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Treading Water in a Sea of Recovery: If California is Ready for Economic Rebound, How Do We Restore Our Competitive Edge?

Senate Select Committee on Business Development

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The Senate Republican Caucus
The Senate Select Committee on Business Development
Senator Bill Leonard, Chairman
April 1994

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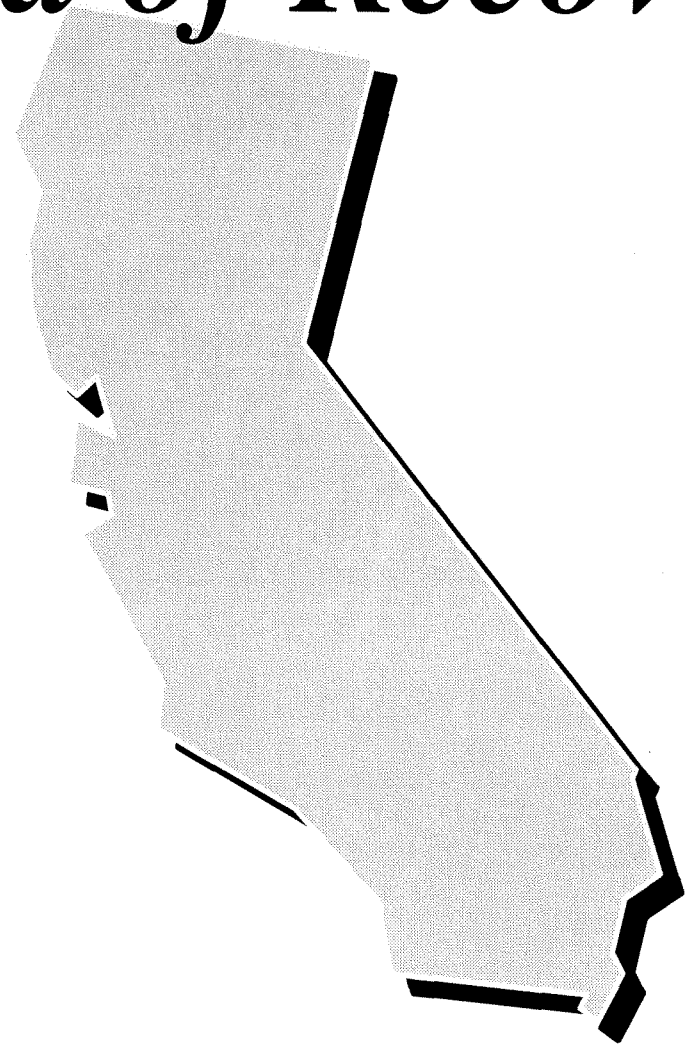

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Senate • State of California

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Friends and Interested Parties:

I recommend to your attention the enclosed report:

TREADING WATER IN A SEA OF RECOVERY

If California is Ready for Economic Rebound, How Do We Restore Our Competitive Edge?

In 1992, the Senate Republican Caucus and Senate Select Committee on Business Development released the first study of California's business environment. All of the reports and studies released in 1992 agreed: California's economy was broke, and something needed to be done. The Republican Caucus study provided the legislature with a blueprint for economic reform.

During 1993, some progress was made. Modest reform of the state's workers' compensation system was adopted and some changes to environmental permitting laws were made. These changes provided the Governor with some of the tools he needs to market California worldwide as a good place to do business.

Recent reports indicate California's recession has bottomed out and may be primed for recovery. But even the optimistic forecasters clarify their remarks by stating that recent positive signals in no way indicate California will return to pre-recession levels of employment and economic growth. The state lost another 150,000 jobs in 1993. And the UCLA Business Forecasting Project notes in its most recent report that even by 1996, California's employment will still be several million jobs below pre-recession trends.

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California is in stiff competition with its Western neighbors for high-paying, skilled jobs. It is a fight we are losing. While the other Western states are enjoying strong economic activity and solid job growth, California continues to wait for a modest recovery. The reasons are clear.

Taxes are too high in California -- higher than any of our key competitors. It still takes businesses years and tens- or even hundreds-of-thousands of dollars to get necessary permits. Governor Wilson has made great strides in streamlining state permitting operations, but absent further legislative action, his hands are tied. Permitting in competing states can take only a few days or weeks and cost far less than in California.

It is clear that much work remains to be done if we are to break free from the economic stagnation which besets our state. The good news is we have the formula to finish the job started last year. The bad news is we are fighting a legislative majority known for its propensity to become complacent. We need your help.

This report examines the progress made toward business climate improvement during the 1993 legislative session and presents the measures and issues that must be addressed in 1994. I hope you will join me in supporting these measures and reform ideas. Returning the economic luster to our once-Golden State must remain our top priority.

If you have any questions about this report or would like additional information, please contact me at (916) 445-6617.

BILL LEONARD

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Table of Contents

INTRODUCTION:

California's Economic Condition

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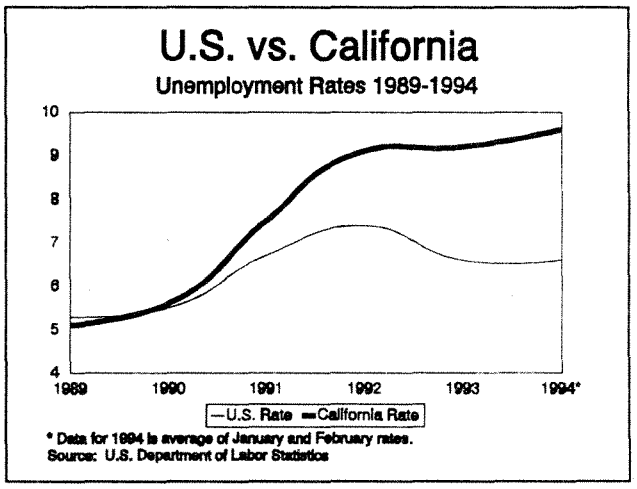
California's Economic Condition

Between June 1990 and November 1993, California lost approximately 600,000 to 800,000 jobs. 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 (as opposed to cyclical) and are, therefore, permanent losses. The study concluded that corporate downsizing is likely to continue in California for the next several years. The driving force behind these and other cutbacks is the need to lower costs and increase productivity -- two things for which California is ill-suited.

Their findings were more recently confirmed by the March 1994 release of the Federal Reserve's "Beige Book" report on Current Economic Conditions. The Federal Reserve study found that while much of the Twelfth District is showing signs of solid economic growth, California continues to lag behind. A graphic illustration of this is presented when one considers how California's share United States unemployment has posted steady increases since 1990. Though California represents 12 percent of the nation's population, it accounts for about 30 percent of the nation's job losses.

In contrast to the California economy, Oregon and Arizona, chief competitors for California jobs, are experiencing solid growth across several sectors.



California had early warning signs. An absolute decline in manufacturing employment began in 1989, prior to the onset of the recession and defense related downsizing. The state suffered the biggest decrease in new business start-ups in the nation in 1990. Just two years prior, in 1988, California had ranked third in the country as the home of new manufacturing plants, but by 1990, the "Golden" state did not even make the top 10.[1]

Despite these and other signals, some analysts and even state leaders refused to see the writing on the wall. As recently as 1990, the Commission on State Finance, headed by state Treasurer Kathleen Brown, claimed California would experience losses of only 30,000 to 40,000

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[1] Steve Hayward, "West of Eden, California's Economic Fall," Policy Review, Summer 1993, No. 65.

jobs in the next year. Their predictions were incredibly optimistic, as by the fall of 1991 job losses surpassed 300,000.

There are some recent signals, and reports, that California has begun to recover or, at least, finally hit the bottom of its economic tailspin. But as discussed in greater length below, even the most optimistic forecasters clarify their optimism by noting that they in no way imply California is on track to reach pre-recession levels of employment and growth.

Base Closures

Many observers have asserted that California's disproportionate decline during the recession was largely the product of large defense budget cutbacks and downsizing. The federal government has proposed closing 20 bases in California with the potential elimination of 250,000 jobs over the next several years. During the first two rounds of base closures, 60 percent of the defense jobs lost nationwide were in California.

But while this does explain some of the job losses, it in no way provides a complete explanation for why California's economy fell further during the recession than any other major industrial state, nor why the state continues to lag far behind the national recovery. California suffered and continues to suffer more than other states because its existing and emerging industries are not capable of absorbing the displaced workers or generating new jobs.

The simple fact is that the cost of doing business in California is prohibitively high. And these costs are directly attributable to government-imposed costs. California was able to shift more and more responsibilities to private sector businesses, such as increased funding for schools and infrastructure as well as for environmental preservation, during the prosperous 1970s and 1980s. California's booming population and economy handily absorbed these added costs. But the price we pay for this is a business sector incapable of competing with out-of-state businesses which were not saddled with these extra costs when the recession hit.

The State of Washington provides a good example. Washington's aerospace industry has been hard hit by recent cutbacks, like California. But, unlike California, and due to its much stronger business climate, these job losses were reported by the Federal Reserve as offset by strength in other sectors of Washington's economy.

California's Regional Competitors

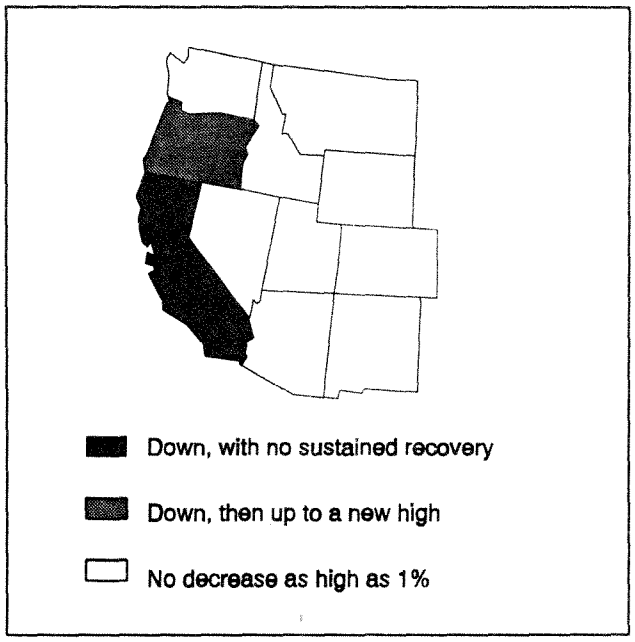
The recession affected states very unevenly. Some states faced much sharper employment decreases than others and in some states there were barely any signs of economic downturn.

Drawing on data from the Bureau of Labor Statistics, the Rockefeller Institute of Government's Center for the Study of the States traced the impact of the recession on all 50 states. But the center performed the more useful task of tracking the recession's continued economic effect. While the national recession officially lasted from July 1990 to March 1991,

the center tracked employment data through most of 1993.

Not surprisingly, the researchers found that California was among the hardest hit. The study placed states in one of four categories based on the severity of employment declines and the strength of their recovery: No employment decrease; Decreases followed by new employment highs; Decreases followed by moderate increases; and Decreases followed by no sustained recovery. The chart below illustrates the vulnerable position California is now in with booming regional economies in neighboring states that have either rebounded to new employment highs or were never substantially hit by the recession.

California was one of only seven states that suffered high unemployment and have yet displayed no sustained recovery.



The most striking feature of the study, however, is regionally defined. Of the Western states, California is the only state falling in this last category. The remainder of California's chief competitors displayed a lasting resilience as the majority of them experienced no decrease in employment as high as 1 percent. The only state to experience a decrease in the Western Region, Oregon, followed the decline with a new employment high for the state.

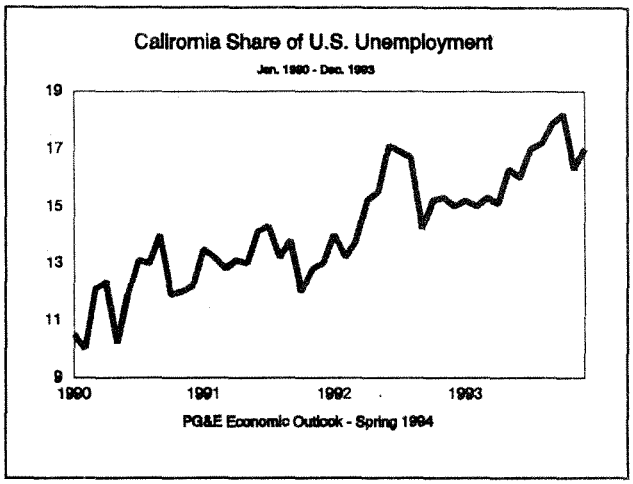
The study also addresses the relation of recent employment changes to state tax increases. Researchers concluded that "[i]t is no coincidence that the eight states with the worst employment trends enacted significant tax increases in the early 1990s."

So with its self-inflicted wounds, California has left itself vulnerable to out-of-state head hunters who can boast of high employment rates and lower taxes as they encourage California businesses to relocate. And California's Western competitors have not failed to realize this potential. While their share of U.S. employment has increased, California's share of the nation's *unemployment* has increased.

Luring Tactics of Other States

California's Western competitors remain active in trying to lure California businesses away with hefty tax-break packages, lower operating costs, cheap real estate and job training incentives. California remains an easy picking ground for these states.

Below is a survey of a few of California's chief competitors and a description of their tactics.



New Mexico

The city of Rio Rancho, New Mexico, has been very successful in luring California businesses to its area. Rio Rancho's soliciting agency is the Rio Rancho Economic Development Corp. (RREDC). Their team consists of volunteers, including a banker, a builder, corporate executives and city and state representatives. A team appears to operate with a "take-over" mentality as it analyzes a company's finances to determine the financial appropriateness of a solicitation and possible move. The team arranges for new banking relationships and the design and construction of new plants. It then acts as a liaison to state and local government agencies offering incentives tied to construction, hiring and the purchasing of new equipment.

Rio Rancho's team is quick and mobile. They act as the sole authoritative source and assembler of proposals for a California company to consider as the basis for a move. Team members will fly to California at a moment's notice (and at personal expense) to present a proposal to a promising lead.

And their "incentives" come cheap because they are able to take advantage of the decisions California policymakers have made to impose costly tax and regulatory burdens that make expanding or remaining in California a cost-loser. For example, the RREDC facilitated the migration of the Great American Food Stock Co, which was able to build their new facility in Rio Rancho, rather than California, in four months -- less time than it would have taken to obtain a permit in San Diego, which they left. The building permit cost $2,250 and took only four days to obtain. In San Diego, the same permit would have cost $40,000 and required 18 months for review. The company also cited as paramount considerations the fact that they will now enjoy substantial reductions in payroll costs and taxes.

Arizona

Through their state Department of Commerce, Arizona operates another successful business recruitment organization. Under the Governor's Strategic Partnership for Economic Development (GSPED) program, Arizona is targeting high-paying, high-technology jobs, such as aerospace, transportation and bio-medical and optics technology. The state formulates proposals specific to individual companies which include tax abatements and job training.

Arizona is also targeting industries displaced by defense cutbacks and the Arizona State Legislature recently enacted a defense restructuring bill to facilitate the process. The lure of such incentives become greater when displaced industries in California are presented with a ready option for continued viability. In California, they face the option of re-tooling, restructuring and possibly re-constructing facilities that no longer are able to operate without defense contracts. When faced with the multi-million-dollar costs of such projects in California, the fact that another nearby state is offering incentives for them to re-build there offers a compelling option.

Texas

Texas has been actively soliciting California businesses and has displayed notable success in certain industries. Austin and San Antonio are common destinations for California firms. These cities have been attracting high-tech, biotechnology, health, entertainment and biomedical firms. At least 21 Silicon Valley computer companies have chosen to either expand to or relocate in Austin in recent years.

The specific motivations cited by some of these firms are California's high housing costs, burdensome regulations, high personal and corporate income taxes and congestion. Austin, meanwhile, is able to offer lower taxes, affordable real estate and labor costs as well as a skilled workforce. These Texas locales are also able to offer businesses a competitive university-based research structure that California has long cherished as one of its last remaining advantages. Austin's success is typified by Motorola which, in July, announced it was opting to bolster its Austin operations by $1 billion in new construction and the addition of nearly 1,000 new jobs.

Utah

Utah has been able to take direct advantage of California's high marginal tax rates. Utah's corporate tax rate is 50 percent lower than California's. Alan Ashton, founder of Wordperfect in Orem, Utah, notes that Utah's high-tech industry is so strong that many people are now flocking from California and other struggling states.

Utah has also been able to make direct investments in high-tech industries with its Center of Excellence program. Through this program, Utah has aided the creation of over 70 new high-tech companies.

The Effect of Competition

California has not sat idly by as other states pick over its remaining industries. Governor Pete Wilson has taken an active approach to job retention and established some successful programs for convincing ailing or expanding businesses to remain in California.

Governor Wilson has overseen the creation of permit assistance centers around the states to provide a clearinghouse to local businesses seeking assistance in expanding or building. Likewise, the Department of Trade and Commerce has established a "quick response" team to

mobilize local and state regulators and offer business direct assistance and incentives if it is considering an expansion. But these efforts can by definition be no better than what the legislature gives them to work with. These programs are successful in directing business owners through California's regulatory thicket, but they cannot cut away the thicket. These programs can offer limited job training funds and try to arrange local tax breaks, but they cannot reduce what is an overly-burdensome state tax rate set by the Legislature.

Therefore, it remains the job of the legislature to remove the impediments to job recovery and expansion and to provide state officials with the tools they need to compete with the likes of Arizona, Utah and Texas. Without these tools, they are stuck in an endless game of catch-up. Rather than encouraging expansion of businesses, they are forced to work like fire-fighters rushing in to help a business that is already fed up with California and looking elsewhere.

Optimistic Forecasts

A recent decrease in California's unemployment and the expected influx of federal disaster-relief following the Northridge Earthquake have prompted some analysts to conclude that California's economic decline may have bottomed out. Some analysts have gone so far to state the recovery may have actually started. But even assuming these forecasts are accurate, there is ample evidence California policymakers can ill-afford to wait idly by for this "recovery" to take place.

The unemployment rate in California dropped from 10.1 percent in January to 9.0 percent in February and 8.6 percent in March. But California's unemployment rate still stands far above the national average, currently running at 6.5 percent.

Among the more optimistic analysts, the UCLA Business Forecasting Project has predicted that California would experience recovery in 1994. In its most recent report, the forecasters conceded that "somehow the same forecast feels more risky now that the second quarter of 1994 us upon us." The largest single factor the report cites as the source of its predicted recovery is the influx of disaster relief money and the ensuing construction work that will increase in Southern California. The problem is, this money is temporary; the same pressures that have prevented a sustainable recovery in California prior to now will remain once the funds dry up. This means that, at best, the "causes" of the economic improvement could be very short lived.

Secondly, the UCLA forecasters note that "to say California has started a recovery *is very far from implying* that California will soon recover pre-recession levels of jobs, taxable sales or real incomes." (Emphasis added.)

Finally, the three "solutions" the UCLA forecasters rely on to lower California's high unemployment numbers are hardly the type of factors the legislature can count on as "positive" growth signals, and hardly the type of factors that will restore California's position as a world economic heavyweight. These "key" factors cited by the UCLA analysts are: "(1) more people

will leave California, as they have been doing; (2) more people will get so discouraged looking for work that they drop out of the labor force; and (3) more people will accept jobs in lower-paying service industries."

The Outlook

If California is to recover its pre-recession growth and employment levels, clearly more will be needed than timely disasters which provide an excuse for spending tax dollars on local construction projects. All of the necessary reforms lie within the purview of the state legislature. Reforming regulatory practices which force businesses in some regions to run a 70-agency permit gauntlet is a must. State tax rates, now among the nation's highest, must be reduced. And though the legislature addressed the issue of workers' compensation reform during the 1993 legislative session, the work is incomplete.

In an effort to aide the legislature in formulating reform policies, this report has first summarized 1993 legislative action in the key reform areas. Each chapter then presents a detailed list of reform bills now pending before the legislature which would provide these needed reforms. Too often previous reports on California's business climate identified only issue areas without targeting specific proposals for passage. This report, however, provides a simple, detailed list of the measures and other reform proposals that if adopted, would help reverse California's precipitous decline and put the state back on a high growth, quality job creation track.

Chapter I

REGULATIONS

Regulations

Introduction

Reform of California's regulatory process took center stage during the 1993 legislative session. But despite the attention and fanfare, California has not adequately addressed this major impediment to business startup, expansion and hiring.

The one true success occurred in the area of removing duplication and streamlining some state regulatory operations. A second area that received heightened attention, but failed to see substantial reform, was the California Environmental Quality Act process (CEQA). A small victory was achieved in this area, however, as half the battle involves educating policymakers and the public about the grave effects of this innocuously-named regulation giant.

1993 Legislative Session

Perhaps Governor Wilson best summed up the progress of the 1993 session and the need for further action in comments made upon signing some marginal reform bills: "These reforms do not match the expectations that were raised by the Competitiveness Council and the Economic Summit. It is imperative that the legislature revisit this issue early next year."

The bills below demark attempts by members to reform particular components of California's regulatory structure. However, members with substantial reform measures were routinely required to amend out the substantial provisions of their bills at the behest of majority Democrats in order to gain passage. The fundamental problems detailed by the 1992 Caucus report, therefore, remain for the legislature to address in 1994.

Removing Duplication/Streamlining State Operations

The Senate Republican Caucus report on California's business environment highlighted the undisputed fact that California's regulatory structure imposes costly delays and confusion. Ill-defined jurisdictions for state agencies and a lack of coordination forces employers to often duplicate work and effort to satisfy local, state and federal requirements.

SB 1185 (Bergeson) -- Ch. 419, Statutes of 1993

This measure requires that the secretary of the California Environmental Protection Agency adopt regulations establishing a consolidated permit agency process whereby one permit agency would be designated to issue a single facility permit covering the requirements of all the other applicable permit agencies. Expedited time limits for review are also provided.

This measure places the coordinating burden where it belongs -- with state agencies. California businesses have accepted the burden of regulatory compliance as a cost of doing business in California. But the price is too high when they must likewise do government's work for it. S.B. 1185 will remedy this now that it has become law.

SB 659 (Deddeh) -- Ch. 1068, Statutes of 1993

S.B. 659 addresses the often "creative" means by which government agencies circumvent the Permit Streamlining Act and removes technical errors that effectively exempted CEQA projects from its benefits. [For an analysis of how this measure impacts CEQA, see CEQA section below.]

SB 1082 (Calderon) -- Ch. 418, Statutes of 1993

S.B. 1082 addresses duplication in hazardous waste/material management programs. The measure requires the creation of a consolidated regulatory program for hazardous waste facilities and establishes a process whereby Cal-EPA will oversee the unification of hazardous material and hazardous waste programs administered by local governments.

AB 1451 (O'Connell/Umberg) -- Ch. 630, Statutes of 1993

A bill addressing hazardous waste reporting, AB 1451 offers a partial solution for duplicative state reporting requirements regarding hazardous waste materials. Users and generators of hazardous waste materials are currently subjected to a number of overlapping reporting and planning requirements. This bill requires the Office of Emergency Services to adopt a format to help those businesses that are subject to two or more of the six particular reporting and planning requirements. The office has until January 1, 1995 to develop this format.

However, beneficial provisions that could have more quickly streamlined reporting requirements were deleted from the bill prior to Senate passage. As the measure passed the Assembly, it would have also allowed certain chemical source reduction and recycling reports required under the federal Pollution Prevention Act to be used for state requirements if all state-required information was included.

California Environmental Quality Act Reform

The California Environmental Quality Act (CEQA) was one area of needed regulatory reform that received particular attention. But the progress in this area best typifies the 1993 legislative session's progress: Piece-meal reform.

Several bills were introduced that addressed CEQA, but in the end, only a few bills marking progress were adopted: SB 659 (Deddeh), SB 919 (Dills) and AB 1888 (Sher/Allen). Authors of other reform bills were compelled to either merge there measures with AB 1888, or have their measures held in the Assembly Natural Resources Committee.

SB 919, for example, was allowed out of the committee only after its more comprehensive reform components were removed by demand of the committee and the author was obliged to double-join what remained of the measure with AB 1888. But in the end, both measures were largely gutted, and recast to include many provisions from another reform measure held in committee, SB 912 (Leonard).

SB 919 (Dills) -- Ch. 1131, Statutes of 1993
AB 1888 (Sher/Allen) -- Ch. 1130, Statutes of 1993

The most substantive elements of both bills will require state agencies to first conduct an environmental analysis of reasonably foreseeable compliance projects when adopting a new rule or regulation regarding installation of pollution control equipment or the imposition of performance standards.

Businesses seeking to comply with these state agency regulations will then be allowed to use this information, in varying degrees, in preparing applications to comply with the regulation. To many this seems a simple common-sense step. But the very fact this small reform step was required illustrates just how much farther CEQA reform efforts must go.

The second major element of the package requires that in order to judicially challenge a certified EIR the complainant must have participated in the public hearings or discussion period held for the project.

Assembly Bill 1888 also provides authorization for a Master EIR to be written for projects such as general plans and phased projects. Certain projects disclosed by the MEIR will then be exempt from duplicate review. But this provision, unlike those for state agency regulations taken from SB 912, merely "authorizes" the use of this reform proposal. And as noted in the Senate Republican Caucus report, when presented with the "opportunity" to reform, government officials and bureaucrats balk. Other provisions of the package include: a definition of the quality of evidence that is necessary to require the preparation of an EIR; a requirement that the Office of Planning and Research review and update CEQA guidelines at least once every two years; and a special exemption for one automotive plant trying to comply with a local AQMD regulation.

SB 659 (Deddeh) -- Ch. 1068, Statutes of 1993.

This CEQA streamlining measure, the effects of which are arguably more far reaching than many other heralded reform measures, removes technical errors that effectively exempted CEQA projects from the benefits of the Permit Streamlining Act. SB 659 also requires officials to approve or disapprove a project with an Environmental Impact Report within six months of certifying the EIR. For projects requiring a Negative Declaration, or those exempt from CEQA requirements, SB 659 sets a three-month deadline for state action.

Reforming Standards

Reform of regulatory standards during the 1993 legislative session centered on adding criteria for agencies to consider in drafting new or modified regulations. Additional reform, however, is needed, such as expanded peer review of government-created chemical risk guidelines.

SB 513 (Morgan) -- Ch. 1063, Statutes of 1993

This measure requires all state agencies assess to the impact of new or amended regulations on jobs and business creation, expansion or elimination. The measure also requires agencies to include a statement of this assessment in the notice of proposed action.

AB 969 (Jones) -- Ch. 1038, Statutes of 1993

Assembly Bill 969 requires that state agencies, before adopting or amending a regulation, consider how the new or amended regulation will affect the state's ability to compete with businesses in other states.

Federal Conformity

A key element of California's regulatory history that has directly impacted the state's competitiveness is the propensity for state officials to play a game of "one-upmanship" with federal regulators. There has been a propensity to draw a foregone conclusion that if the federal government has decided a particular standard is appropriate, California must adopt a tougher standard. Legislation was enacted during the 1993 session, however, to at least partially address this problem.

AB 1144 (Goldsmith) -- Ch. 1046, Statutes of 1993

This measure requires benefits to outweigh costs before state regulators adopt standards higher than existing federal standards. The measure also requires that agencies document efforts to avoid duplication or conflict with federal regulations.

Air Quality Management Districts

Attention was given during the 1993 session to the ability, and often propensity, for local air quality management districts to negatively impact a region's competitiveness. South Coast Air Quality Management District policies, for example, were the target of much criticism preceding and following the Senate Republican Caucus report.

SB 802 (Lewis) -- Ch. 1073, Statutes of 1993

This measure directly responds to a key Senate Republican Caucus recommendation by putting the brakes on abusive AQMD fees. SB 802 limits increases in fees charged by SCAQMD to the State Consumer Price Index.

The Democrat-controlled legislature, however, inserted a provision to exempt fees allegedly mandated to comply with the federal Clean Air Act. The act, however, is a frequent shield used by the district to justify its onerous practices. The laudable reforms advanced by this bill, therefore, will be easily undermined if district officials continue this practice. More, therefore, needs to be done to address the broad fee-levying authority these un-elected bodies have.

AB 1520 (Aguiar) -- Ch. 1180, Statutes of 1993

AB 1520 could end one particularly egregious practice of AQMDs which delays installation and operation of mandated pollution control equipment. Even though a business is first told it must install a new piece of emission control equipment, AQMDs then require a permit to install the equipment and a permit to operate it.

In addition, districts currently demand final and operating engineering information that a business is unable to provide until the equipment is installed. AB 1520, however, limits the information district officials can demand for permit applications to that which a business reasonably could be expected to have prior to actual installation.

Permit processing delays for mandated installation of pollution control equipment, even those caused by district personnel, can result in a business being fined for failing to meet district compliance deadlines. AB 1520 allows businesses to apply for a variance from fines when delays occur through no fault of their own.

Small Businesses

The Senate Republican Caucus report gave special attention to the plight of small businesses. Lacking the legal and other technical resources available to larger firms, small business owners are regularly forced to interpret technically-drafted regulations for themselves and contend with zealous regulators and inspectors.

Legislative attention to small business regulatory reform sought to exempt these enterprises from the onerous requirements of many sweeping regulatory requirements that they are ill-suited to implement.

A second area of concern is the feasibility of requiring small businesses to comply with onerous ride-share rules that can require costly purchases of vans and other measures to force employees out of their cars.

SB 726 (Hill) -- Ch. 870, Statutes of 1993

This measure requires that when a state agency proposes to adopt or amend a regulation that would affect small businesses the agency must use "plain English" when drafting the regulation. And when due to the technical nature of the proposal this is not feasible, the agency is required to make a plain English summary of the regulation.

This at least partially addresses the particular burden of small businesses who, lacking substantial legal resources, are often forced to interpret and evaluate confusing regulatory requirements for themselves.

SB 883 (Leslie) -- Ch. 563, Statutes of 1993

Existing law prohibits the South Coast Air Quality Management District from imposing its Regulation XV trip-reduction regulations on businesses with fewer than 100 employees at a single site until 1997. This measure expands that relief to employers with fewer than 100 employees in any air district until 1997.

But despite the obvious intent of this and other similar measures, the South Coast AQMD has already begun efforts to circumvent them. As discussed below, SCAQMD has begun considering plans to require cities to impose the trip reduction mandates on businesses and, thereby, circumvent the prohibition on their direct activities in this area.

Injury and Illness Prevention Program Reform -- SB 198

Limited progress in this reform area was achieved in the 1993 session. However, reforms centered on providing selected small business -- very small businesses -- some relief from reporting requirements. Though a needed step, reforms are nevertheless needed to return the primary focus of this bill to those high-hazard industries where its application can arguably be justified. All businesses, large and small, should not be forced to prepare, document and update injury prevention plans in the same manner as high-hazard industries.

AB 1930 (Weggeland) -- Ch. 927, Statutes of 1993

AB 1930 lightens the extensive record-keeping and documentation requirements of SB 198 for small employers in non-hazardous industries. The bill applies to businesses with 20 or fewer workers and still requires them to provide a written injury prevention program listing the person responsible for implementation, a record of periodic inspections, and employee training.

AB 395 (Hannigan) -- Ch. 928, Statutes of 1993

This measure reduces part of the SB 198 regulatory burden by exempting all new employers for one year from civil penalties for failure to have an adequate SB 198 program if they have made good faith compliance efforts and the violation is not intentional or serious.

1994 Legislative Session

Introduction

Though at first glance, the previous section seems to portray substantial legislative action on regulatory reform, that perception is dangerously misleading. Reform attempts in 1993 were made in a number of different areas. However, most of the legislature's successes came in areas where mere common sense dictated the type of reforms adopted. And possibly the most discouraging element of the 1993 session was that even these simple reforms represented hard-fought victories.

For example, it is unfortunate that such an array of legislation was needed to reign in abusive air quality management districts. The legislature created these monsters. But rather than definitively state where AQMD jurisdictions do and do not lie (such as in the regulation of mobile sources), the legislature has been forced to expend time and resources restricting abusive practices one by one. But under currently-prevailing political winds, reform-minded members of the legislature have little choice but take on the abusive practices of one regulation at a time.

Likewise, in the area of CEQA reform, session-long toil produced "reforms" that merely facilitate the use of environmental analyses already performed for subsequent projects. And rather than address the public value of regulatory costs with a rational, cost-benefits approach, attention is paid to sorting the mounds of paperwork current regulatory policies require.

But even with the attention paid common-sense reforms, the legislature's Democrat majority balked at approving bills to develop a single permit application form for certain departments -- even when sponsored by some of its own members. Bills accomplishing this and other reforms are available for passage and are detailed below. Many of these bills, however, take crucial steps beyond those taken last year. And there are still other areas that will require legislative attention and bill introductions.

CEQA Reform

The greatest progress in reform of the California Environmental Quality Act during 1993 was educating the legislature and portions of the public that this environmental process is no where as benign as its title implies. The challenge for 1994 is to move beyond the measures which allow suitable analyses to be used for subsequent projects and address areas such as EIR recirculation thresholds and civil procedure guidelines.

Recirculation

Significant new information triggering recirculation of an EIR should be limited to information indicating that the project will have at least one significant environmental impact not identified in the draft EIR. It is unknown at this time whether legislation is needed in this area

in light of the following state Supreme Court decision.

Laurel Heights

This California Supreme Court decision (Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of University of California (1993) 6 Cal.4th 1112) may have provided California with its best reforms to date. The decision clarifies the quality of evidence needed before an agency is required to recirculate a Draft Environmental Impact Report. The California Supreme Court clearly stated: "Rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement" (Laurel Heights, at 1131, quoting Citizens of Goleta Valley v. Board of Supervisors ((1990) 52 Cal.3d at p. 576).

The court in Laurel Heights held that the statutory phrase "significant new information," which requires the recirculation of final EIRs, requires new information that a proposed project will have new or more severe adverse effects on the environment than previously disclosed. The court, in reaching this conclusion, found that the interests of finality in the CEQA process were a distinct concern that warranted the holding.

This recognition by the courts provides a clear holding that the CEQA process is not to be used by project opponents as a convenient tool for tying the hands of lead agencies and proponents with endless knots of new, often spurious, information thrown into the process with the sole intent of stalling, and eventually killing, a project.

Though this ruling makes strides toward reform in areas the legislative majority has refused to permit, it is not absolute. There are indications that certain groups who oppose such clarity and finality in the process, such as officers of the State Bar Association, may try to weaken and undermine the ruling with legislation this year. The Bar Association's legislative review committee is in the process of drafting a CEQA "reform" report that could recommend proposals to weaken the ruling. The legislature should reject these efforts if they materialize.

Comment Period

A common tactic of project opponents is to submit comments after the comment period on a draft EIR has been closed. This forces further delays in a project application as the lead agency is often compelled to halt the certification process and respond to these late comments with additional analysis. And although current guidelines state an agency is not required to respond to late comments, the reality is they often must or face even costlier litigation.

Legislation is needed which will state unequivocally that CEQA is intended to give agencies total discretion on whether to respond to comments made after the close of the draft EIR review period.

Limiting CEQA Litigation, Reforming Review Standards

To encourage administrative resolution of CEQA disputes, rather than burdening the courts, the legislature should clarify the fact that the petitioner must establish that they have exhausted administrative remedies before pursuing litigation. In addition, guidelines should be adopted which restrict CEQA challenges to those stemming from genuine environmental concerns.

Courts should also be required to reject agency decisions under CEQA that are arbitrary or meet the federally-defined standards as "capricious." Conversely, when agency decisions are not found to be arbitrary or capricious, courts should be required to defer to agency decisions.

Streamlining CEQA Review

A well documented problem with CEQA procedures is the protracted time delays that are inevitably involved. These procedural delays translate into lost jobs and wages as businesses are prevented from going forward with valuable construction plans that produce both construction industry jobs and the jobs that result from start-up and expansion. Existing law allows the lead agency to take up to a full year to prepare an EIR and six months to prepare a negative declaration.

But despite the existing time limits on CEQA document preparation, they are easily and commonly circumvented. The legislature should, therefore, adopt a mechanism for enforcing these time limits. The 1993 reforms did not adequately address this area.

Rules of Evidence and Procedure

The cost of CEQA compliance could be greatly reduced with the adoption of some simple civil procedure reforms. The discovery process should be reformed to allow plaintiffs access to pertinent information, but prevent abuses which have plaintiffs demanding access to reams of data and information unrelated to the project. This common tactic is designed to not only harass project proponents, but also to simply overload the courts with more information than they could possibly ever consider. Prior to discovery, the record of documents in evidence often consist of entire libraries of CEQA documentation and reports.

Legislation should be introduced and adopted to require discovery in CEQA proceedings to conform to existing civil code guidelines. Specifically, full discovery of all documents contained in the administrative record will be provided and additional discovery is permitted if, in the exercise of due diligence, it could not have been obtained during the administrative process. This can be accomplished by simply requiring the discovery process to conform with subsection (e) of section 1094.5 of the code of civil procedure.

Secondly, the procedures for determining whether to grant a project injunction must be reformed. Currently, project opponents are exempt from the common law guidelines that

traditionally govern injunction procedures, allowing them to block economic development with scant evidence of danger. Repealing subsection (g) of Section 1094.5 of the code of civil procedure and directing the courts to follow the common law procedure would remedy this situation. This will require the judge to make a determination of the likelihood of success of the suit on the merits and whether the benefits of granting the injunction outweigh its detriment to the project proponents.

AB 3250 (Haynes)

This measure would streamline the judicial process when allegations of CEQA non-compliance arise.

CEQA Application

Another area that was not addressed during the 1993 legislative session involves a misapplication of the act that has been allowed to take place. CEQA was intended to apply to "changes" that affect the environment. It has, however, been used to thwart rebuilding efforts of existing and permitted facilities, including homes, that are damaged by natural disasters.

Likewise, CEQA was not intended to apply to pre-existing facilities seeking to simply renew already granted and reviewed permits. Efforts to rebuild or restore burned, unsafe or damaged facilities do not involve the type of environmental impacts for which CEQA was intended and it should not be applied.

In addition, if a facility is simply seeking to renew an operating permit and does not propose significant or other production increases or modifications that affect the environment, CEQA's requirements should not be imposed.

AB 3251 (Haynes)

This measure would specify that a lead agency's decision to grant a project a negative declaration or approve an EIR should be sustained if the lead agency's conclusions were supported by substantial evidence in light of the whole record.

Mitigated Thresholds

The benefits of state environmental regulations must now be documented before adoption. Presumably every performance standard or equipment requirement will produce benefits for all Californians, measurable in reduced emittants or discharge. But when a business seeks to comply with new requirements imposed for the benefit of the state it is placed in a precarious situation.

The adoption of performance standards and other regulations most commonly require manufacturers to install a new or updated piece of equipment or add another step to their production process. In doing so, it is inevitable that, at the site, changes in emission levels will

result. One simply cannot add new processing or other steps to the manufacture of a product without creating some change or increase in local emissions. The presumption, however, is that this local change or increase will produce far greater benefits when its statewide impacts are calculated. Manufacturers, however, do not receive that same presumption.

When a manufacturer is required to add a new process or device, it is required to mitigate its local environmental impact down to zero. The "no net increase" rules that produce this result unnecessarily stall not only business compliance, but delay environmental benefits statewide.

To remove this Catch-22, the legislature should require the regulatory agencies, when they prepare their benefit assessments, to include a local impact threshold to which the manufacturer should reasonably be expected to remain within. Below that threshold, manufacturers would not be required to mitigate local impacts further when the overall benefits of a processing change to the state warrant it. The agency could, for example, be permitted to make a statement of overriding concerns which recognizes the reality of process change impacts but guarantees that the statewide benefits of the regulation will result without unnecessary delay.

AQMD Reform

Though legislative attempts have been made to reign in abusive practices by air quality management districts, creative rule-making has allowed these reforms to be circumvented. For example, though the legislature passed, and Governor Wilson signed, measures to restrict the ability to impose costly trip-reduction plans on small businesses, South Coast Air Quality Management District officials have found a way around it.

Rather than impose these rules on businesses directly, as the law now forbids for companies with fewer than 100 employees, this air district has instead required cities to require small businesses to develop and implement these plans. Such flagrant disregard must be addressed by the legislature and this loophole closed.

In addition, the Senate Republican Caucus' Business Environment Report detailed the manner in which AQMDs have circumvented the spirit and intent of regulations requiring them to analyze the economic impact of rules and regulations they impose. Self-serving analyses which often go as far as predicting that new regulations, restrictions, fees and penalties will increase jobs are not uncommon. The simple fact that seems to be ignored by these officials (and perhaps, therefore, a reminder is in order) is when you take money away from a business, that is money it will not be able to offer to new employees or spend on plant expansion.

The legislature should, therefore, adopt guidelines to ensure the analyses required of regulation impacts are performed accurately and independently of air district influence. While SCAQMD estimated that its regulations would only cost about $3 billion a year, two independent analysts placed the costs at $10 to $12 billion a year. These researchers, with the National Economic Research Associates and Resources for the Future, found that the district had tagged many regulations as having "zero" costs. When pressed about this creative cost estimate, district

officials stated that they did not wish to use "arbitrary" figures and, thus, arbitrarily selected zero as the cost.[2]

SB 803 (Lewis)

This measure would require specific information be included in socioeconomic impact reports for proposed rules and regulations, such as the regulation's effect on economic competitiveness and the number of jobs it would affect. This would provide a more accurate assessment of the cost of a rule or regulation.

Trip Reduction Mandates

Probably no other AQMD regulation has proved as controversial as so-called "trip reduction" mandates. The regulations force employers to develop and implement plans to force their employees to car-pool to and from work. The plans have proved costly for business and ineffective in their design.

While the goal of such plans is allegedly to reduce emissions, the plans focus on vehicle trips. Reducing trips, however, will not necessarily reduce emissions. For example, it is of little benefit when employees opt to join together with fellow workers and, perhaps, ride together to work driving the largest car available. Large cars are often the worst polluters. And, when one considers the possibility that the car chosen is also an older vehicle, chances are these employees have provided a net increase in emissions when compared to those produced by employees driving separately, but in smaller, more efficient vehicles.

In addition, the SCAQMD -- where this novel approach was contrived -- has yet to confirm that these plans provide any reduction in pollution. While employers are currently forced to spend literally millions of dollars devising and implementing these plans, as well as seeking AQMD approval for them, the AQMD cannot even justify the expenditures by alleging they will produce cleaner air.

The problem seems to be not only in its lack of effectiveness, but its lack of focus. Assuming the AQMD is justified in imposing these regulations, a better approach would focus on emission reduction, not trip reduction. Hughes Aircraft has spent over $1.5 million implementing its ride-share program per South Coast mandates. It has also, however, developed and tested a remote sensing program that has produced far greater emission reductions than the ride-share option, and accomplished it with considerably less costs. However, SCAQMD refuses to credit their program as an option to meeting their ride-share requirements.

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[2] Steve Hayward, "West of Eden, California's Economic Fall," Policy Review, Summer 1993, No. 65, at p. 65.

SB 1336 (Leonard)

This measure would require 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. The measure provides an incentive for businesses to develop cost-effective and technologically innovative means of compliance that will lift the costly burdens of current regulations and produce cleaner air. The chart on the next page displays the documented cost savings and pollution-reduction effectiveness provided by one of

Cost Effectiveness Of Employer Programs

Source	Control Method	Cost Per Ton	Pollutant
SCAQMD Reg. 1501	Ridesharing	$5,700* to $15,000	CO, NOx, and ROG
Hughes' Remote Sensing Program	Reduction in Vehicle Emission	$1,700^ to $6,000	CO, NOx, and ROG
Potential Savings		**$4,000 to $9,000**	**Same**

* Cost per ton based on annual costs of $40 and $105 per regulated employee.
^ Estimated cost for reductions is dependent on many variables, including: remote sensing system costs, repair costs, number of high emitting vehicles, and the required remote sensing frequency.

Circumventing Legislative Intent

In 1993, as noted above, the legislature expanded protections for small businesses which exempt these enterprises from the costly mandates. Undeterred by this clear statement of legislative intent, however, the SCAQMD has proceeded to examine plans to circumvent that law. Air district officials, for example, are considering requiring cities to impose trip reduction mandates on small employers.

SB 1403 (Lewis)

This measure prevents the South Coast air district from indirectly requiring small employers to comply with Regulation XV trip reduction requirements. It simply forces the air district to carry out the spirit and intent of previously-enacted measures that exempt small employers from those requirements.

Legislative Oversight

Many critics and victims of air district policies have taken special exception with California air districts' ability to wield such great power and authority over the business and personal lives of residents. District boards are often comprised of appointed members who, as a result, operate without appropriate levels of accountability. This concern is not without merit. These boards, insulated as they are from direct public scrutiny and recall, are responsible for imposing some of the most intrusive rules and regulations, which severely impact the lifestyles of all residents. One key reform measure, therefore, would include establishing a process for greater accountability.

SB 1634 (Hurtt)

This measure would provide needed legislative oversight of AQMD budgeting. There is currently no essential limit on what AQMDs can charge businesses through fines and fees to fund their operations. SB 1634 would require that each AQMD submit its budget to the legislature for review and require that district officials follow the budget's spending limits once adopted.

SB 1401 (Lewis)

This measure would provide legislative oversight for some rules and regulations adopted by air districts or the state Air Resources Board. The legislature would have to approve any air district or air resources board regulation that affects small employers (those with less that 100 employees). This measure strikes a balance between concerns about the ability of these boards to function properly and the concerns raised here and elsewhere about the costly burdens these regulations impose on business, particularly small businesses.

AB 1479 (Johnson)
AB 1853 (Polanco)

These measures would bring the budgetary authority of the South Coast Air Quality Management District under the purview of the legislature and governor. In addition, statutory authority would have to be granted before air district officials could impose fee increases.

Funding Mechanisms

The Senate Republican Caucus report also discussed the dangerous conflict in current guidelines that permit air districts to fund themselves through fines and fees they impose on business. The inevitable result is that, as district revenues lag (often due to increased compliance), districts are prone to merely raise fees and fines to boost their revenues.

Two possible approaches for the legislature to consider would remove this fee-raising incentive. One approach would have all revenues raised by air districts deposited in the General Fund. District budgets would, therefore, receive the appropriate legislative deliberation and

debate of all public expenditures. The second approach would have the legislature oversee district fee-raising practices by requiring districts to gain legislative approval of proposals to raise fee or fine levels.

A proposal that was circulated last year, but may not be pursued by the author this year (AB 1853, Polanco), would have established an Air Quality Management Operation Fund. This measure would have transferred the operating budgets of each air district to the Cal-EPA, and limited the fee raising authority of the districts. It is an idea that the legislature should again consider.

Appeals Process

Current guidelines permit air districts to appoint their own appeals board members. Businesses challenging a permit denial or other administrative action of an air quality management district governing board are then faced with the prospect of making their case to appeals board members owing their jobs to the businesses opposition. Such a conflict of interest must be removed.

The legislature should, therefore, impose a mechanism for naming appeals board members that are independent of those whose decisions they are charged with reviewing. One proposal being circulated would apportion the appointments to appeals boards to county members of air districts and the districts' governing boards. This would help ensure truly independent reviews of governing board decisions.

Tax Credits

Several measures would lighten the financial burdens environmental regulations impose via tax credits. They include:

SB 63 (Alquist)

This measure would allow businesses or individuals to claim a tax credit equal to 15 percent of the amount spent on pollution control equipment used in fabricating, processing, assembling, producing or manufacturing activities. Tax refunds would not be allowed under the measure, but manufacturers would be allowed to carry over unused portions of the credit to be used against future tax liabilities.

AB 1070 (Ferguson)

This measure would exempt any equipment or machinery that is purchased to reduce air pollution in order to comply with local, state or federal requirements from property, sales and use taxes. The measure also would allow taxpayers to expend 20 percent of the cost of qualified pollution control equipment in the first year, and spread the remaining 80 percent over the succeeding four years.

Sunset Provisions

Though enacted with the intent of controlling the effects of certain products or manufacturing by-products, regulations often come before science. For example, while the South Coast Air Quality Management District has determined that employers must force employees to car-pool, they have yet to determine what the benefits of this costly mandate will be. Likewise, the ill-effects of certain chemicals are often determined not by science, but the interest group that is most effective at garnering news coverage. The result is a rush to regulate something later determined to be innocuous.

One effective way to address this problem would be to enact legislation requiring sunset clauses on all regulations. In addition, re-authorization by the legislature would provide the chance for lawmakers and the public to reassess the dangers posed by the regulated element to determine whether existing regulations provide the best approach.

SB 1905 (Campbell)

Senator Campbell's measure would impose a five year sunset on all regulations promulgated by state agencies. After five years, the agency must review and re-promulgate the regulation if it is to remain in effect.

Federal Conflict

California often "prides" itself on having the toughest environmental regulations in the nation. California regularly seeks to adopt standards intended to exceed federal standards.

This practice, however, often has the consequence of imposing duplicative and costly requirements that provide little gain in environmental quality or safety. Such measures, however, regardless of the perceived need, increase business costs in California relative to other states. Some additional review, therefore, is required before California embarks on such a costly course that imposes new and additional requirements not found in other states.

SB 1831 (Campbell)

This measure would provide such oversight by requiring that, before adoption, state agency regulations covering the same subject as federal regulatory bodies, be submitted to both houses of the legislature. The agency would have to submit the proposal within 30 days prior to its effective date and the legislature would then have the authority to veto the proposal before adoption.

Conclusion

Regulatory reform finally received serious attention as a major business climate issue during the 1993 legislative session. Although this can be considered the biggest success of last year's session, the challenge in 1994 is to retain regulatory reform as the foremost concern with respect to California's business environment.

With the modest reforms achieved in 1993, an unjustified complacency has already become apparent. Similar to the first modest workers' compensation reforms that were first enacted in 1989, legislative opponents to business climate reforms are now arguing -- as they did in 1990 -- that they have already addressed the problem and the legislature should give the enacted reforms a chance to work.

However, the 1993 reforms were considered only first steps even by their authors. Governor Wilson recognized the need to press ahead with further reforms in 1994 in a statement issued in signing CEQA reform measures. California is still losing jobs. The legislature can ill-afford to put off additional reforms.

Chapter II

TAXES

Taxes

Introduction

The issue of taxation in California remains the most important business environment concern as yet not addressed in a meaningful and comprehensive way. The literature on the affects of taxation on economic growth and job creation continues to grow, but the majority in the legislature continues to ignore both the growing evidence and common sense.

High tax rates impede economic growth. High tax rates impede job creation. High taxes suffocate economic growth in California; lifestyle enhancements associated with more and better jobs become a distant dream. The evidence from many studies conducted over the last decade could not be more clear: states with low, stable tax rates experience higher rates of growth and job creation. And the lower growth rates are permanent; the jobs not created can never be recovered.

The response of the legislature during 1993 was also quite clear, and quite clearly inadequate. The Senate Republican Caucus report *Are We Losing Our Competitive Edge? - A Study of California's Business Environment* detailed in unequivocal language what California must do to regain a competitive position vis á vis other states. The report recommended the following:

* Immediate repeal of the temporary top personal income tax brackets adopted in 1991.

* Immediate repeal of the increase in sales tax.

* Reinstatement of the net operating loss deduction.

* Lowering and making more stable tax rates and marginal tax rates.

1993 Legislative Session

Several dozen measures were introduced in 1993 to address various aspects of California taxation. Those measures proposed various credits, exclusions and exemptions; no measures were introduced which sought to reduce the general levels of taxation. A few measures passed which accomplished some marginal improvement in the business climate, but nothing approaching a comprehensive reform of California taxation policy.

SB 671 (Alquist) -- Ch. 881, Statutes of 1993

The most significant measure to pass in 1993 was SB 671. It (and two companion measures) enacted the following:

* A credit of 6 per cent on manufacturing equipment placed in service after January 1, 1994 (the credit cannot be used until the 1995 tax year) or an exemption from the state portion of the sales tax on manufacturing equipment for start-up companies during the first three years of operation. [It is significant that Assembly Speaker Willie Brown did an about-face in 1993 on business climate concerns. He authored AB 1313 which would have exempted certain manufacturing equipment and recycling equipment from the state sales tax, thus reducing the cost of acquisition by six percent. His bill experienced the usual difficulty attracting sufficient votes from Democrats; the six percent credit in SB 671 was the compromise position eventually taken.]

* A reduction of the tax rate charged against S corporations from 2.5 per cent to 1.5 per cent.

* An exemption from state and local sales and use taxes on space flight materials used in launches at Vandenburg Air Force Base (until January 1, 2004).

* Extending the existing research and development tax credit permanently and replacing the "rolling average" method of calculation (generally preferred by high-tech firms) with a "fixed base" method.

* Reinstatement of the net operating loss deduction, extending the deduction beyond its original 1996 sunset and increasing the deduction to 100 per cent of losses for "small business."

* An exclusion from income of 50 per cent of the realized gain on the sale of qualified small business stock.

* Revising the "unitary" method of taxing income of corporations which have non-California operations.

* Conforming with the 1993 federal change reducing the deductible portion of business meals to 50 per cent (from 80 per cent).

Conclusion

In spite of the somewhat silly and definitely exaggerated congratulatory remarks and publicity surrounding the passage of SB 671, the gains for California inherent in that bill are quite modest. Most of the tax relief was deferred to subsequent years, while the provisions which increased tax revenues were effective immediately. Most of what was recommended in

the 1992 Senate Republican Caucus study remains undone.

1994 Legislative Session

The higher marginal rates of taxation on individuals were not repealed during 1993 and remain too high; the corporate tax rate remains too high, especially as compared with the Western states with which California competes for business location and expansion; sales tax rates remain too high; a fully-federal-conforming net operating loss deduction has not been adopted.

A rational policy discussion regarding tax policies and rates has yet to take place. Some changes in attitude have occurred with respect to the fact that state tax policy does, in fact, make a difference in job and economic growth rates and in business expansion and location decisions, but a comprehensive review of rates and policies must occur. Too many in the legislature are still hostage to the notion of single year, static revenue analysis; good tax and economic policy is still sacrificed at the altar of "revenue neutrality." California is thus condemned to stagnant economic growth and an endless series of budget crises.

In spite of the much-heralded marginal progress in 1993, California is still not competitive among Western states. Our tax rates and policies are still inhibiting the kind of solid economic recovery that California desperately needs.

Rate Reduction

Some measures have been introduced in 1994 which address important aspects of the California tax problem, including the following:

SB 1342 (Leonard)

This bill would repeal effective January 1, 1994 the two extra income tax brackets adopted in 1991 which would otherwise run to January 1, 1996. This is exactly what the 1992 report recommended as a first step toward making California more competitive with its western neighbors.

The ineffectiveness of adding higher brackets to raise revenues is nicely demonstrated by comparing the revenue forecast when the brackets were adopted with the revenue losses projected if they are now repealed! The 1991 projection was that these two extra brackets would raise slightly over $1 billion per year; the 1994 projection is that slightly over $800 million will be "lost" in fiscal year 1994-95 if these brackets are repealed. All too typically and unfortunately there are at least two measures in 1994 which would extend the temporary brackets for two additional years (SB 676 - Alquist) or forever (AB 2867 - Klehs).

These brackets were added based on the usual liberal argument that the "rich" should do more to help out a state starving for funds. The fact that the "rich" paid an increasing percentage

of state personal income tax revenues during the decade proceeding the increases escaped any substantive notice.

SB 1343 (Leonard)

This bill would repeal one half cent of the state sales and use tax (reducing the effective state rate from 6 per cent to 5½ per cent). This reduction was recommended in the 1992 report. The rate of sales and use tax in California, a tax which started out as temporary over half a century ago, has increased steadily over time to the current levels which are among the highest in the nation. One important attribute of the sales and use tax frequently overlooked is that business entities pay approximately 40 per cent of this tax. Interestingly, the revenues from sales tax have remained flat over the last three years.

SB 1344 (Leonard)

The current rate of tax on corporations in California is 9.3 per cent; this bill would reduce the tax rate to 7.5 per cent. California is simply not competitive with the western states with which we compete for business location and expansion, as illustrated by the following information:

State	Corp. Tax Rate	State	Corp. Tax Rate
Oregon	7.5	Washington	**-0-**
Utah	5.0	Arizona	9.3
Colorado	5.0	New Mexico	4.8 to 7.6
Texas*	**-0-**		

*Texas charges .0025% on stated capital and .045% on earned surplus per annum.

The three bills described above address the problem of high tax levels in California directly and unequivocally. Taken as whole, they would affect the kind of change California needs by a) reducing rates which are too high and b) by sending a strong message that California is serious about recovering the economic luster that once made our Golden State the envy of the rest of the nation and the world. Taken together, these bills would put California on a higher growth/job creation track and soon induce the economic recovery which still remains a distant dream.

Tax Credits

There are other measures worthy of support during 1994. These measures do not address the high rates of taxation directly, but would accomplish a significant push to economic recovery if adopted.

SB 1695 (Hurtt)

The problem of tax disincentives to business formation is targeted by this bill. The measure would exempt from the sales and use tax for one calendar year tangible personal property (otherwise subject to the tax) purchased by a trade or business that first commences doing business in California after July 1, 1994. It further exempts from corporation or personal income tax for one calendar year the earnings from the conduct of a trade or business (other than as an employee) which first commences doing business after July 1, 1994.

SB 1696 (Hurtt)

This measure would institute a credit against tax of 25 per cent of the costs of employment for each new job created in California by the taxpayer. The credit would be available to individuals and corporations; any excess of the credit over the net tax due could be carried over to succeeding years until fully used.

SB 2086 (T. Campbell)

This is another effort to stimulate job creation: it would permit a double deduction for the cost of net new jobs added by a qualified taxpayer (a taxpayer with a net increase in jobs), with a cap on the extra deduction of $20,000. This important benefit would be available to individuals and corporations.

Compliance Costs

An important element of the tax environment in California which was not addressed in the 1992 report is the cost of compliance with California's income tax laws. A recent study by The Tax Foundation (Washington, D.C.) determined that the cost of accounting and reporting for corporations at the national level *exceeds* the tax revenue derived by over 300 per cent! In fact, the study reveals that for corporations with less than $1 million in assets (90 per cent or more of all corporations), the cost of compliance is $390 for each $100 of tax liability. The federal cost is 70 per cent, the state cost is 30 per cent. Extrapolating those figures to California, the cost of accounting and filing corporation returns in California costs approximately $5.6 billion to yield the approximately $4.8 billion in tax revenues due. Three measures introduced in 1994 would address the tremendous cost of compliance by enacting simplifications of the tax codes.

SB 1702 (Leonard)

This bill would substitute a modified flat rate tax for the existing personal income tax. The concept is simple: over a base amount of income which would not be taxed ($12,000 single, $18,000 head of household, $24,000 married filing jointly, with an increase of the base amount of $3,000 for each dependent), a flat rate of approximately 5 per cent would be charged. No good estimates exist of the cost to Californians of complying with the current personal income tax law, but common sense indicates the cost in terms of time, effort and money is great.

SB 1977 (T. Campbell)

The idea of changing California's personal income tax system to "piggy-back" on the federal system has been proposed before; Senator Campbell has introduced the concept again and may have more luck winning support for it during 1994. The concept is simple: the California personal income tax rate would be stated as a percentage of the federal income tax; the percentage would be determined each year. This would represent a substantial saving of time, effort and money for California taxpayers.

SB 1703 (Leonard)

The current Bank and Corporation Tax law would be substantially eliminated if this bill passes. Corporations would calculate gross income as defined (gross sales and receipts less costs of goods sold plus net rents, royalties, interest and other income) and pay a tax of .135 per cent (that is, a rate of tax of .00135 on gross income as opposed to the current rate of .093 on net income). Several billion dollars in otherwise nonproductive compliance and reporting costs would be eliminated. This bill and SB 1702 not only simplify accounting and filing; they have the additional benefit of making the personal and corporate income taxes neutral with respect to sources of income.

Conclusion

The California recession persists; it is the longest since the Great Depression. The California legislature has ignored the responsibility it bears for promulgating and prolonging policies which make recovery difficult or impossible. Most economic forecasters believe that California will begin a mild recovery sometime during 1994 but the recovery, if it comes, will be weak and remain weak for as long as it lasts. The choice for California lawmakers is clear: remove the arbitrary barriers to sound recovery, sound economic and job growth, or keep pursuing the present policy path which chases businesses, jobs and middle class families out of California.

Chapter III

TORT REFORM

Tort Reform

Introduction

California's existing civil justice system contributes to a climate which is unfavorable to business. Reform of our tort laws is necessary to ensure that California will be able to attract and retain new and established businesses. These businesses will provide much needed capital and jobs in today's sluggish economy.

In its 1992 Study of California's Business Environment, the Senate Republican Caucus stated that we need to remove the current disincentives to product research and business activities created by our tort system. The ultimate consequence of this system is that businesses choose not to operate here, because they can go to other states with fairer tort laws, resulting in fewer jobs for California.

Since the 1992 Caucus report, few important reforms of California's tort laws have taken place. However, 1993 U.S. and California Supreme Court decisions and increased legislation indicate that tort reform should be one of the hottest issue areas in 1994. Attempts to achieve a fairer civil justice system should pave the way for important tort reform which will lead to an improved business climate in California.

Important 1993 Decisions in the Area of Tort Law

The United States and California Supreme Courts decided several cases this past year that will affect tort law in California. In July of 1993, the California Supreme Court ruled in Privette v. Superior Court (5 Cal.4th 689) that a roofing worker who was injured because of a contractor's negligence could not bring a claim against the homeowner who had hired the contractor. According to Justice Joyce Kennard, employees of independent contractors are reimbursed by the workers' compensation system, so allowing them to sue the homeowner would give them an "unwarranted windfall." This decision limits the basis for bringing claims under the peculiar risk doctrine, and represents a step in the right direction: prohibiting plaintiffs from suing a party who is not liable, but who may have deep pockets.

However, two U.S. Supreme Court decisions indicate that the national trend seems to be in favor of greater liability for defendants. In TXO Production v. Alliance Resources ((1983) 113 S.Ct. 2711), the court affirmed the West Virginia Supreme Court's decision to uphold a jury's $10 million punitive damage award. The punitive damage award is more than 500 times greater than the actual injury suffered by the plaintiffs, who own of a tract of land upon which TXO desired to drill oil wells.

TXO had devised a scheme which would have lead to a renegotiation of their deal, and the plaintiff would have stood to lose millions. The court justified the large punitive award by

examining the potential loss to the plaintiffs had the defendant succeeded with its deceitful plan, thereby retreating from its own admonition in Pacific Mutual v. Haslip (499 U.S. 1 (1991)) that judges and juries do not have unlimited discretion when making such punitive damage awards. The punitive damages awarded in Haslip amounted to four times that of the compensatory damages, and the Court held that amount was "close to the line" of being unconstitutional.

In June of 1993, the U.S. Supreme Court decided Daubert v. Merrell Dow Pharmaceuticals (113 S.Ct. 2786). The plaintiffs were California parents who sued after the mothers had taken the anti-nausea drug Benedicton during their pregnancies, and their children were born with birth defects. The Court held that federal judges have more discretion over admitting "junk science" from expert witnesses. At first glance this appears to be a blow to defendant manufacturers. However, this recently enunciated rule of evidence can work for both sides, so defendants, too, can use junk science studies of their own to counter plaintiff's studies. Even if one looks at it this way, the decision definitely smells of anti-business sentiment.[3] Because California courts will likely follow the trend of the U.S. Supreme Court, we must look to legislation to achieve effective tort reform.

True reform will best be achieved by enacting legislation in several areas. These areas include:

1) Prescribing liability, which addresses issues of product liability and enactment of valid defenses;

2) Compensation guidelines, which address punitive damages, among other issues; and

3) Court procedure, which addresses provisions for encouraging settlement, along with other issues.

1993 Legislative Session

The legislature addressed a few issues in these three areas during the 1993 session, mainly in the area of court procedure. The following bills were chaptered by the Secretary of State.

AB 498 (Goldsmith) -- Ch. 276, Statutes of 1993

This bill deals with motions for summary judgment, and requires the party opposing such a motion to show that a triable issue exists, rather than the party making the motion show that such an issue does not exist.

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[3] Foran, John, "Holding Action," Tort Report, August-September 1993. p.5.

SB 401 (Lockyer) -- Ch. 1261, Statutes of 1993

SB 401 requires all courts in Los Angeles County and authorizes other courts to implement a program of mediation of specified civil matters where the amount in controversy does not exceed $50,000.

AB 58 (Peace) -- Ch. 456, Statutes of 1993

This bill limits the ability to file a motion for judgment on the pleadings more than once and mandates that an award of costs under Code of Civil Procedure section 998 is not stayed by the filing of a notice of appeal. AB 58 also grants rights to defendants who obtain judgments for costs.

AB 208 (Horcher) -- Ch. 518, Statutes of 1993

AB 208 enacts a comprehensive regulatory scheme to provide that no advertisement made by an attorney or law firm shall make various prohibited statements, such as guarantees, and requires certain disclosures.

Thwarted Efforts

Other bills that would have contributed to the tort reform movement but which were defeated in the Senate Judiciary Committee include:

SB 390 (Russell)

Senator Russell's measure would have required that in order to prevail in an action alleging injury resulting from defective product design, the plaintiff must show the existence of an alternative design that would have prevented or reduced the injury without making the product undesirable. It would also expressly authorize the manufacturer or seller of an allegedly defective product to present evidence that the product is in conformity with industry customs and standards of manufacturing.

AB 2203 (Vasconcellos)

This measure, which was sponsored by the Assembly Democratic Economic Prosperity Team, was unfortunately dropped by the author after its initial defeat. AB 2203's life was "brief and tragic," according to ACTR lobbyist John Foran in the August issue of Tort Report. The bill would have limited recovery of damages in wrongful termination cases where there is not an express written contract. It would have further required an employee or former employee to give notice of the alleged acts or omissions upon which such an action would be based.

1994 Legislative Session

Though we took limited steps toward improving California's tort system, substantial reform is essential. Fundamental reform is necessary in the areas of punitive damages and product liability, as well more issues in the area of court procedure.

One attempt at progress came in the form of a short-lived initiative for the 1994 ballot sponsored by Californians for a Fair Legal System and ACTR-president, former State Senator Barry Keene. The initiative was pulled, however, approximately one month after it was introduced. Entitled the "Lawyer Accountability Act of 1994," the initiative attempted to curtail the filing of frivolous lawsuits by limiting attorney fees for personal injury suits. The initiative represented a good faith, but misguided, effort to halt unmeritorious suits. Government has no legitimate place in price structuring or wage setting and, thus, should refrain from setting attorneys' fees. Negotiating the cost of services is best left to the attorney and the client. Better alternatives exist for enacting effective tort reform and thereby improving California's business environment.

Prescribing Liability

The legislature should eliminate the collateral source rule so that a defendant is provided with, and the jury may hear, evidence of compensation that the plaintiff has received from health insurance, workers' compensation, disability, Social Security and other forms of compensation.

SB 1738 (Leonard)

SB 1738 would promote justice in the civil courtroom and discourage "double-dipping" by plaintiffs by abolishing the "collateral source" rule. The current system censors information available to the jury and allows claimants to "double dip" into numerous sources of recovery. SB 1738 give courts and juries the ability to consider evidence of all compensation that the plaintiff has received or will receive from collateral sources. It allows the jury to make an informed decision when awarding damages to a plaintiff.

Product Liability Reform

If California is ever to regain its manufacturing strength, steps must be taken to reform current product liability laws. Current practices are not only unfair to manufacturers, but they also have the perverse effect of deterring the marketing of safer products. For example, if an employer take 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 only *discourages* research and development of safer products which undermines a key rationale of product liability law: to encourage the marketing of safer products.

SB 1881 (Campbell)

This measure would provide that evidence of steps taken to improve the safety of products shall not be admissible to allege that the previous design was defective. This measure will end the costly and dangerous situation where manufacturers develop advanced, and often safer, products at their peril.

Risk-Utility Evidence

Legislation is also needed to allow the admission of risk-utility evidence. California is one of only three states that do not allow a defendant to present evidence on the characteristics of a product and compare them with products or designs that might have been less useful alternatives.

In addition, a defendant manufacturer should be allowed to present evidence of its compliance with industry customs and standards in manufacturing. California is one of only a few states which prohibit this. Manufacturer defendants should also be permitted to admit evidence that it used state-of-the art technology in developing its product, which would allow a defendant may attempt to show that the level of technology existing at the time the product was made did not permit a safer design.

Courts should require that a plaintiff present more evidence to meet the consumer-expectation test (one of the requirements to establish liability) than his or her own personal expectations. Only in California can a plaintiff meet this burden by presenting his or her subjective expectations.

Compensation Guidelines

Punitive damages should not be available when a defendant has lawfully complied with regulatory standards established at the time of manufacture by the Federal or State government. The courts should grant punitive damage awards to a state agency, such as the Crime Victims' Fund, rather than to the plaintiff; since punitive damages are intended to punish the defendant, rather than enrich the plaintiff. Awarding damages to the state will diminish excessive awards by juries who feel sorry for the plaintiff, and will also provide such a Fund with much needed revenue.

AB 2813 (Morrow)

Assemblyman Morrow's measure would exempt a manufacturer or seller of a defective product from liability for punitive damages if the product was in compliance with all applicable government standards in the jurisdiction in which it was manufactured.

Court Procedure

AB 108 (Richter)

This is a two-year bill which the author intends to pursue. As a pilot project applicable only in Butte, San Diego, San Bernardino and Riverside Counties, the bill mandates that the signature of an attorney or party on any pleading, motion, and any other paper filed or served in a civil action, constitutes a certificate that he or she has read the paper, has made a reasonable inquiry into the allegations and presents it in good faith and not for an improper purpose. The bill would require an appropriate sanction to be imposed by the court if a paper is signed in violation of these requirements.

AB 2300 (Morrow)

This bill increases the judicial arbitration limit from $50,000 to $100,000. It enables a greater number of civil actions, for the benefit of businesses, to be pursued through the generally less expensive and more efficient procedure of arbitration. This bill is currently in the Senate Judiciary Committee.

Other Reform Areas

Legislation is needed and should be enacted in the area of court procedure which:

* Requires a party who rejects a settlement offer to pay the opposing party's attorney fees and court costs if the rejecting party does not recover more (or pay less, if the rejecting party is the defendant) than 110 percent more of the offer after trial. For example, if a plaintiff rejects an offer of $50,000, and is awarded $54,000 after trial, it would have to pay the defendant's costs. If awarded $56,000, it would not. This will force parties to carefully evaluate their position when considering a settlement.

* Promotes and facilitates the use of arbitration, mediation and neutral evaluation to promote settlement and reduce the burden on the courts.

* Abolishes "Forum Non Conviens" - We should no longer allow non-residents injured in foreign jurisdictions to take advantage of California's pro-plaintiff liability laws by filing suit here merely because a product was made here or its manufacturer based here, when the plaintiff can file suit in his or her own state. This law creates a disincentive for companies to locate or expand in California, and adds to the length of time citizens of this state must wait for their own civil cases to be heard and concluded. Only California and Texas allow this.

A final rule that could be considered would follow the English law, where the loser of the suit pays the other party's attorney fees and court costs. This would force parties to carefully evaluate their position, and lead to more pre-trial settlements and fewer frivolous suits.

Fighting Attempts to Expand Liability

In addition to enacting the above legislation, those interested in California's business environment must work to ensure that several bills are defeated during the 1994 legislative session. These measures would expand liability and discourage cost effective settlements.

SCR 10 (Lockyer)

This resolution would discourage settlements in product liability cases by preventing litigants from entering into confidential settlement agreements.

SB 1242 (Boatwright)

This bill seeks to invalidate any confidentiality agreements, settlement agreements or protective orders in any action to which any local public entity is a party. This will only serve to further burden our courts and discourage settlement.

SB 1638 (Lockyer)

This bill discourages fair and efficient arbitration by increasing the procedural burden on parties to the arbitration.

SB 1682 (Johnston)

SB 1682 would expand liability for employers who attempt to terminate employees, and would provide unnecessary remedies to employees for emotional distress and punitive damages.

SB 2045 (Petris)

This bill would create a new emotional distress cause of action for parents and caregivers in pharmacist negligence actions.

AB 2128 (W. Brown)

Speaker Brown's measure would create a new cause of action permitting third party non-policy holders to file lawsuits against insurers.

Conclusion

California rules of evidence and civil procedure result in expansive, unnecessary liability for manufacturers, which persuades companies to take their business to other states with fairer laws. Citizens concerned about the business environment, as well as a just system of civil law, must act to promote a more fair system in California. This will best be achieved by effective tort reform legislation.

Chapter IV

CRIME

Crime

Introduction

There is no arguing the fact that crime is a dominant issue this year in the minds of Californians. And given this year's statewide elections, crime will certainly continue to be an issue through November. The public outcry following the murder of Polly Klaas and the popularity of the "three strikes and you're out" initiative drive are but two indicators of the importance Californians place on putting career criminals behind bars permanently.

Although Republicans have recognized for years that high crime is detrimental to a healthy economy, Democrats may finally be seeing the light. The problems that stem from increases in crime effect not only cities and social communities, but also effect state businesses and industries, who understandably regard high crime as injurious to the survival and prosperity of the economy. Crime clearly affects every sector of California's society and economy.

If California hopes to pull itself out of its economic slump we must control crime. High crime -- even the perception of high crime -- can drive businesses out of the state and keep new businesses from locating here. Another effect of California's high crime rates, both real and perceived, is to discourage tourists from choosing California as a vacation destination.

1993 Legislative Session

There were several bills proposed during the 1993 legislative session to combat rising crime. These measures were intended, primarily, to offer an added sense of security to those Californians who no longer felt safe walking the streets of their own neighborhoods. In light of severe budget cuts, voters passed Proposition 172 to guarantee the continued funding of their local police and emergency services. The fact that millions of California voters were willing to continue to tax themselves shows the importance they place on controlling crime.

Unfortunately, many local jurisdictions are now using the money they receive from the Proposition 172 tax to fund other, non-public safety related programs. Alameda County, for instance, used almost $1 million of their Proposition 172 money to keep from cutting general assistance welfare grants by three percent.

Classification and Sentencing

The classification of certain crimes within the California Penal Code has inherent inconsistencies, such as labeling as misdemeanors those crimes which should be considered serious or violent felonies. These inequities often allow convicted criminals to serve short sentences for committing serious crimes.

SB 310 (Ayala) -- Ch. 609, Statutes of 1993

Signed by the governor, SB 310 classifies as first degree murder any murder which is carried out by discharging a weapon from a motor vehicle (drive-by shooting) with the intention to inflict death and is punishable by 20 years to life in prison. Also, the bill provides for a three to five year penalty enhancement for any person who uses a firearm in this manner.

SB 60 (Presley) -- Ch. 611, Statutes of 1993

Previously, carjacking was considered a felony under robbery statutes, punishable by two, three and five year sentences. SB 60 creates the new crime of carjacking, punishable under its own statutes, with a maximum punishment of three, six or nine years in state prison, plus a $10,000 fine. Sentence enhancements apply in certain situations.

1994 Legislative Session

Crime will probably be the most debated issue of the 1994 Legislative session. Governor Wilson, in his State of the State address, made mention of his desire to sweep the streets of career criminals who threaten our lives and livelihoods. The proposed "three strikes and you're out" initiative -- planned for the November ballot -- is expected to pass by overwhelming margins, given the public mood. And because California's economy cannot flourish under the specter of crime, the governorand the legislature will undoubtedly take rigid and necessary steps to insure that the state keeps criminals off the streets and behind bars.

Signed Legislation

AB 971 (Jones/Costa) -- Ch. 12, Statutes of 1994

This bill, identical to the "Three Strikes and You're Out" ballot initiative, was signed into law by Governor Wilson on March 7, 1994. Two prior serious or violent felonies activate the "three strikes" provisions.

AB 971 would make the following changes to sentencing laws: a second serious or violent felony conviction requires the sentence to be "twice the term otherwise provided;" a third serious or violent felony conviction requires a life sentence. The minimum term is calculated as the greater of: (a) three times the term otherwise provided, (b) 25 years, or (c) the term determined by the court pursuant to other applicable sentencing provisions of existing law.

Juvenile adjudications count as a prior conviction under AB 971 if the juvenile was 16 or 17 years old, committed a 707(b) offense, and was tried as an adult.

Under AB 971, sentences would have to be served consecutively, and the law would prohibit probation for those previously convicted of a violent or serious felony. The law also limits "good time credits" to a maximum of one-fifth the total sentence. The bill does not make any changes to the list of serious or violent felony crimes.

A recent report by the Governor's Office of Planning and Research revealed the benefits of the newly signed law. According to the report, criminals locked up under the newly signed law will save potential crime victims and the Califonria economy more than $140,000 per inmate per year upon incarceration. By contrast, the cost of incarcerating an inmate in the California prison system is less than $25,000 annually. The study was intended to highlight the benefits of the "three strikes" law.

Mike Reynolds, proponent of the "Three Strikes and You're Out" initiative, has turned in more than 800,000 signatures and has qualified the initiative for the November ballot. According to Reynolds, he is going forward with the initiative to "keep the legislature honest," since the initiative, if passed, would supersede any laws passed by the legislature.

Sentencing: "Three Strikes and You're Out"

AB 1568 (Rainey)

This bill would enact a variation on the "three strikes" law. Two prior serious or violent felony convictions would activate the "three strikes" provisions of the bill.

AB 1568 would make the following changes to sentencing laws: the second violent felony conviction would require a ten-year enhancement on a person's sentence; a second serious felony conviction would carry a five-year enhancement; a third serious felony conviction with two prior felony convictions requires a sentence of 25 years to life; a third violent felony conviction with two prior violent felonies requires a life sentence without the possibility of parole; and a third violent felony with two prior serious or violent felonies requires a life sentence without the possibility of parole.

The bill mandates a life sentence without the possibility of parole for persons convicted a second time for crimes against children. AB 1568 does not allow violent felons or persons convicted under "three strikes" to earn good time credits. The bill also makes changes to the classification of certain serious and violent felonies. Under AB 1568, juvenile adjudications do not count as prior convictions.

AB 2429/AB 9X (Johnson)

This bill would also enact a variation of the "three strikes" law. Two prior violent felonies activate the provisions. The bill also requires that notice be given to convicted felons that their convictions may qualify them for life sentences if they offend again. Failure to provide this information, however, does not invalidate the use of the conviction as a prior conviction.

AB 2429 would require that a person convicted of a third violent felony be sentenced to life in prison without the possibility of parole. There is no sentencing provision for persons who are convicted for first or second violent crimes. There are no good time credits available to persons convicted under the "three strikes" law.

Under AB 2429, juvenile adjudications do not count as prior convictions. This bill does not make any changes to the list of serious or violent felonies.

SB 1259 (Hurtt)
SB 5X (Wyman)

Senate Bills 1259 and 5X mirror the provisions of AB 971 and the "Three Strikes and You're Out" initiative. See AB 971, above, for the specific provisions of the bill.

SB 22X (Kopp)

SB 22X would increase sentences for repeat offenders. One previous serious offense increases the sentence by four, six or eight years. Two convictions for a serious offense will increase sentences by nine, 12 or 15 years. Three or more serious offenses would result in an additional 15 years to life.

AB 167 (Umberg)

This bill would enact a "three strikes" law. Two prior serious or violent felony convictions activate the "three strikes" provisions. A notice must be given to felons that their convictions may qualify them for life sentences if they offend again. Failure to provide this notice does not, however, invalidate the use of the conviction as a prior conviction.

AB 167 would make the following changes to sentencing laws: the second violent felony conviction would require a ten-year enhancement on a person's sentence; a second serious felony conviction would require a five-year enhancement; a third serious felony conviction with two prior felony convictions requires a sentence of 25 years to life; a third violent felony conviction with two prior violent felonies requires a life sentence without the possibility of parole; and a third violent felony with two prior serious or violent felonies requires a life sentence without possibility of parole.

The bill mandates a life sentence without the possibility of parole for persons convicted a second time for crimes against children. AB 167 does allow felons who are not serving life sentences to earn good time credits worth 15 percent of their total sentence. The bill also makes changes to the classification of certain serious and violent felonies. Under AB 167, juvenile adjudications do not count as prior convictions.

Summary of "Three Strikes" Legislation

Governor Wilson has challenged the legislature to enact even tougher legislation to advance the fight against crime.

Some members and individuals have raised several concerns regarding AB 971. They argue that language in the law seems to prohibit death penalty sentences for those felons convicted under the "three strikes" law. Critics also contend that sentencing credits of 20 percent of the total sentence is too generous and that tougher penalties for child molesters and crimes against children are absent from AB 971.

Several proposals have been forwarded to resolve these issues, including: amending language in AB 971 specifically to allow for death penalty sentences for those convicted within the "three strikes law"; reducing allowable good time credits to 15 percent of the total sentence; and enacting a "two strikes" law for sex crimes against children, with the second strike earning a felon life imprisonment without the possibility of parole.

The legislature will have to find a way to reconcile these proposals. Lawmakers must enact a stern and effective crime package to reassure citizens and business owners that it is safe and attractive to live and conduct business in California. But it must likewise ensure that an effective system is put in place that can withstand constitutional challenges and not be twisted through creative interpretation to undermine its intent.

One Strike for Sex Offenders

Governor Wilson has endorsed a proposal that would lock away first-time rapists and child molesters for life without the possibility of parole. This issues has recently come to a head with the release of convicted rapist Melvin Carter, who was found guilty on more than two dozen sexual assault charges, and has admitted to over 100, but served less than half of his sentence.

SB 26X (Bergeson)

This "one-strike" bill would increase the penalties for rape, child molestation and other types of sexual assault to life imprisonment without the possibility of parole upon a first conviction. The bill would also increase the penalties for intent to commit sexual assault from three, six or eight years to six, 12 or 16 years.

Indeterminate Sentences

SB 4X (Kopp)

SB 4X deletes the existing statutory reference to the determinate sentencing law and instead provides for only indeterminate sentencing. However, the list of crimes subject to indeterminate sentencing (currently ranging from kidnapping to murder) will be expanded to

incorporate all "violent crime."

Arson

SB 1309/SB 14X (Craven)

This bill would provide that any person convicted of arson be sentenced to life imprisonment without the possibility of parole.

Reduction of Good Time/Work Credits

SB 6X (Leonard)

This bill, as opposed to AB 6X (discussed below), eliminates all work credits for individuals serving life sentences, but allows for the possibility of parole.

AB 971, signed by Governor Wilson on March 7, 1994, contains a provision which would reduce "good time credits" to a maximum of one-fifth the total sentence. The provision would apply only to repeat offenders convicted under this law. SB 6X, by contrast, has a broader scope because it would apply to all persons convicted of serious or violent felonies, not just persons convicted under "three strikes" laws.

SB 1382 (Hurtt)

Senator Hurtt's measure would require convicted criminals to serve at least 85 percent of their original sentence behind bars. The measure would also provide a "full disclosure" element to sentencing proceedings by requiring judges at the time of sentencing to announce for the record the precise minimum time to be served under the sentence.

AB 6X (Katz)

This bill would reduce the allowable worktime credit for prisoners serving life sentences for murder convictions from the current 50 percent to a maximum of 15 percent.

Innovative Approaches to Gangs

The proliferation of gangs have created new challenges for California's law enforcement agencies. Some local communities, however, have been successful with innovative approaches to gang-control. The legislature should encourage these innovative measures by making model programs available statewide.

SB 1581 (Hurtt)

This measure would build on the successful TARGET Gang Crime program adopted by

the Westminster Police Department. The measure would expand the crimes covered by the program and permit application of the program statewide.

The Governor's Proposal

Governor Wilson, who has repeatedly expressed his desire for tougher crime legislation, proposes three means by which to reduce crime in California. They include:

* Recruiting and training 500 new CHP officers and placing them in high crime areas, to assist local law enforcement.

* Promoting, in part through welfare reform, the importance of two-parent households. Parents and social organizations must take the lead in educating children, while they are still young, about the dangers of drugs, gangs, and crime, through such programs as CalLearn, which requires teen parents who receive AFDC benefits to stay in school. These programs stress the imporance of familial responsibility in deterring poverty and crime.

* Enacting tougher laws for criminals, including the "three strikes" bill, which would put child molesters and three-time offenders behind bars for life. Governor Wilson has already signed AB 971, a "three strikes" bill by Assemblyman Bill Jones.

The legislature should seriously consider these proposals endorsed by Governor Wilson. They are fashioned in the belief that communities and businesses will flourish only if streets are free of the criminal elements that threaten our prosperity.

Prison Construction

The governor has emphasized the importance of placing criminals where they rightfully belong: Behind bars. However, the state's prison system has reached its capacity, so California needs to construct more prisons. Governor Wilson has recommended building six more prisons. Wilson hopes to pay for the new facilities by selling two billion dollars worth of bonds, thus spreading the cost over the next two decades.

The costs of constructing and maintaining these new prisons could be alleviated several ways. First, the legislature should enact laws to effectively return undocumented felons to their countries of origin to serve out the rest of their sentences. SB 1878 (Torres) attempts to address this problem in a limited fashion. Second, the Department of Corrections should enforce a "triple celling" policy, wherein more than one person may occupy a prison cell. And third, prison officials must continue to enact cost-cutting measures to reduce the staff-to-prisoner ratio in state prisons through infrastructure and operational improvements. For example, the DOC's electric-fencing program would reduce the number of guards necessary to staff watch towers, while at the same time maintaining prison integrity and security.

To help ease the cost of building new prisons, the legislature should consider repealing prevailing wage requirements for the purposes of jail and prison construction.

Conclusion

Crime and the effects of crime are costing California millions of dollars a year in damage and loss. Moreover, Californians now feel their streets are no longer as safe as they used to be. The legislature must enact strict and aggressive laws which send a stern message to criminals -- if you commit crimes in California, be prepared to do serious time. Citizens and business owners in the state deserve at least that much.

The seriousness of the crime issue is underscored by the fact that crime leads to poverty. In places such as South Central Los Angeles, where crime is perpetuated by high levels of poverty, no enterprise zone or urban renewal plan will effectively spur economic prosperity. In short, economic development -- in any region of California -- will fail if crime is not reduced.

If the legislature wants to attract new businesses to the state, keep the businesses already here in the state and help the state's economy, then they need to act quickly and send the message that crime will not be tolerated in the Golden State.

Chapter V

WORKERS' COMPENSATION

Workers' Compensation

Introduction

The 1993 workers' compensation conference committee report represented a comprehensive, but modest, reform proposal that attempts to bring California's workers' compensation costs under control. The new laws are designed to reduce costs by $1.5 billion annually in a system that costs over $11 billion a year. The plan also sets a standard likely to influence future reform efforts by allocating savings about equally between improved benefits for injured workers and cost reductions for employers.

However, the $1.5 billion savings figure is prospective. The increased benefits and cost savings may not materialize if the reforms are not properly and expeditiously implemented. The need for further reforms, as discussed in the section addressing the 1994 legislative session, is, therefore, obvious. First, these savings are not guaranteed. Secondly, $1.5 billion represents only a small portion of the total system costs, which remain prohibitively high and continue to provide inadequate benefits for truly injured workers. In addition, many key reforms were not adequately addressed in the 1993 session, such as a predominate cause standard for all injuries, a transfer of benefit emphasis from subjective "soft tissue" injuries to more severely injured workers, and the elimination of the ineffective vocational rehabilitation system.

1993 Legislative Session

The legislature sent Governor Wilson about 12 workers' compensation reform bills in 1993, including those produced by the conference committee.

The two central reform measures and their provisions are listed below, followed by a list of the bills adopted in attempts to reform specific aspects of the system.

SB 30 (Johnston/Leonard) -- Ch. 228, Statutes of 1993

As adopted, this measure:

* Repeals the minimum rate law.
* Provides a predominate cause standard, but only for stress claims, and prohibits stress claims that are a result of routine employment events or lawful, good-faith personnel actions.
* Allows employers to provide managed health care and an option to the vocational rehabilitation system along with other limits on voc-rehab costs and duration.
* Limits medical-legal reports to one per employee and employer.

AB 110 (Peace/Brulte) -- Ch. 121, Statutes of 1993

As adopted, this reform measure:

* Prohibits physician referrals to facilities in which the physician has a financial interest and provides for the adoption of a fee schedule for health care services.
* Authorizes use of certified Health Care Organizations (HCOs) to provide employee treatment, but only if the employee chooses the option prior to injury.
* Bars health care providers from accepting compensation for medical-legal expenses in addition to those authorized by SB 31's fee schedule (discussed below).
* Restricts the liability of the employer to pay for extra medical-legal reports to one additional report covering all issues in dispute at the time the report is obtained.
* Imposes a $16,000 cap on vocational rehabilitation services and targets certain employers for special injury-prevention programs.

The provisions of AB 110 included language taken from SB 907 (Leonard).

Medical Treatment Costs

Medical treatment costs are one of the most expensive elements of the workers' compensation system. In recent years medical costs have risen an average of 13 percent per annum -- a rate far surpassing inflation. If combined with better controls on utilization, medical fee schedules will help to restrain medical costs while still ensuring quality care for legitimately injured patients.

SB 1005 (Lockyer) -- Ch. 227, Statutes of 1993

Provisions in this measure eliminate the Health and Safety Commission in the Department of Industrial Relations and establishes the Commission on Health and Safety and Workers' Compensation in its place. The bill also increases the number of voting members of the Industrial Medical Council (IMC) from 14 to 16 and redefines their obligation to set medical fees.

Psychiatric Injury/Stress Claims

The proliferation of psychiatric injury and stress claims in recent years is a major cost driver in the workers' compensation system, a proliferation that proved notorious for abuse and fraud. Before reform of the current system, workers only needed to present evidence that 10 percent of their injury was work related. In an era when everyday life is rife with stress, a 10 percent threshold puts too much burden on the employer for events not under his control. Also common are retaliatory claims by disgruntled workers in response to a legal, good-faith action on the part of the employer.

AB 119 (Brulte) -- Ch. 118, Statutes of 1993

This measure addresses the issue of retaliatory claims filed *after* termination by disallowing psychiatric injury claims resulting from lawful personnel actions unless: the injury was reported prior to the termination; the Department of Fair Employment and Housing determines the employee was subject to racial or sexual harassment; or it is determined that sudden and extraordinary events occurred prior to termination.

Medical-Legal

Although litigation is another of the largest cost drivers of the system, reports and procedures that are necessary to litigate a claim have also grown enormously. Measures to eliminate multiple evaluations and set fees attempt to address this issue.

SB 31 (Johnston) -- Ch. 4, Statutes of 1993

This measure repeals the current system used for setting medical-legal fees. It requires the Administrative Director of the Department of Industrial Relations to set medical-legal fees based on the relative difficulty of the work done by the physician and the time expended in contact with the patient in preparing the report rather than relying on a fee schedule based on the previous year's fees.

Fraud

Investigative reports by local and national media have focused almost exclusively on workers' compensation fraud despite the fact that other abuses of the system have proven more costly. Moreover, existing laws make it possible to prosecute offenders under general fraud provisions. The measures passed in 1993 simply facilitate prosecution for workers' compensation fraud by providing stricter guidelines and earmarking funds for investigation and prosecution.

SB 484 (Lockyer) -- Ch. 119, Statutes of 1993

The purpose of this anti-fraud bill is to inhibit the "front loading" of medical-legal charges and help eliminate the enormous profits in workers' compensation fraud by providing for forfeiture of unlawful profits. This measure prohibits "kickbacks" to workers' compensation claims adjusters and makes contracts with health care providers void if workers' compensation fraud and anti-kickback laws are violated. The bill also requires the court to pay restitution in workers' compensation fraud cases and makes changes to medical-legal procedures.

AB 1300 (W. Brown) -- Ch. 120, Statutes of 1993

AB 1300 adds provisions barring the offering or receipt of consideration for referrals of clients or patients. The bill also provides that judgments and sentences for violations of more

than one of these provisions will be limited to only one violation. This measure was amended to include the provisions of SB 438 (Leonard), which provides for the addition of civil penalties to existing provisions for workers' compensation fraud. Fines will be deposited in the Workers' Compensation Fraud Account, which is part of the Insurance Fund. Provisions of SB 237 (Bergeson) were also amended into AB 1300 to reduce the number of fraudulent claims by imposing sanctions against any participant in the proceeding (including the attorney) who brings a claim that is not well grounded, in good faith, or is brought with the intention to harass or delay proceedings before the appeals board.

SB 223 (Lockyer) -- Ch. 1242, Statutes of 1993

This measure became the vehicle for technical clean up of the workers' compensation reform package. One provision of import is the appropriation of $7.5 million from the Worker's Compensation Fraud Account for distribution among district attorneys to enhance investigation of workers' compensation fraud cases.

1994 Legislative Session

There are still several issues that need to be addressed before a major victory can be declared in reforming California's workers' compensation system. As the 1993 Legislative session began, Republicans' reasonable goal was to eliminate $3 billion from a system that had gotten way out of control. Only half of that amount *may* materialize as real savings after implementation of the reforms. The legislature must still address the need for a predominate cause standard and reform the system's approach to minor disabilities and vocational rehabilitation to reach the goal of $3 billion in savings.

Predominant Cause

A predominant cause standard for both physical and mental injuries needs to be established for all claims. Current thresholds are too low and result in workers claiming benefits for injuries not directly related to the work place. These claims undermine justifiable benefit increases to those workers with more severe injuries directly linked to their employment, the very people for whom the workers' compensation system was created.

Along with establishing a higher threshold, employers should only be required to compensate an employee for that portion of an injury that is actually caused in the work place. Requiring employers to compensate workers for any portion of an injury not caused by the workplace is not only patently unfair, but contrary to the stated intent of the system -- to provide compensation for *on-the-job* injuries.

AB 2420 (Mountjoy)

AB 2420 requires that, in order to establish a compensable injury arising out of an allegation of sexual harassment, sexual assault or sexual battery, an employee must demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all combined causes of the cumulative injury.

AB 2423 (Mountjoy)

Provisions of this bill repair a loophole created by last year's workers' compensation reform package that allows an employee to collect post-termination workers' compensation for a psychiatric injury merely on the basis of evidence that the date of the injury is subsequent to the notice of termination or layoff, but prior to the effective date of the termination or layoff.

AB 3753 (Alby)

This bill will have the same effect on post-termination claims as AB 2423 (Mountjoy), but applies to non-psychiatric injuries.

SB 1853 (Leonard)

This measure will modify the initial employee claim form so that in filing the claim, the employee grants the employer or insurer access to all medical information related to the injury, illness, or condition. This medical information is necessary for the employer or insurer to determine the predominant cause of the condition and, thus, to decide whether to accept or reject the claim. Immediate access to this information will allow the employer or insurer to process claims and provide benefits to deserving employees more quickly.

Minor Disabilities

Standards and definitions of injuries should be strengthened to eliminate claims based on the currently vague demarcations. In conjunction with this, we need to reduce benefits for minor disabilities such as "soft tissue" injuries. Minor disabilities comprise 80 percent of all disability claims; minor injury claims also comprise at least 80 percent of all abusive claims without any evidence that the disability affects job performance.

AB 2422 (Mountjoy)

This bill will repeal the requirement that provisions relating to workers' compensation and safety in the work place be liberally construed by the courts. The elimination of this requirement will allow for proceedings that are fair to both parties, rather than biased in favor of the employee.

Vocational Rehabilitation

This program needs to be abolished, or at least reformed to give the employer complete discretion on whether to offer it. The program is ineffective because it is not results-oriented; all parties get paid whether the "client" ever gets a job. Moreover, most of the workers who do get a job do not accomplish this as a result of the program. Under current standards, workers are often placed in the program before it is even determined whether it will prove beneficial.

The 1993 reform measures help, but they still leave the system fatally flawed. Finally, many provisions of the workers' compensation program are already covered by the federal Americans with Disabilities Act (ADA). Under the ADA, an employer must reasonably accommodate the disabilities of an employee unless undue hardship would result. These factors leave the vocational rehabilitation system without any remaining substance or justification.

AB 1269 (Johnson)

Among other provisions, AB 1269 provides that inmates engaged in work under contract be considered to be employees for purposes of workers' compensation. However, these inmates will not be entitled to vocational rehabilitation services.

SB 1440 (Lewis)

This bill provides that when an employee is injured while engaged in any unemployment relief program conducted by the state, political subdivision, or any governmental agency, the employee shall not be entitled to a vocational rehabilitation plan or rehabilitation maintenance allowance payments.

Contracting Out

Changes are also necessary in how the state manages workers' compensation claims by its officers and employees. Currently, the state is required to use the State Compensation Insurance Fund as the third party administrator for these claims. By allowing outside firms to compete to provide this service, the state may realize cost savings as well as administrative benefits that private sector firms already enjoy.

SB 1750 (Leonard)

Provisions of this bill allow the state to contract with private sector administrators to handle the processing of workers' compensation claims. The bill creates a pilot program in which the state will contract out 15 percent of its claims to private sector claims administrators for three years in order to determine whether more cost effective methods of management are available.

Insurance Costs

Escalating insurance premium costs are a major factor in the calculations many business owners consider before deciding to expand their operation or even remain in business in California. Several factors contribute to premium increases: over-utilization of the system, inclusion of ambiguous injuries as allowable claims, abuse of the system, and fraud.

Imposing limits on what insurers can charge may seem a simple solution, but this does nothing to correct the abuse of the system.

Conclusion

California's workers and employers have hope that reform of the costly workers' compensation that was initiated this session will have some beneficial impact on their lives and livelihoods. They should see hard dollar savings of $1.5 billion from rate rollbacks, elimination of minimum rate laws, a predominate cause standard for psychiatric and post-termination injuries and reductions in medical and litigation costs.

However, there is no guarantee that these savings will materialize as the legislature intended. Special interests will attempt to block implementation of reforms and bureaucracies will likely prove unable/unwilling to properly execute the legislation. For example, there are already complaints from a construction company that the company cannot implement a new program resulting from a collective bargaining agreement (as set out in SB 983) because a department cannot decide if it needs to certify the program or whether it even has the authority to do so. On another front, a hospital is stymied because of conflicting fee schedules. If our objective is to make California a friendly place to do business, we need to enact further reforms. We cannot afford to wait.

Chapter VI

PREVAILING WAGES

Prevailing Wages

Introduction

In recent years, budgetary problems have made it increasingly difficult for government to construct and maintain an adequate network of public facilities -- highways, roads, streets, bridges, airports and schools -- needed to support and sustain economic development. The wages paid to workers involved in these projects has been based on artificially-inflated rates promulgated by government through prevailing wage laws. When originally enacted in the 1930's, lawmakers were responding to a perception that unscrupulous contractors were profiting at the expense of their workers. However well-intended, these laws have outlived their usefulness.

Federal Review

According to a January 12, 1994 Wall Street Journal article, construction done under the federal prevailing wage law -- the Davis-Bacon Act -- accounts for 20 percent of the $232 billion spent construction nationally. The United States Chamber of Commerce has estimated that prevailing wage laws inflate costs on federally-financed infrastructure projects by about $1.5 billion a year. A Congressional Budget Office study also found that Davis-Bacon costs taxpayers $100 million in regulation.

Yet last year, President Clinton revoked an executive order issued by then-President Bush in October 1992 suspending federal prevailing wage laws in hurricane-damaged areas of Florida, Louisiana and Hawaii. Interestingly, Vice President Gore's report on reinventing government, released last September, did contain a reform proposal -- raising the threshold for imposition of the federal prevailing wage law from projects costing $2,000 to projects costing $100,000.

On October 27, 1993, a bipartisan congressional group, headed by Republican John Kasich of Ohio and Democrat Tim Penny of Minnesota, introduced a comprehensive list of spending cuts which included two prevailing wage reform proposals. The Kasich/Penny plan includes Gore's proposal, along with a proposal to eliminate various reporting requirements. If implemented, the reforms would save taxpayers an estimated $635 million over a five year period -- $245 million for the threshold changes and $390 million for the reporting requirement reforms.

State Review

In a March 16, 1993 article, San Francisco Chronicle economics editor Jonathan Marshall noted that no scientific survey has established the cost of California's prevailing wage law. However, a study prepared by former GOP Assemblyman Bob Cline for the Pacific Research Institute found that California could save between $170 million and $340 million annually if market averages were used to set prevailing wage rates on publicly-funded public works projects. This range of tax dollar savings does not count huge potential savings to more than 6,000 city,

county and other local entities in this state.

A report released last year by the California Affordable Housing Task Force -- a panel convened by State Treasurer Kathleen Brown -- found that prevailing wage laws drove up the cost of publicly-subsidized affordable housing by five to 15 percent in the San Francisco Bay Area and by 15 to 30 percent in the Los Angeles area. The Sacramento Bee, in a March 1, 1994 editorial, cited removal of prevailing wage requirements as a reform lawmakers must address in order to preserve the long-term fiscal solvency of California.

Despite apparent bipartisan recognition of the problems and the need for some reform, the Democrat-controlled California legislature has remained a graveyard for any meaningful prevailing wage reform legislation in the 1993-94 legislative session.

1993 Legislative Session

In its 1992 report on California's business environment, the Senate Republican Caucus noted that prevailing wage laws have outlived their usefulness, and recommended that they should be abolished altogether. At the federal level, Florida GOP Congressman Porter Goss introduced in March a comprehensive list of spending cuts that included a proposal to repeal the Davis-Bacon Act. It is estimated that Goss' proposal, if enacted, would save $5.2 billion over a five-year period. No repeal measures were introduced in California, however.

Wage Determination Method -- Modal to Weighted Average

AB 192 (Goldsmith)

California and Minnesota are the only two states that use a "modal" scale for determining prevailing wage rates. Under this method, which has been used in California since the mid-1950's, the state sets the prevailing wage as that paid to a majority of workers in a particular craft by classification or type of work within an area. If a majority of workers is not paid a single wage, state regulations specify that the prevailing rate shall be the single rate paid to the greatest number of workers in a craft.

According to Bob Cline, because union collective bargaining agreements apply to all areas of California and require all signatory contractors to pay a specifically bargained rate, those rates almost always set the wage mode in an area. Union agreements seldom reflect wage rates actually paid within the locality to a particular craft and may widely vary from most actual wage rates.

In its 1992 study on California's business climate, the Senate Republican Caucus cited modally-determined prevailing wage rates as a prime example of government waste and called for a phase-out of this method. For example, the Caucus' report noted that the market rate for an electrician in San Mateo County was about $20 per hour while the prevailing wage rate was over $35 per hour.

AB 192 by Assemblyman Jan Goldsmith would have required the Director of the Department of Industrial Relations to use a weighted average of wage rates paid to union and non-union workers within a region rather than the current modal formula. It is patterned after the federal method for determining prevailing wages: if 50 percent or more of the workers in a wage classification surveyed are paid the same rate, that rate would prevail. If no single rate is paid at least 50 percent of the workers, a weighted average would apply.

AB 192 was killed by the Assembly Labor Committee last year.

Local Control

AB 193 (Goldsmith)

In light of continued funding uncertainties, due in part to shifting of property tax revenues from local to state coffers in recent state budgets, cities and counties must have greater flexibility to address their unique infrastructure needs.

In 1981, the State Court of Appeals ruled that charter cities, including San Francisco, San Diego and Los Angeles, already have authority to exempt themselves from prevailing wage requirements (Vial v. City of San Diego) because locally-funded public works projects were municipal decisions.

Last year, Assemblyman Goldsmith authored AB 193, which would allow local agencies to waive the prevailing wage requirements on public works projects that are locally funded. A local agency is defined to include any city, county, special district, redevelopment agency, transit, school community college, water, hospital or fire district, or any joint-powers authority whose voting members consist entirely of any combination of these entities.

AB 193 would have expanded and codified the Vial decision upholding a charter city's ability to exempt itself from state prevailing wage mandates on projects with purely municipal funding. If enacted, this bill would have greatly reduced the existing construction cost burden on local governments by allowing them to waive prevailing wage requirements on projects that are locally funded. Despite the arguments of CSAC and a number of cities, the Assembly Labor Committee defeated AB 193.

The conference committee on the 1993-94 budget also thwarted an attempt by Assemblyman Goldsmith to abolish the state's prevailing wage mandate on local government. Goldsmith's proposal was part of a package he introduced aimed at abolishing state mandates on local government.

School Construction

AB 1135 (Knight)
AB 1582 (Haynes)

Like other local entities, prevailing wage laws force school districts to pay far more on construction projects than is necessary. Last November's defeat of Proposition 170 leaves unresolved the problems school districts face in keeping up with ever-increasing demand for classroom space. Two prevailing wage reform bills that would have helped restore local school district decision-making -- a major point made by Proposition 170 proponents -- were introduced but failed passage in the Assembly Labor Committee in 1993.

AB 1135, authored by Assemblyman Pete Knight, would have exempted public school construction, alteration, repair, renovation, maintenance and equipment installation in connection with a school facility from prevailing wage requirements and from compliance with other public works project laws, including costly record keeping and inspection requirements.

AB 1582, authored by Assemblyman Ray Haynes, would have allowed school districts to pay less than prevailing wage rates for construction work performed pursuant to the State School Building Aid Law. AB 1582 also provided that districts could not be penalized by the state or receive any reduction in funding because of a failure to pay wages as calculated by prevailing wage laws. It would have helped facilitate more public school construction within existing limited resources.

Imposition Thresholds

AB 93 (Richter)

As stated previously, the Kasich-Penny federal spending-cut package contains a proposal that would raise the threshold for imposition of prevailing wage mandates on federal projects from $2,000 to $100,000.

At the state and local levels, excess money spent paying inflated worker wages due to prevailing wage requirements could be better spent funding other projects and creating additional jobs. Current California law requires payment of prevailing wages to workers employed by private contractors on projects costing $1,000 or more. Construction projects costing $25,000 or less and alteration/demolition/repair/maintenance projects costing $15,000 may be exempted from prevailing wages.

Unfortunately, the Assembly Labor Committee missed an opportunity to implement savings for projects costing less than $500,000 when it failed to pass AB 93, a bill by Assemblyman Bernie Richter that would have allowed market forces to set the wages for these projects.

1994 Legislative Session

The 1994 session has seen continued efforts on the part of Republican legislators to reform California's prevailing wage laws. The Northridge earthquake, coupled with the renewed emphasis on criminal sentencing reform, have given rise to concerns about inflated construction costs of freeways, prisons and jails.

Wage Determination Method -- Modal to Weighted Average

SB 1204 (Hurtt)

SB 1204 by Senator Rob Hurtt is identical legislation to last year's AB 192, replacing the modal formula with one that would be determined by averaging union and non-union pay rates.

Like AB 192, SB 1204, if enacted, would bring about rates that are more realistic in terms of a local area's labor market. It is estimated that California could save approximately 20 percent on wages and fringe benefits paid to building trades workers employed on public works projects if either of these bills were enacted.

Unfortunately, like AB 192, SB 1204 was also killed by legislative Democrats, failing passage in the Senate Industrial Relations Committee on January 12, 1994.

Local Control

SB 1243 (Hurtt)

This bill would allow local agencies' governing bodies to opt out of the prevailing wage schedule if a project is paid for solely with local funds.

Like AB 193 (Goldsmith) which was introduced last year, SB 1243, if enacted, would have provided more flexibility to local governments, which must contend with diminished funds due to the property tax shift provisions in the 1993-94 state budget. Because money was extracted from local government to help balance the 1993-94 state budget, it only makes sense for the state eliminate cost mandates that unduly hamper local government agencies. But Senator Hurtt's measure was similarly dispatched by legislative Democrats in the Senate's Industrial Relations committee.

Comprehensive Reform

AB 1970 (Morrow)

Compared to the above-mentioned bills, which focused on specific areas of prevailing wage reform, AB 1970 took a comprehensive approach to reform.

AB 1970 exempts the following projects from prevailing wage requirements:

* Contracts under $500,000 (also contained in AB 93 (Richter)).

* All maintenance work.

* Work done on behalf of the state; school, hospital, water and sewer districts; local and state redevelopment agencies; UC, CSU and community colleges; Caltrans, Judicial Council and State Bureau of Prisons.

* Laying of carpet in any publicly-owned building or performed under a building lease-maintenance contract.

* Hauling of refuse by state agencies.

* Privately-owned property, where less than the entire parcel is leased to the state.

AB 1970 also modifies the method for determining the prevailing wage rate in the following manner:

* Requires the rates for some projects be determined by a local survey of average rates in an area, rather than by the modal method (similar to SB 1204 and AB 192).

* Federal prevailing wage rates would be used on all projects where any federal funds are involved.

* Deletes holiday work, overtime, travel time and subsistence pay from prevailing wage rate calculations.

* Prevailing wages would not have to be paid to a licensee, officer or agent of a private contractor, even if performing work.

* Deletes consideration of area collective bargaining rates in determining prevailing wage rates.

* Requires Director of Department of Industrial Relations to conduct a local survey before determining an area's prevailing wage rate.

* Eliminates state apprenticeship standards in lieu of federal standards.

AB 1970 requires awarding bodies solely to enforce prevailing wage laws for local projects and enforce all violations, and requires an awarding body to make periodic wage surveys for all work performed.

The Director of the Department of Industrial Relations would be authorized to exempt from prevailing wage requirements any work done for or on behalf of youth, service, sports or non-profit organizations.

AB 1970 died in the Assembly Labor Committee without a final vote.

School Construction

AB 2809 (Andal)

Introduced by Assemblyman Dean Andal on February 14, AB 2809 would enact the "Local School Empowerment Act of 1994," which includes among its provisions language providing that prevailing wage rates shall not be required for any school construction project.

Prison Construction

SB 34X (Hurtt)

As California grapples with increased incarceration costs, enactment of prevailing wage reforms can result in considerable savings of scarce tax dollars. A recent estimate by the Department of Corrections, noted that the "Three Strikes and You're Out" law, alone, will add 81,000 inmates to California's prison system by the year 2000, requiring 20 additional prisons at a cost of $6.6 billion. Moreover, the cost savings from prevailing wage law reforms counters the arguments of some that the state cannot afford longer sentencing proposals, such as "Three Strikes." We can afford needed sentencing enhancements if we can reasonably reduce the cost of prison construction. Ironically, it is these same critics of "three strikes" that are often responsible for killing prevailing wage law reform measures.

Senator Hurtt recently introduced SB 34X, a special session measure that would allow local governments to exempt themselves from prevailing wage requirements for construction of any correctional facility. SB 34X would also change the "modal" calculation for prevailing wage determinations to the fairer "weighted" average for the construction of new state prisons.

Senator Hurtt's bill could save California $400 million in new state prison construction costs over the next ten years, and give local governments additional flexibility to build sorely-needed correctional facilities. SB 34X has been assigned to the Senate Industrial Relations Committee, where it will be heard on April 20.

Los Angeles Earthquake Damage Repair

SB 1472 (Hurtt)
AB 2694 (Richter)

The January 17 Northridge earthquake dramatically underscored the importance of roadways and other major public facilities. The price tag for repairing or rebuilding them -- most notably the Santa Monica and Golden State Freeways -- will have a major impact on the timetable for the economic recovery of Southern California.

On January 21, Senate Republican Caucus Chairman Bill Leonard announced several proposals to remove government-created impediments to earthquake recovery in Los Angeles. Included in the Senate Republican Caucus Earthquake Response Package is SB 1472 by Senator Rob Hurtt, which would authorize the governor to suspend, by order, prevailing wage and regulatory requirements for state and local freeway construction. Bidders on state highway projects have said that reforms such as those in this measure could save the state 15 to 20 percent on project costs. SB 1472 has been assigned to the Senate Industrial Relations Committee, where it will be heard on April 20.

Assemblyman Bernie Richter has also introduced AB 2694, which would exempt the payment of prevailing wages to workers on public works projects resulting from damage caused by the Northridge earthquake. AB 2694 was assigned to the Assembly Labor and Employment Committee, where reconsideration was granted after it was defeated by reform opponents -- Assembly Democrats.

Conclusion

In recent years, natural disasters, as well as the California recession, have resulted in a substantial drain on state and local finances in California. In the case of the 1989 Loma Prieta earthquake, a billion-dollar statewide sales tax increase was even enacted to pay for repairs of public facilities.

Multimillion-dollar damage tallies from the 1992 Los Angeles riots and the recent Northridge earthquake further underscores the need for more cost-effective methods of rebuilding and repairing public facilities. Prevailing wage reform is not only an integral part of this process, but is also a cost-efficient way to respond to budget concerns and the state's construction needs. Though unsuccessful at getting legislation passed by the Democrat-controlled California Legislature, GOP lawmakers will have additional opportunities to achieve reform by offering amendments to the 1994-95 state budget.

Chapter VII

BUSINESS RETENTION

Business Retention

Introduction

Business retention tactics are an increasingly popular solution to the problem of business flight in California -- especially in light of the luring tactics used by other state's to attract existing and would-be California businesses away from the state. Although retention tactics have promoted a more cooperative attitude between the majority of legislators and the business community, they do not constitute a long-term solution to California's deteriorating business environment stemming from unwise spending priorities and policies.

1993 Legislative Session

During the 1993 legislative session, the California Legislature finally recognized the need for pro-business legislation to stem the flow of businesses leaving California and to attract new businesses from outside the state. The majority of these measures achieved some relief for businesses, but left untouched the fundamental problems of high taxation and excessive regulation stemming from existing priorities and policies. Although a few bills directly addressed these problems, progress was modest. Much more needs to be done if California is to regain its former prosperity.

Economic Development Agencies/Policies and Market Expansion

Although bills advocating that the state promote economic development indicate a positive change in the legislature's attitude toward business, it is important to realize that these bills provide only short-term relief -- and some of them could create problems instead of solving them. For example, economic development programs and studies are funded by fees on business, which adds to the cost of doing business in California. Moreover, economic development bills can provide a pro-business mask for some legislators who promote parochial business proposals while simultaneously voting for stiffer regulations, higher taxes and other anti-business legislation that have been undermining the state's overall business environment for years.

Historically, governments have never been reliable predictors of successful industries. Thus, when the government identifies markets or industries for expansion, it runs the risk of politically distorting the market. Moreover, businesses are taxed to pay for state programs and policies which many could operate better on their own -- or could do without all together.

To the extent that the following bills require government to plan economic strategies and issue reports, they could prove counter-productive. The best way to expand California's market is to lower taxes and streamline regulations, which would allow businesses to identify and create emerging markets. To the extent that the following bills coordinate and consolidate existing economic development agencies and policies, they are a step in the right direction. Yet

consolidation is only a step. Legislators must directly confront the fundamental problems undermining California's business climate, such as high taxes, excessive regulations and hostile tort laws.

SB 748 (Deddeh) -- Ch. 839, Statutes of 1993

SB 748 adds legislative intent language encouraging the Office of Trade Policy and Research to work with other state agencies to develop a foreign market development strategy which the Trade and Commerce Secretary would be required to include in the first annual report to the governorand legislature. SB 748 also declares legislative intent that the California Export Finance Office seek federal matching funds for defense conversion projects.

SB 748 also requires the Office of Trade Policy and Research to target industries for foreign market development assistance and to develop an agency for identifying and creating emerging markets for California products.

AB 761 (Vasconcellos) -- Ch. 864, Statutes of 1993

AB 761 requires the Secretary of Trade and Commerce to coordinate and develop state policy on economic development and trade. The law also enacts the California Economic Development Strategic Planning Act of 1993, requiring the secretary to review an economic development strategic plan for the state, convene a biennial economic development strategy plan panel composed of 15 members, and to submit an interim report to the Governor and the legislature on or before September 1, 1994.

AB 2253 (Areias) -- Ch. 1019, Statutes of 1993

Assemblyman Areias' measure requires the Director of the Office of Planning and Research, in consultation with the Governor's Interagency Council on Growth Management and an advisory committee composed of rural landowners and citizens, to adopt a rural growth strategy.

SB 852 (Maddy) -- Ch. 871, Statutes of 1993

SB 852 transfers management of the regional small business development corporations (RDC's) from the Department of Commerce to the Trade and Commerce Agency (TCA) to conform with existing law.

AB 1732 (Brulte) -- Ch. 1153, Statutes of 1993

Assemblyman Brulte's measure updates various statutes to conform with the changes instituted at the Department of Commerce and the California World Trade Commission as they combined into the Trade and Commerce Agency and would provide for the Secretary of Trade and Commerce to serve on specified boards, committees and commissions. This law also

transfers the Office of Permit Assistance to the Trade and Commerce Agency.

AB 1246 (Quackenbush) -- Ch. 446, Statutes of 1993

Assemblyman Quackenbush's bill renames the Office of Competitive Technology as the Office of Strategic Technology, and the Competitive Technology Program as the Challenge Grant Program, in the Trade and Commerce Agency. It also reorganizes these offices and defines their authorities and duties in an effort to define, target and promote emerging regional technical alliances. The goal of this law is to shift state policy from supporting technology research in general to choosing which technologies and industries in various regions of the state will receive the support of state government.

Tax or Rate Incentives

Bills that promote specific industries by tax or rate incentives, however well-intended, run the risk of distorting the market through political manipulation. Rather than target specific industries, tax or rate cuts across the board would help all businesses who are considering expanding or relocating and would allow the market to determine the most efficient and beneficial industries.

SB 898 (Mello) -- Ch. 264, Statutes of 1993

SB 898 authorizes the California Public Utilities Commission (CPUC) to provide rate incentives to industries or businesses located within an enterprise zone which engage in activities in connection with the conversion of Fort Ord to other uses.

Monetary Assistance

Leveraging funds for across-the-board loans to small businesses is a step in the right direction. Yet this will provide only short-term relief that could be undermined if taxes are not significantly cut and regulations streamlined.

SB 852 (Maddy) -- Ch. 871, Statutes of 1993

Senator Maddy's measure creates a new milestone requirement in the contract between RDCs and the Trade and Commerce Agency by fully leveraging the corporate funds of the RDC. If the milestone provision of the contract is violated, the RDC can be put under temporary suspension. This law also authorizes use of funds for direct lending to farmers provided that at least 90 percent of the corporate fund farm loans and all fund farm loans are guaranteed by the U.S. Farmers Home Administration.

SB 1061 (Mello) -- Ch. 903, Statutes of 1993

SB 1061 provides that the Office of Small Business may allow regional Small Business

Development Corporations to create another direct loan program under which "micro-loans" would be made to small businesses in amounts up to $50,000 per borrower to help the small business borrowers who have difficulty obtaining funds through conventional private-sector channels. The total of these micro-loans could not exceed 25 percent of the amount in each RDC trust fund.

AB 648 (Epple) -- Ch. 442, Statutes of 1993

This law establishes the New Business Incubator Enterprise Program, to be administered by the Small Business Development Board, which will provide loans to assist start-up companies seeking to use military technology in the private sector. This law will take effect only when sufficient money is appropriated to support the bill's programs.

AB 1259 (Katz) -- Ch. 866, Statutes of 1993

AB 1259 requires small business development corporations that serve areas with declared disasters or emergencies to increase the number of small loans, as specified, and would create a new program or expand existing ones if necessary. This bill also provides a direct appropriation for the specified activities and will direct to the Small Business Expansion Fund (SBEF) a portion of the state's tax on the increased federal motor vehicle fuel tax.

AB 1496 (Peace) -- Ch. 1164, Statutes of 1993

This law repeals the existing small business loan program and establishes a new Capital Access Loan Program (CALP) for small businesses to facilitate lending to businesses to upgrade pollution controls and comply with environmental regulations. The CALP will be administered by the California Pollution Control Financing Authority.

Enterprise Zones

Enterprise zones could provide the means by which to fundamentally reform anti-business policies that have driven businesses from California. These zones, in which special business incentives are offered, have been limited to blighted areas in need of economic revitalization that businesses probably would not otherwise consider economically viable. Applied on a statewide basis, enterprise zones could keep and attract businesses by significantly reducing the tax and regulatory burden, thus providing a competitive and profitable business environment. Much more can and should be accomplished since the progress the legislature made was primarily limited to clarifying technicalities in zones that have already been created.

AB 18 (Archie-Hudson) -- Ch. 18, Statutes of 1993

This bill makes technical and clarifying amendments to the Los Angeles Revitalization Zone (LARZ) provisions in AB 38X, Chapter 17X, Statutes of 1992 and extends the provisions from January 1, 1998 to December 1, 1998. The most significant provisions include: an income

tax credit equal to the sales tax paid on qualified property; tax credits for wages paid for construction work in the zone; and a lenders' deduction where banks and other financial institutions loaning money to businesses in the LARZ pay no tax on the interest earned on the loan.

AB 57 (W. Brown) -- Ch. 879, Statutes of 1993

AB 57 allows businesses located in enterprise zones and the LARZ to reduce their tax liability below their tentative alternative minimum tax (AMT) by applying tax credits authorized to businesses operating in the zones. This law is intended to make the full benefits promised under the enterprise zone and LARZ concepts available to all and not allow the AMT or operation of the tax break limit to thwart that objective.

The failure of SB 1007 (Leonard) to pass out of the Senate Governmental Organization Committee represented a major setback for the 1993 legislative session. This measure would have authorized the County of Los Angeles, the Cities of Los Angeles, Compton, Long Beach and other cities within the County that experienced destruction to business, property and public facilities during the April 1992 riots, to qualify for various program, tax and regulatory incentives and exemptions. SB 1007 included provisions relating to product liability, housing, health care and insurance, personal and business income taxes, sales and use taxes, workers' compensation, welfare, wages, environmental quality and day care centers. This bill had the potential to revitalize economically devastated areas by eliminating excessive taxation and regulation. If it had proved successful, this bill could have been applied on a statewide basis to create incentives for private business development throughout the state.

1994 Legislative Session

Although the legislation considered and/or passed in the 1993 legislative session indicates a greater degree of awareness regarding the problems faced by businesses in California, few bills directly addressed the fundamental problems of doing business in California. The bills passed to increase the avenues of monetary assistance might aid some businesses, but if these businesses are to thrive in the long term, they need a better business environment. Expanding the enterprise zone concept could accomplish this goal. The main challenge for the 1994 session will be cutting back on taxes and streamlining regulations that are still strangling businesses. This will require some form of spending limitation and/or government cutbacks, but such actions are necessary to restore the state's prosperity.

Economic Development Policies and Agencies

SB 1479 (Maddy)

This bill would enact an industry-approved assessment which would provide a private-sector financing mechanism that, when combined with state funding, would increase tourism expenditures within California. This measure has been sent to the Committee on Governmental

Organization where a hearing date has been set for April 12, 1994.

AB 1822 (Costa)

AB 1822 would transfer the Office of Small and Minority Business from the Department of General Services to the Trade and Commerce Agency. This bill would also transfer the Small Business Advocate program from the Business, Transportation and Housing Agency to the Trade and Commerce Agency. This bill would require the State Auditor to review all Trade and Commerce Agency economic development programs and to recommend actions to coordinate and consolidate those programs and to make specified program activity recommendations.

Enterprise Zones

SB 845 (Rogers)

This measure will increase the authorized number of enterprise zones from 25 to 28 and expand the tax credit for wages paid to include wages paid to persons who live in the enterprise zone if they are eligible or enrolled in the specified programs. This bill passed the Utilities and Commerce Committee in the Assembly and was re-referred to the Revenue and Taxation Committee; a date for hearing has not been set.

SB 881 (Killea)

SB 881 would provide that zones and areas designated under specified federal programs shall be deemed as enterprise zones or development areas under state law if their governing bodies enact resolutions to be subject to those provisions.

AB 692 (Richter)

This bill would have authorized the Department of Commerce to designate one "rural enterprise zone" from applications received before December 31, 1994 from counties that have a total population of fewer than 35,000 persons. Although the bill died in the Senate Committee on Governmental Organization and there are no plans to revive it, the concept deserves further consideration and support.

AB 1015 (Nolan)

AB 1015 would have authorized the Department of Commerce to designate an additional five enterprise zones each year for three years to the existing authorization of 25 enterprise zones in the Enterprise Zone Act. This bill would include individuals who perform services for the taxpayer and have been determined eligible or are receiving subsidized employment under the federal Job Training Partnership Act within the definition of qualified employees for the purposes of the tax credits. Although this bill died in the Assembly Revenue and Taxation Committee and there are no plans to revive it, the concept deserves further consideration and support.

Conclusion

Promoting retention strategies might foster more cooperation toward business on the part of government officials, but the idea that government can or should decide, target or promote certain businesses usurps a crucial market function. Several bills attempt to do this in one way or another. However well-intended, these bills run the risk of distorting the market by political manipulation.

One positive sign was the fact that few bills created new agencies or expanded existing ones; instead, there seems to be a trend toward consolidation. The effort toward consolidating economic development agencies and policies under the Trade and Commerce Agency to prevent duplication and promote efficiency is a step in the right direction yet leaves the more fundamental solutions of significantly lowering taxes and streamlining regulations untouched.

One Sacramento accountant rhetorically asks his clients if they want to make money and, without waiting for an answer seriously urges them, if possible, to incorporate in Nevada. Granted, this is only one anecdotal example, but it indicates a very serious problem if California wants to keep and attract business.

Chapter VIII

EDUCATION

Education

Introduction

Education reform is, and will continue to be, a major issue in California. In an effort to address education reform, the 1993 legislative session saw the passage of two limited public school choice bills -- AB 19 (Quackenbush) and AB 1114 (Alpert). These two measures were attempts to circumvent Proposition 174, the choice initiative on the November 2 ballot, which would have given parents the opportunity to send their children to either public or private schools. Unfortunately, Proposition 174 was defeated. Consequently, public education in California will continue to be mediocre and controlled by "educrats" whose only interest is maintaining their monopoly of public schooling.

1993 Legislative Session

The 1993 legislative session saw minimal progress on any comprehensive reforms of California's public education system. Attention was given to reforms such as full school choice, but only long enough for the legislative majority to squelch these efforts. The issue of school choice grew in importance, however, as even its stalwart opponents in the education establishment were forced to accept some limited choice reforms.

Limited Public School Choice

Passage of the limited public school choice measures was an effort to thwart Proposition 174, and appease the public's outcry for education reform. Previously, all school choice legislation was killed by the legislature.

AB 19 (Quackenbush) -- Ch. 160, Statutes of 1993

This measure will allow the governing board of any school district to institute a program of interdistrict public school choice. However, it would limit the number of students who could transfer to five percent of their current year daily average.

AB 1114 (Alpert) -- Ch. 161, Statutes of 1993

This measure requires the governing board of each school district to establish a program of intradistrict public school choice. Also, it requires the district to notify the parent or guardian of the enrollment options available in the district.

1994 Legislative Session

Much needs to be done to reform California's public education system. Opportunities for choice and charter schools must be expanded while funding mechanisms need re-evaluation. The legislature must produce some substantive reforms this year; as recent test scores reveal, much needs to be done.

Charter Schools

In 1992 the legislature considered two bills relating to charter schools, both introduced as alternatives to Proposition 174. AB 2585 (Eastin) would have given the teachers' unions the power to block charters and maintain collective bargaining, and required certification of all teachers, along with approval of the state superintendent of education. Furthermore, this bill made provisions for fifty charter schools and required 50 percent approval of parents and teachers. Under AB 2585, 60 percent of the charters would have been set aside for "low performers."

Governor Wilson vetoed AB 2585 on the grounds that it failed to embrace the basic ingredients of the charter concept. However, he signed SB 1448 (Hart) which provided for 100 charter schools. This was a political compromise between the Business Roundtable, which wanted 500, and the California Teachers Association (CTA) which wanted zero.

The major issues for the 1994 legislative session regarding charter school reform will focus on expanding charter schools and allowing parents to initiate and sign charter school petitions. Currently only teachers and administrators have the ability to sign petitions.

The problems facing charter schools largely arise from teacher union opposition. In order to thwart the success of charter schools they have resorted to obstructionism. Their antics are best illustrated in the Sacramento City Unified School District. The local union, in conjunction with the Sacramento City Teachers Association, has filed a complaint with the Public Employment Relations Board (PERB) accusing the district's only charter school, Bowling Green Elementary, of circumventing collective bargaining agreements in its personnel policy.

The unions are agitated with Bowling Green's policy of assigning all jobs according to merit, not seniority, and they are complaining to PERB about the reduction of the student/teacher ratio from 33-to-1 to 25-to-1. The unions claim this change violates their contract because they were not consulted. Additionally, they are rankled because Bowling Green has changed its method of evaluating teachers, focusing evaluations on student outcomes.

SB 1806 (Lewis)

This measure would remove the cap on the number of charter schools allowed in California and allow parents as well as teachers and administrators to initiate and sign the petitions to become a charter school.

AB 2454 (Goldsmith)

This measure recommends that an entire school district be allowed to become a charter school district.

Education Funding

Currently, general purpose funds account for 60 percent to 75 percent of the money a district receives. The remaining amount comes from categorical funding, which varies according to the categories of need in a district.

There are more than 65 categorical programs, but only about 30 of these programs consume most the money. Each categorical program has its own formula for distributing money. Some formulas make perfect sense; others make no sense at all. Education funding should be streamlined and the system of funding made more accountable.

AB 2809 (Andal)

Assemblyman Andal's measure would establish three block grants to replace the current categorical program grants. The block grants under AB 2809 break down as follows:

1) A grant to school districts with a majority of residents with family income of less than $35,000 a year gross income;

2) One grant to fund programs designed to service students regardless of income, to be equally dispersed to all district on an Average Daily Attendance (ADA basis);

3) A third grant from merging the Necessary Small School Program, Small School District Bus Replacement Program, and the portion of the Transportation Program which deals with small school districts. This grant would be distributed by the current funding formula for small school districts.

AB 3200 (Haynes)

AB 3200 repeals numerous categorical educational programs and requires school districts to notify each parent or guardian of the child's right to be educated exclusively in the English language. The bill also requires expulsion of a student found to possess a firearm or other deadly weapon or a student who commits aggravated assault.

School Choice

Despite the defeat of Proposition 174, the issue of school choice has and will continue to take center stage in the debate over public education reform. Several proposals are currently circulating in the legislature:

AB 2918 (Andal)

This measure would create a pilot voucher program for the 20 worst school districts in the state, and for students whose family earns less than $35,000 per year.

AB 3280 (Boland)

Assemblywoman Boland's measure would repeal the five percent limit on interdistrict transfers, which was stipulated in AB 19 (Quackenbush), approved in 1993 (Ch. 160, Statutes of 1993).

School Districts

California's public schools are top heavy, and they need to be reorganized. For example, school districts employ about 480,000 people (this total does not include substitute teachers). One of every 25 people employed in the state is working in the public school system. Public schools need more teachers in the classroom and fewer administrators.

Under current law, if parents want to reorganize their local school district, there are two approaches they can take, both following a "citizen's petition" process.

Step one requires citizens to gather the signatures of 25 percent of the registered voters in the school district (in Los Angeles Unified School District this would be approximately 400,000 valid signatures). The 25 percent threshold would ensure that the county's education committee must review and transmit the petition to the state board of education for their approval or disapproval. If the petition is approved by the state board, it is placed before the voters for final approval.

Step two is to follow the same procedure as the first step but obtain the signatures of only 10 percent of the registered voters. Achieving only the 10 percent threshold does not guarantee that the petition will ever make it past the county's education committee and up to the state board of education for their review. Upon reviewing the petition, the county's education committee can "hold" the petition if it is not in support of the proposal.

AB 2628 (Boland)

This measure modifies the existing law on how citizens can reorganize a school district by making the law "user friendly" and more democratic. AB 2628 would lower the signature threshold in each case to more reasonable and achievable levels: from a 25 percent threshold to 10 percent under step one, and from 10 percent to 5 percent under the alternative approach. Additionally, it removes the veto power that charter cities' governing boards have over the citizen's petition.

Public Schools Contracting with the Private Sector

One of the most grievous problems of our public education system is its failure to properly utilize existing resources. For instance, administrative and non-instructional services now consume 42 cents of every dollar spent on K-12 public education. In this time of fiscal constraints it is essential to find ways of reducing such an inefficient use of funds.

SB 1809 (Lewis)

This measure would authorize a school district to contract for janitorial and building maintenance service as well as food service.

Bilingual Education Reform

The major problem with bilingual education is the Department of Education's continued insistence that special funding for language instruction be contingent on meeting "native language instruction" guidelines. The Little Hoover Commission noted in their report, *A Chance To Succeed: Providing English Learners With Supportive Education*, that "the result of the Department's single-minded pursuit of the method known as native-language instruction has been divisive, wasteful and unproductive. Students, trapped in the middle of a political and academic tug-of-war, have suffered the brunt of this failed policy direction."

The problem when trying to repeal the sunset of inoperative bilingual law is twofold:

1) Repealing the Bilingual-Bicultural Act of 1976 (BBA) would essentially undermine the principle of local control. Since the BBA is currently inoperative, districts technically have the freedom to decide the method of language instruction they think is the most effective and the most efficient. Passing a law repealing the BBA could undermine decisions made at the local level.

2) If a bill is introduced to repeal the BBA and it fails, the failure will only strengthen the position of bilingual education supporters.

The solution is for a school districts to first use the language instruction method they think is best and be willing to fight the Department if it tries to bring suit.

Second, changes should be made in the credentialling law. The legislature would direct the Department of Education and the Commission on Teacher Credentialling to focus on improved teaching techniques rather than on increasing the number of bilingual teachers.

Conclusion

The 1993 legislative session produced minimal education reforms with the passage of AB 19 (Quackenbush) and AB 1114 (Alpert). The challenge for the 1994 session is to reduce bureaucracy, make schools more accountable and give parents choices as to which schools their children will attend.

In order to accomplish these goals, schools need to be run more like a business instead of a planned economy. Charter schools are a step in the right direction toward implementing the necessary reforms for improving education. Currently, 50 charter schools have been approved. Since charters school were implemented this year, it is difficult to determine their success thus far. It will take at least two years to gauge the development of this program.

Also, there will be a great demand for school construction. By the year 2000 it is estimated there will be over 200,000 new students entering an already overcrowded school system. Consequently, this puts more pressure on the state's budget at a time when the legislature must reduce overall spending. Since additional state monies will not be available to fund school construction, and voters are disinclined to approve more bonds, a more viable solution to this problem is to address the prevailing wage issue (see the prevailing wage section).

Chapter IX

DEFENSE CONVERSION

Defense Conversion

Introduction

On July 1, 1993, the Defense Base Closure and Realignment Commission submitted its final report to President Clinton. In this report, the Commission recommended the closure of 130 bases and the realignment of 45 bases across the United States by the year 1999.

California suffered disproportionately in this latest round of base closures. Eight of the state's major bases were slated for closure and 37 minor bases were slated either for closure, transfer or realignment. These closures and transfers are estimated to result in a loss of over 33,000 military and civilian jobs. That is nearly 88 percent of the total national personnel reductions.

1993 Legislative Session

During the 1993 legislative session, numerous bills were introduced to mitigate the economic impact of the closure of military bases in California. Much of this legislation was specifically tailored to meet the needs of individual bases. However, there were several bills that sought to provide revitalization stimuli to all bases slated for closure and to their surrounding communities. These comprehensive bills can be divided into the following categories: Financial Incentives, Clearinghouses and High Technology Business Retention.

Site-Specific Legislation

Three specific areas of California will face the brunt of job losses from the latest round of base closures. The area hardest hit will be the San Francisco-Oakland-Bay Area counties. The Inland Empire region of San Bernardino and Riverside Counties also face significant losses, as does Orange County.

Several pieces of legislation were introduced in 1993 to offset the losses these areas will experience. Some of the more important bills that dealt with site-specific conversion plans for military bases are listed below. These bills represent very different approaches to defense conversion.

SB 2X (Ayala/Leonard/Brulte) -- Ch. 2X, Statutes of 1993

This legislation offers a package of incentives in order to attract a federal defense finance and accounting service center to Norton Air Force Base. Some of the inducements included an allocation up to $10,000,000 in Employment Training Funds for special training related to the accounting center.

AB 693 (Cannella) -- Ch. 1216, Statutes of 1993

This bill creates the Castle Joint Powers Redevelopment Agency and authorizes the establishment and operation of the Castle Air Force Base Project Area. Senator Maddy carried a similar piece of legislation, SB 348. He deferred to Assemblyman Cannella's legislation.

Financial Incentives

By far the most popular form of defense legislation consisted of providing financial incentives for businesses willing to locate on abandoned military bases. The incentives that were offered ranged from reduced utility rates to full enterprise zone packages.

The foremost piece of legislation utilizing financial incentives was AB 693. AB 693 borrowed heavily from the enterprise zone concept and created Local Agency Military Base Recovery Areas (LAMBRA) which offers a full range of tax credits to businesses willing to locate within the LAMBRA.

AB 693 (Cannella) -- Ch. 1216, Statutes of 1993

AB 693 develops a Local Agency Military Base Recovery Area (LAMBRA) program for areas hit hard by base closures. The bill permits the Trade and Commerce Agency to select one military base in each of five regions of the state. Businesses that locate on the designated base and add at least one full-time equivalent job will, until 2003, receive tax benefits comparable to those provided to businesses which locate in enterprise zones.

These incentives include a credit in the amount of sales or use tax paid on qualified property for use in the LAMBRA; a jobs credit varying from 50 percent of wages in the first year of employment down to ten percent of wages in the fifth year of employment, with an annual credit limit of $2 million; expensing (deducting in the year acquired, rather than depreciating over several years) of depreciable property purchased by the taxpayer for exclusive use in the business conducted within the LAMBRA, with a deduction limit of $5,000 in the first two years of depreciation, $7,500 in the next two years and $10,000 thereafter; personal income tax and bank and corporate income tax credits; a 100 percent net operating loss carry-forward; a carry-forward of the sales and use tax credit and hiring tax credits in specified circumstances; and the recapture of tax credits in the event there is no net increase in employment by the business.

AB 2072 (Knight) -- Ch. 1276, Statutes of 1993

This legislation allows public utilities to offer "enterprise zone" rates to facilities located on military bases scheduled to close. AB 2072 sunsets January 1, 1999.

Clearinghouses

Another popular approach to base conversion was the "one-stop shop" plan. Two identical measures, SB 458 (Hart) and AB 2222 (Lee), create a council which acts as a clearinghouse or "one-stop shop" for information on funds for military base conversion programs. Both of these measures require their council to develop a strategic plan for the conversion of military bases.

Most of the legislation in this area overlaps with an executive order issued on March 3, 1993 by Governor Wilson which created the California Council on Defense Industry Conversion and Technology Assessment. The Governor's Council was charged with the following: recommending an integrated strategy of defense industry conversion; identifying federal resources available to assist in the conversion; and coordinating all defense industry conversion activities in the state.

The Council released its report on February 25, 1994. The principal recommendations of the council, intended to serve as a model for base re-use efforts across the nation, include the following:

* Resolving jurisdictional disputes by formally designating a single local re-use entity for each closing base.

* Coordinating the environmental review process between federal and state government so that one impact statement suffices for both levels of government.

* Amending the federal McKinney Homeless Assistance Act, as it affects military base re-use so that more authority for base re-use projects is placed in local hands.

* Extending legislation passed in 1993 that authorized the use of the redevelopment process on closing military bases to make redevelopment more attractive and beneficial for re-use.

SB 458 (Hart) -- Ch. 445, Statutes of 1993
AB 2222 (Lee) -- Ch. 444, Statutes of 1993

These bills create the State Defense Conversion Council (DCC) within the Trade and Commerce Agency to act as a central clearinghouse for all base re-use and defense conversion activities within California. The DCC is required to develop a strategic plan for federal, state and local military conversion and training programs and report back to the governorand legislature on its findings. SB 458 has a sunset date of January 1, 1999.

SB 268 (Roberti) -- Ch. 441, Statutes of 1993

Senator Roberti's legislation creates the Defense Conversion Matching Grant Program to provide matching grants from the Petroleum Violation Escrow Account (PVEA) and technical assistance to organizations applying for federal funds. According to federal law, the PVEA funds

may only be used for energy-related programs. SB 268 sunsets January 1, 1999.

High Technology Business Retention

With the stagnant economy and the threat of base closures looming on the horizon, legislators were forced to recognize the need for legislation aimed at retaining the large base of high technology industry in California, attracting new high technology projects and fostering the creation of new technology. Worker productivity in the aerospace industry is one-third higher than manufacturing and well over double that of the service industry. If work is not found for the highly skilled people who are displaced from the aerospace industry due to defense downsizing, these skilled individuals will most likely find work out of state. To prevent this, several bills were introduced to deal exclusively with aerospace and other high technology in California.

AB 279 (Seastrand) -- Ch. 1003, Statutes of 1993

Assemblywoman Seastrand's legislation encourages the expansion of the commercial space industry in California by designating the Western Commercial Space Center at Vandenberg Air Force Base as the California Spaceport Authority. As originally drafted, AB 279 contained language providing a sales tax exemption on tangible personal property used in space flight. This provision was amended out of AB 279, but was included in the final version of last year's omnibus business tax reform legislation (SB 671/Alquist).

AB 1246 (Quackenbush) -- Ch. 446, Statutes of 1993

Assemblyman Quackenbush's AB 1246 took a comprehensive approach to retaining, attracting and fostering the creation of high technology enterprises. It requires the Office of Strategic Technology within the Trade and Commerce Agency to serve as the lead office for programs that foster technology development particularly in response to defense conversion in an effort to target emerging technology in the state. This involves: coordinating efforts with higher education institutions; coordinating computer access to technology and business development information; marketing and promoting state programs that foster technology transfer development and result in enhanced competitiveness and job creation; and identifying opportunities and strategies to leverage state funds and program services. This bill also sets up grant programs to target emerging industries and technologies in California and establishes Regional Technology Alliances to decentralize the delivery of services and resources for technology development.

Assembly Bills 1246 and 693 were the most far-reaching and significant measures of the 1993 legislative session. Both bills seek to provide a comprehensive solution to some of the problems associated with military base closures. AB 1246 focuses on preserving California's concentration of high technology enterprises while AB 693 seeks to attract all manor of business to areas affected by base closures through a package of attractive tax incentives. Both measures strive to prevent businesses and jobs from fleeing California for more business-friendly climates.

Measures such as AB 693 which offer site-specific solutions for base closures fail to address the problems associated with defense downsizing across the state. The piecemeal effect of these measures did nothing to alleviate the loss of jobs which California as a whole is experiencing.

1994 Legislative Session

Although progress was made in 1993, more needs to be done. California needs to develop a master plan to attract high-skill jobs to our state. An aggressive campaign should be launched to attract businesses that create jobs. We can learn much from observing our neighboring states who for years have been wooing businesses out of California with promises of lower taxes, fewer regulations and a better standard of living.

Legislation is also needed to help alleviate the loss of military and civilian jobs at the closing bases. Improvements can be made in the areas of education and taxes. There are many former military personnel who possess specialized skills that could benefit our schools. It is also important that we provide tax exemptions for the purchase of equipment used in manufacturing products.

Site Specific Legislation

SB 899 (Mello/McPherson)

SB 899 authorizes the establishment of the Fort Ord Re-use Authority for the purpose of planning, financing, and managing the transition of Fort Ord from military to civilian use. SB 899 was passed by the Assembly Local Government Committee on February 7, 1994, and was sent to the Assembly Ways and Means Committee. While unveiling the California Military Base Re-use Task Force's report at the Alameda Naval Air Station in February, Governor Wilson noted that SB 899 is a model for base re-use efforts statewide

Education

Defense conversion legislation is needed in the educational area to help retiring military personnel obtain employment where their extensive educational training and on-the-job experience can be used to the benefit of California. This can be accomplished by making it easier for former military personnel to obtain teaching credentials in their area of expertise. Legislation is needed to streamline the traditional credentialing process required of California teachers.

Taxes

Sales and use tax exemptions are needed for manufacturing equipment. Tax credits are not good enough if California expects to compete with neighboring states that offer a sales tax exemption. In California, a company must make a profit before the tax credits can be utilized. Most new companies operate in the "red" for the first few years and, therefore, would not be eligible to claim the tax credit on their state income tax returns.

Conclusion

In 1993, the legislature enacted some piecemeal measures designed to lessen the economic impact of military base closures. Despite some incremental progress, the legislature and governormust move forward with more comprehensive legislation. The California Military Base Re-use Task Force's recommendations, to the extent possible, must be enacted into law so that valuable, well-located property can be recycled into the civilian economy.

Chapter X

HEALTH CARE

Health Care

Introduction

Health care is, without a doubt, one of the most controversial issues currently being debated at both the state and federal level. Although many agree that a system providing universal care is desirable, there is considerable disagreement about how to achieve that end. Almost two years ago, the Senate Republican Caucus issued a report and recommended two different health-care plans that would provide universal coverage without increasing government's role in the $700 billion a year industry.

The two plans the Caucus recommended were President Bush's managed-care approach and a "Medisave" proposal by the National Center for Policy Analysis' John Goodman and William F. Buckley.

* President Bush's managed-care proposal would have given tax credits to individuals, couples and families for the purchase of private health care. The plan would also have given tax deductions to the self-employed equal to 100 percent of their health care costs. Medicaid program growth would also have been controlled under the Bush Plan.

* The Goodman-Buckley proposal would establish a consumer-driven, market-based system, in which employers and/or individuals would contribute to tax-free Medisave accounts used to cover health care costs. Similar to Individual Retirement Accounts, the Medisave accounts would be "portable" and could be taken from job to job, unlike many current health benefits which are linked to employment.

Unfortunately the plan that President Clinton has in store for the nation is not based on either of the plans the Caucus report endorsed. The president's managed competition plan for the nation -- and a state plan backed by Insurance Commissioner John Garamendi -- will undoubtedly receive most of the media attention this year. Therefore, it is important for conservatives to promote plans that are market driven and maximize individual choice and to reject plans that rely on government oversight through heavy doses of regulation and price control.

1992-93 Attempts at Reform

In 1992, the California Medical Association sponsored Proposition 166, which would have required employers to provide health insurance to employees and their families. Although the measure was defeated, it brought serious attention to the health care issue. Since the defeat of Proposition 166, several groups and individuals have proposed plans to provide health coverage to more Californians. Insurance Commissioner John Garamendi has offered a proposal for California that looks very similar to what Bill Clinton has in mind for the entire nation.

Governor Wilson also attacked the health care problem in 1993, issuing an executive order to set up a program that makes it easier for small businesses to provide health coverage for their employees.

Proposition 166

Proposition 166 would have set up a health care system in which all employers would be required to provide health insurance to employees and their families if they work at least 17.5 hours a week or 70 hours per month. The requirement would have been phased in over four years, depending on the size of the company. Employers would have paid at least 75 percent of the insurance premium, with employees picking up the rest provided it did not exceed two percent of the employee's wages. The measure also would have required insurers to charge the same premium per employee to employers within the same geographic region, based on factors such as the type of business.

The Garamendi Plan

Commissioner Garamendi's plan relies on the "managed-competition" model for health care delivery. He envisions a public-private partnership in which the health care components of all insurance -- auto, worker's compensation and health care -- would be folded into a single health care system, with government overseeing the operation to "ensure fair competition." The program would be financed through a payroll tax on employers of roughly 6.75 percent, with small employers paying less and 1.5 percent tax on employee wages. Health care delivery would come from private organizations -- mainly HMOs, PPOs and fee-for-service organizations -- with consumers choosing among competing plans. The system also contains an as-yet-undetermined "global budget" for health care.

Garamendi's plan has been described by some as one of the frameworks upon which President Clinton drafted his "managed-competition" health care plan. However, its cost containment proposals ring hollow. It controls cost through "conscious consumer choice," a ridiculous concept when the vast majority of the costs are being picked up by employers. The plan also relies on increased "administrative efficiency," whatever that is.

The Health Insurance Plan of California

Governor Wilson's Health Insurance Plan of California (HIPC) Small Employer Purchasing Pool allows small businesses to band together to purchase health care for their employees. The plan reduces the cost of health care for small businesses with volume purchasing of insurance. All the costs under Wilson's program are paid for by employers and employees. The plan was authorized under AB 1672 (Margolin/91-92) and has been operative since July 1, 1993. Since then, the plan has enrolled a 18,591 employees and their families for a total of 32,587 enrollees. Approximately 22 percent of those enrolled -- roughly 7,100 people -- were previously uninsured. The program is expected to have 60,000 total enrollees at the end of its first year of operation, with approximately 25 percent of those having been previously uninsured.

1994 Legislative Session

Given the focus on health care at the federal level, 1994 has the potential to be a watershed year for health care reform. At first glance, the Clintons' plan seems flexible enough to allow states to set up their own "universal care" systems and avoid the bureaucratic tangles associated with a federal universal coverage program. This is not the case. The Clinton Plan would require the states to choose between managed-competition or a single-payer Canadian-style system, neither of which would be good for California. Therefore, it is critical that California get its own plan in place *before* Congress acts. It may be our strongest hope of derailing the Clinton managed-competition train.

The Clinton Plan

The President's plan would require states to establish by January 1, 1998, a health care system that provides universal coverage. California would have two options under this plan. First, the state could establish a "single-payer" system, in which the state would directly provide health care services for its residents. Alternatively, the state could establish a system of "managed competition" with one or more regional "health alliances" that would contract with private insurers and health care providers for coverage of residents in the alliance. Under this approach, the alliances would provide a choice of insurance plans and would fund the program through a tax on employers -- who will pay 80 percent of premium costs -- and employees, who will pick up the remaining 20 percent. Additional monies would come from the state and federal government.

A "comprehensive benefits package" would also be required by the Clinton plan. This coverage would include physician, hospital and most laboratory and diagnostic services; prescription drugs; some substance abuse and mental health services; and dental and vision care for children.

Late last year, the Legislative Analyst's Office produced a report entitled "The President's Health Care Reform Proposal: A Review of its Implications for California." The report concluded that the plan would have "direct and indirect fiscal impacts on California," and would increase unemployment. These impacts include the expected loss of $200 million in state cigarette tax revenue due to reduced demand resulting from the $0.75 federal cigarette tax. This would be in addition to the unknown revenue loss in state income tax collections due to increased unemployment.

The LAO report also found that the President's plan does not have cost-containment provisions that are adequate for the needs of California. Specifically, they noted that the plan allows employers to contribute much more toward the cost of insurance than the amount necessary to purchase the least expensive plan, and to offer more generous benefit packages. While the plan requires employers to pay 80 percent of premium costs, it permits them to pay up to 100 percent of these costs. Therefore, consumers would in many cases continue to be

insulated from the cost of more expensive health insurance with little incentive to make cost-conscious decision when choosing insurance.

AB 16 (Margolin) & SB 1098 (Torres)

These two measures -- currently in a conference committee -- are intended to be the implementing legislation for the Clinton Plan should it pass Congress. The bills would create the California Health Plan Commission to establish and maintain a universal health care coverage program. The bill requires the commission to adopt regulations, on or before January 1, 1995, to fully implement the universial health care coverage progra,. The bills require the commission to create a modified managed-care system to serve rural communities and to establish regional health insurance purchasing corporations (HIPCs) which will administer health care plans in urban areas. The bills will be modified in conference committee as the Clinton Plan begins to unfold in Congress. Thus, language of AB 16 and SB 1098 are likely to change between now and then. What will not change, however, is what the bills set out to do: give California a managed-competition health care system modeled after Clinton's federal plan.

Medisave Accounts and Legislation in Other States

Medical savings accounts (MSAs) are quickly gaining respect as a credible way to handle health care reform. Thirteen bills to enact MSAs at the federal level have been introduced in Congress. All told, 185 member of Congress have co-sponsored bills to establish MSAs. Also, at least 38 bills setting up MSAs have been considered in 22 states. At least three states already allow MSAs and another four states have sent resolutions to Congress urging them to enact MSAs on the federal level. Sixteen more bills are pending in various legislatures and will be considered in 1994. In California, Senator Bill Leonard has introduced MSA legislation three times, and each time the bills have been defeated by Democrats in the legislature.

Interest in MSAs is not just in the legislative branch. The Iowa Health Reform Council recommended the creation of MSAs in its report on how to reform the state's health care system. In Ohio, the director of the department of health has said the state could save at least $29 million annually on health care expenditures for its employees by allowing the use of MSAs.

Conclusion

It is imperative that Republicans take decisive action to institute a health care system that does not put unnecessary burdens on employers and employees. Although managed competition schemes look good on paper, in practice they will be bogged down by soaring costs and administrative entanglements, similar to those in the current system. A universal health care system that is portable and market-driven, one which maximizes personal freedom and choice, is clearly the best option. Tax-free Medisave accounts can achieve this goal. It is not enough to simply rail against President Clinton's plan or to say that a single-payer Canadian-style plan is too bureaucratic -- we must present our own credible and workable plan.

Chapter XI

TRANSPORTATION AND INFRASTRUCTURE

Transportation and Infrastructure

Introduction

Since the infrastructure building boom of the 1960s, the amount of money the state spends on its highways and public works has steadily declined as a percent of the state's total budget. Many factors have contributed to this decline, but one of the main reasons is increased spending on highway maintenance. As the state's highway system has grown, so have maintenance costs, taking money away from other uses, such as construction of new roads. California now spends, per capita, less than half of what it did in 1960 on transportation projects, and nationally we now rank almost last in per capita spending on transportation. Decreases in state funding for transportation have prompted voter reaction, including the approval of Propositions 108, 111 and 116 which used debt financing to secure $18.5 billion for various infrastructure projects, including several rail and mass transit systems.

Clearly, debt financing and the issuance of more bonds is not the answer. However, bonds will inevitably find their way onto the agenda this year in the wake of the Northridge earthquake. There will be $2 billion bond measure on the June 7 ballot, with roughly $1 billion to pay for earthquake-related damage, including matching funds to qualify for federal highway repair money. The other half of the bond measure will be used to finish the retrofit of state bridges that was begun after the 1989 Loma Prieta quake.

Unfortunately, many lawmakers believe that public spending on freeway construction and repair projects creates jobs and spurs the economy -- but that is not so. However, many legislators have fallen into this Keynesian trap, arguing that earthquake repairs will aid the Southern California economy. Nothing could be further from the truth. Although there may be a one-time, temporary benefit to the Southern California economy, the long-term effects are negative. The estimated $641 million that will be required for repairs in Los Angeles County alone, is tax money that could be spent somewhere else or, better yet, not spent at all. Whether the problem of financing earthquake repairs is solved by bonds or by increases in the sales tax or the gas tax, one thing is clear: Rebuilding Southern California's highways will be expensive and will not help the economy.

1993 Legislative Session

The past year saw minimal progress toward improving the state's transportation network. However, several projects funded by bonds approved in 1990 are nearing completion, including the Regional Rail system in the Los Angeles basin, and 1994 will see continued expansion of existing rail and mass transit lines in San Francisco Bay Area and San Diego. Of the almost $3 billion in bonds approved in 1990, less than $1 billion remains to be allocated. On the Legislative front there were few major transportation/infrastructure bills that made their way through the legislature. Several growth management plans, including some which would restrict

local governments in their plans to expand local infrastructure, were proposed in 1993. Although none of them made it to the governor's desk, this issue will certainly be revisited in 1994.

Infrastructure

SB 1209 (Bergeson) -- Ch. 433, Statutes of 1993

Senator Bergeson's bill modifies CalTrans contracting-out authority for certain professional services, and enacts provisions regarding CalTrans contracting-out for services that are specifically applicable to contracts in the case of projects to retrofit highway structures in accordance with statues enacted following the 1989 Loma Prieta earthquake.

The bill was a response to recent legal squabbles between CalTrans' director and the engineers' union over the department's authority to use private engineers on state projects.

AB 1977 (Jones) -- Ch. 869, Statutes of 1993

This bill makes various changes to the Rural Economic Development Infrastructure Program. It transfers responsibility for the program to the Trade and Commerce Agency and authorizes the agency to issue bonds to finance additional infrastructure projects, while eliminating their authority to issue grants. AB 1977 also increased the maximum loan amount from $1 million to $2 million.

Transportation

AB 713 (Goldsmith) -- Ch. 962, Statutes of 1993

AB 713 authorizes the San Diego Association of Governments (SANDAG) to conduct a congestion pricing and transit development demonstration program on Interstate 15 in San Diego County, which consists of allowing single-occupant vehicles to use high-occupancy vehicle lanes during peak hours of use for a fee.

Growth Management

SB 377 (Presley)

SB 377 would impose a state-created growth management plan on local governments. The bill establishes three goals for future environmental and policy reports produced by the governor's Office of Planning and Research: (1) economic revitalization, (2) public health and environmental quality, and (3) coordination and consistency of goals. The bill also requires the state to prepare a comprehensive regional strategy, which local governments will have to comply with through "cooperative regional strategies." These cooperative regional strategies require local entities with planning authority to amend their local planning strategies to comply with state mandated regional plans. The bill also makes various other modifications to the state-local

planning relationship. SB 377 is currently in the Assembly Local Government Committee.

1994 Legislative Session

The state's infrastructure and transportation problems clearly were not solved in 1993, and likely will not be remedied in 1994. This is particularly true in light of the Northridge earthquake. Although Southern California's freeway infrastructure will be rebuilt, it is unlikely that the repairs will result in less congestion in the Southland.

Earthquake Recovery

There is no doubt that the damage caused by the Northridge earthquake has severely crippled the Los Angeles County transportation infrastructure. Caltrans has estimated the state's cost to repair freeways and bridges in Los Angeles County at $308 million. The estimated cost for repairing all transporation systems damaged in the quake stands at $468 million, down from the original estimate of $1.015 billion. In order to pay for these repairs, several legislative options are being examined -- including the use of bonds, higher sales and gas taxes, or some combination of the three. Governor Wilson has signed a $2 billion bond proposition for the June 1994 ballot to pay the state's portion of the repair costs and to cover the continuing costs of retrofitting other state highways and bridges. As an alternative to bonds, several legislators have proposed tax increases to cover state costs.

SB 131 (Roberti) -- Ch. 15, Statutes of 1994

Senator Roberti's measure is the $2 billion bond measure that Governor Wilson signed. It will appear on the June 7, 1994 ballot. The bond measure has several different components:

Seismic retrofit of bridges (with 40 percent designated for toll bridges)	$950 million
California Disaster Assistance Program (funds for rebuilding housing)	$575 million
Local infrastructure (roads and bridges)	$200 million
Caltrans (to cover state's portion of the 90-10 federal match)	$145 million
K-12 facility repair	$65 million
Hazard mitigation (general clean-up)	$65 million

AB 1983 (W. Brown)

This bill is Willie Brown's "temporary" quarter-cent sales tax hike. AB 1983 would increase the state sale's tax one-quarter cent for two years to raise $1.4 billion for earthquake recovery and seismic upgrades to other roadways and bridges. This measure will only be considered if voters fail to approve the $2 billion bond measure on the June 1994 ballot.

SB 1433 (Kopp)

Senator Kopp's measure would raise the state gas tax two cents for four years. SB 1433 allegedly would result in $1 billion in revenue to pay for upgrades to roads and bridges outside of Southern California.

None of the proposals to pay for damage associated with the Northridge quake are particularly palatable. Bonds, although cheapest in the short term, will require a larger fraction of the General Fund for interest and redemption in the future. Taxes, on the other hand, are most expensive in the short term and could push the state's economic recovery even further into the future. In addition, although the tax proposals currently being considered are "temporary," the fact is that the state has not had a temporary sales or gas tax imposed since before the Loma Prieta quake. Every "temporary" sales or gas tax enacted since 1989 has become a permanent tax.

Other Issues in 1994

There are bills which did not make it out of the legislature last year that merit attention. There are also several steps that lawmakers can take -- and several bills that could be introduced -- to alleviate the traffic congestion on the state's existing roads and freeways.

AB 1495 (Peace/Bergeson)

AB 1495 would enact the California Bergeson-Peace Infrastructure Act. During the 1993 legislative session, major provisions of SB 101 were amended into AB 1495, which was later placed in conference committee. As reported from the conference committee in March 1994, the bill would rename the California Housing Finance Agency as the California Housing and Infrastructure Finance Agency (CHIFA) and would also create the California Infrastructure Bank within the new agency. In addition, the California Infrastructure Bank Fund would be created in the State Treasury to fund the provisions of the bill.

The California Housing and Infrastructure Finance Agency would be responsible for insuring bonds to finance various public improvements. The agency would also issue its own bonds for public works projects. Eligible projects include: highways and streets, public transit facilities, drainage and flood control, school sites, libraries, child care facilities, parks and recreational facilities, port facilities, sewage and water treatment facilities, solid waste facilities and communications. Amendments to AB 1495 were added in conference committee that require

the bank to assign a "higher priority" to projects that provide the greatest impact in generating long-term employment opportunities. The bill would not become operative until the legislature receives written notice from the governor that he has determined that sufficient funds are available to implement the provisions of the bill.

Congestion Pricing and Private Toll Roads

Congestion pricing pilot programs, such as Jan Goldsmith's AB 713, should be expanded to all urban areas with under-utilized high-occupancy vehicle lanes. There is no reason why those willing to pay a fee to travel in less congested lanes should not be able to do so. In addition, the state should encourage cities and counties to approve private toll roads to reduce freeway congestion.

Initiate Peak Travel Time Management Policies/Promote Off-peak and Telecommuting

These two complimentery ideas would reduce peak-time congestion by encouraging those who use freeways to use them more efficiently. By providing businesses with a tax incentive to promote ride sharing during peak commute time, local governments could reduce congestion and overall emissions. Employers who promote off-peak commuting and telecommuting by their employees could also be rewarded with tax incentives.

SB 1383 (Wright)

This measure establishes the Division of Telecommunications within the Department of General Services and requires it to develop and implement a program utilizing telecommuting as an alternative to commuting to and from work. The division would enter into contracts to develop new telecommuting centers and expand existing centers.

Build More Infrastructure

This option is one of the more frequently cited areas for legislative action. If it is agreed that the state needs more "infrastructure" to meet increased demands on public services and public roadways, then the legislature must grapple with the question of how to finance these projects. Increased bond sales at the state level, although a popular funding source, are probably not wise at this juncture. The state near its prudent debt limit on debt amortization and additional debt at this time could put the state's credit rating at risk; at the least, the portion of general fund revenues dedicated to debt service is alarmingly high.

Lawmakers should examine the possibility of using funds currently set aside for mass transit and railway system and re-authorizing the bonds for general infrastructure. Mass transit and rail systems are by far the most inefficient use of infrastructure bond money, as they cost millions of dollars in future year subsidies to keep the systems up and running.

Local bonds may provide a better avenue for infrastructure construction and improvement.

Legislative attempts to provide bond insurance for such programs already exist (see AB 1495/SB 101 above). Given the state's current fiscal situation, local government financing of local projects might be a better option.

Conclusion

The state's infrastructure problems are well documented, as is the state's traffic congestion. One way to alleviate both problems is increased spending on infrastructure, for both improvements and new construction. However, give the state's current fiscal situation, local governments must take the lead on this issue, particularly since things like sewage plants, irrigation systems, schools and the like, are used by those in the community where the infrastructure is needed.

The state has an obligation to maintain and fund major highway projects. But once again, we cannot afford to simply build more roads. Other means must be found to reduce congestion. Whether it be through congestion pricing, private toll roads, telecommuting, or what-have-you, the state must find ways to reduce congestion without increasing its debt. This is another area in which the state may want to encourage local governments to take the lead.

Chapter XII

AFFORDABLE HOUSING

Affordable Housing

Introduction

Affordable housing has been in short supply in California for many years. The economic boom of the 1980s fueled a huge expansion of California's housing market and the value of homes grew at an incredible rate. By the end of the 1980s, California had become the most expensive state in the nation to own a home. And though the recession has driven home prices down in recent years, the cost of a home in California remains well above the national average and, more importantly, well above the averages found in all Western states which vie for California's jobs.

The high cost of housing has been a major contributor to the state's anemic economic climate. With home prices falling there is little demand for new housing and hence, new home construction. In addition, the still high cost of housing means that employers are forced to pay their employees higher wages to compensate. This makes many neighboring Western states -- such as Nevada and Idaho -- attractive to businesses that want to cut costs.

Although many groups, including the California Business Roundtable, the California Manufacturers Association, and the state Chamber of Commerce, have identified housing costs as a major contributor to the state's ailing economy, very little has been done at the state level to rectify the problem. Indeed, ever increasing government regulation at the state and local level has been the biggest cost driver in housing.

1993 Legislative Session

The legislature did very little during the 1993 session to remove the barriers to affordable housing in California. Only one major piece of legislation made it out of both Houses last year -- a bond measure to provide low-cost loans for homebuyers and housing construction -- but it was defeated by voters in November. Although the high cost of housing in California is well-documented, very little was done last year to fix the underlying regulatory burdens that drive up costs.

Zoning and Development Fees

For years, local governments have imposed impact fees on developers to cover the costs associated with development. However, in recent years, the nexus between impact fees and legitimate development-related costs has begun to blur. These runaway impact fees, combined with discriminatory zoning laws, have contributed greatly to a serious shortage of affordable housing in California.

SB 1059 (Mello) -- Ch. 764, Statutes of 1993

Signed by the governor, SB 1059 requests that the governor direct one or more state agencies to examine by January 1, 1996, the extent to which local agencies establish procedures to comply with the law concerning development fees and conditions. This bill was introduced in response to complaints about runaway development and "impact fees" charged by local governments. Although state law requires that a nexus exist between the costs associated with a development and the fee charged, this law is often abused or ignored altogether.

AB 765 (Goldsmith) -- Ch. 413, Statutes of 1993

This bill narrows the definition of "mobile home park" to make it easier to put manufactured homes in close proximity to one another without falling under the definition of "mobile home park." The bill also encourages innovative uses of manufactured housing to provide affordable multi-family housing.

Homebuyer Assistance Programs and Statewide Bond Measures

Legislators tried again in 1993 to build more affordable housing through the use of bond measures. One of those attempts, Senator David Roberti's SB 131, would have placed a $280 million bond measure on the June 7, 1994 ballot. SB 131 would have used the bond money for low-interest mortgage loans and grants to low- and moderate-income families. However, SB 131 has since been amended and is now the vehicle for the $2 billion earthquake recovery bond issue.

Another attempt to use bonds to make housing more affordable for more Californians made it out of the legislature and was signed by the governor. That legislation, Willie Brown's AB 214 and AB 215, was recently rejected by voters when they defeated Proposition 168.

AB 214 (W.Brown) -- Ch. 115, Statutes of 1993
AB 215 (W.Brown) -- Ch. 116, Statutes of 1993

AB 215 would have used $185 million in previously approved, but unused, bond funds to set up a mortgage insurance program for low- and moderate-income first-time homebuyers. AB 214 contained the "implementation" language for AB 215 and the mortgage insurance program. It was hoped that Proposition 168 would lead to increased construction of low and moderate income housing to meet an increased demand.

1994 Legislative Session

The lack of affordable housing in California should be a topic of serious debate and legislative action in 1994. In all likelihood, there will be more bond measures proposed in an attempt to build more low-income housing or to fund low-income mortgages. However, these programs have never proved effective in building affordable housing because the problem is not

the availability of financing, but rather, over-regulation. If the legislature takes action and forces local governments to reduce or remove the regulatory barriers that inflate the cost of housing, they will have taken a great step toward reducing the cost of a home in our once Golden State.

Permit Streamlining and Regulatory Relief

The cost of housing in California is pushed up by all of the regulations that builders are forced to comply with, including an excessive and confusing permit process, crazy-quilt local zoning ordinances, run-away impact fees that are used for a variety of non-development-related services, and so on. Until the legislature begins to address these problems, the dream of a home in California will be unattainable for most people.

AB 1826 (Farr)

This bill would make various changes to the local permitting process. Among other things, it requires the Department of Permit Assistance to create a single form to advise developers of the different local and state agency permits they will need for their projects. It also reduces some of the reporting requirements for city's and counties if they have complied with CEQA. Since Sam Farr is now in Congress, the future of this bill is uncertain. AB 1826 is currently in the Senate Appropriations Committee.

Time limits on Processing and Approval

The state should create strict time limits for all state and local housing reviews and approvals. The state should also establish a legal presumption of approval: If the regulatory body does not act within the legislated time frame or put forth a convincing case for refusal, the approval would be automatic.

SB 660 (Deddeh)

Senator Deddeh's proposal would expand the existing Permit Streamlining Act project approval time limits to legislative actions such as zoning ordinances, specific plan and general plan amendments in connection with a development project application. SB 660 is currently in the Assembly Local Government Committee. Since Wadie Deddeh is no longer a member of the Senate, the future of this bill in unclear.

The legislature should also examine the following proposals when considering barriers to affordable housing:

Curb the Abuse of Impact Fees

Specifically, the state should require local governments to end the practice of using impact fees to finance general, indirect infrastructure improvements that are not related to a construction project.

Eliminate Inclusionary and Exclusionary Zoning Ordinances

The state should bar local governments from using inclusionary or exclusionary zoning ordinances which discriminate against certain types of affordable housing and drive up the cost of housing.

Revise the State Model Building Code

Based on the minimum standards for public health, such a revision would encourage the use of the most modern and cost effective technology and materials.

Conclusion

Although several construction and business groups have identified unaffordable housing as a major problem in California, the legislature has done little or nothing in recent years to solve this problem.. A recent study found that the average single-family home in the San Francisco Bay Area costs almost $250,000 -- that's more than double the national average of $98,000. Clearly then, the legislature needs to begin breaking down the barriers to affordable housing -- permit delays, onerous regulation, ridiculous zoning ordinances and out-of-control developer fees to name a few -- if the state wants to pull itself out of the economic slump it has been mired in since 1991.

Chapter XIII

WATER

Water

Introduction

Although the 1987-1992 drought is "officially" over, state policymakers must still deal with the need for a readily available and affordable supply of water. In light of California's potential loss of Colorado River water to Arizona, as well as the current jurisdictional dispute over the Central Valley Project and the State Water Project, steps must be taken to preserve the state's control of its water supplies not only for the benefit of businesses but to best ensure environmental protection.

Several events in the last two years have made sound water policy critical. The Central Valley Project remains under federal jurisdiction. The State Water Project has come under new environmental regulations and the surplus water supply from the Colorado River must be allotted to Arizona. These water projects supply over 40 percent of our state's water supply, yet they are controlled by other jurisdictions. Understanding these relationships are critical when evaluating California's water outlook.

Southern California

The current water situation in Los Angeles illustrates the need for California to be in charge of its water destiny. Historically, Los Angeles received 80 percent of its water supply from the Owens Valley and Mono Basin. But since the 1987 drought began, no water has been taken from the Mono Basin. At the onset of the drought, the Mono Basin and the Owens Valley accounted for about 20 percent of Los Angeles' water needs. Los Angeles took water from the Southern California Metropolitan Water District (SCMWD) to make up for the rest.

The SCMWD has been able to buy water from Arizona, although most of SCMWD's water comes from the State Water Project (SWP). The SWP receives most of its water from the Delta, which was subjected to increased federal regulation during the drought -- regulation which continues today.

All of this goes back to the Mono Basin which initially was subjected to increased federal regulations because of environmental concerns realized during the 1987 drought. Concerned parties monitoring Mono Lake claimed the environment around the lake was dying -- citing low water levels resulting from overusage of the available water supply.

Now that drought conditions have receded, Los Angeles would like to have the Owens Valley as a reliable source of water. The heart of this debate revolves around the State Water Resource Control Board and its advice to the court as to whether or not the Owens Valley area can dispense water and still remain environmentally sound. While monitoring the basin's water level has been the traditional standard used, recent scientific studies conducted in the Owen's basin have concluded that the water level is not the best indicator. These studies argue that it

is more important to examine whether the environment around the valley is productive and growing.

While this will mean less water exported to Los Angeles than has historically been sent south, the resolution of this question should stablize an important resource owned by the city of Los Angeles while preventing the environmental degredation of the eastern Sierra.

Colorado River Water

Colorado River water has been a source of insurance to Southern California since the turn of the century. The rights to Colorado River Water are governed under Arizona v. California, 373 U.S. 546, 83 S. Ct. 1468. This case specified the allotment of water California receives from the river in conjunction with Nevada and Arizona. There are seven states included in the water compact, but they are divided into two categories --- upper and lower basin. California is part of the lower basin group.

California had been receiving 1.2 million acre feet per annum (mafa), which was to be reduced to 550,000 mafa. After all states have taken their share of the water, any excess would be divided between California and Arizona.

Until recently, Arizona did not have the facilities to handle its full allotment from the Colorado River. Therefore, California was able to meet the 1.2 mafa level that it had traditionally taken. Arizona completed construction of a reservoir that will be able to handle its allotment of water from the Colorado River. However, it is not in need of its share of surplus water from the Colorado River. California has been able to purchase this surplus water from Arizona and will continue to do so until demands dictate otherwise. The Los Angeles Metropolitan Water District does not expect to take less than 1.2 mafa in the next few years barring any unforeseen federal regulations.

Colorado River water takes on additional significance in Southern California because of faith many in the region placed on construction of the Peripheral Canal. This facility would have provided an alternate supply of water to Southern California in the event of drought or other conditions that would curtail water reserves. At this time, the Colorado River provides the only protection in case of natural catastrophe. The Los Angeles Metropolitan Water District is trying to double the reservoir capacity in Southern California from its present capacity. This action would decrease the need for additional surplus water from the Colorado River. Fortunately, the water supply in Los Angeles was sufficient enough to meet the demand presented by last year's earthquakes and fires. However, LAMWD fears increased federal regulations would deplete the water supply more than natural disasters.

Northern California

Northern California has traditionally been concerned with keeping its precious supply of water from being shipped to the southern part of the state. Now, however, there is a greater concern that water from the delta will be used to benefit environmental concerns instead of economic ones. This trend creates problems for Northern California because it destroys the stability in the water relationships within the state. Instead of equitable distribution of water, some areas or regions of the state may be penalized arbitrarily. Although Northern California water has not been hampered severely, increased federal intrusion threatens water allocation to Northern California cities and farms on an immense scale.

Central Valley and State Project

Efforts by the Wilson Administration to put the Central Valley Project under state jurisdiction failed last year and the project remains in the hands of the federal government. The State Water Project is also in jeopardy of being subjected to increased regulation by the federal government. The reason for all this is the federal government's increasingly stringent enforcement of the Endangered Species Act (ESA).

The ESA gives federal agencies the authority to designate any species as "endangered" or "threatened" and requires state and local entities to protect the habitat of any endangered species. California has administratively initiated different programs to abide by this act, including the Natural Communities Conservation Planning Program. The problem with any state-controlled environmental act is that it is subject to final authorization under ESA. If a federal authority disagrees with a state interpretation of ESA, the state can have its policies voided.

The California Delta Smelt provides an illustration of how the federal government has intervened and superseded California environmental policies. Even though the State Water Project is governed by the Natural Communities Conservation Planning Program, the federal authorities dictated how much freshwater was to be diverted from agriculture to protect the habitat of the Delta Smelt.

The underlying problem is that federal regulations fail to consider whether stringent environmental laws incur serious economic difficulties for the locale affected. Federal authorities have recently backed down from their stance that the state regulations were too laissez-faire, and federal and state agencies have vowed to work together in formulating policy for the coming year. Whether or not this strategy will be effective remains to be seen.

This makes water the top concern for the agricultural community in California. If water projects are left under federal authority, this could decrease water deliveries to farmland by a minimum of 20 percent, and probably more if drought strikes the state again.

1993 Legislative Session

Conservation

Major conservation legislation passed in 1993 covered two areas: property tax exemptions for agricultural users and rate structure design for local water supply agencies. Given the ever-increasing demands upon the state's water supply, every effort must be made to encourage increased conservation. For farming businesses, the purchase, installation and ongoing maintenance of water conservation equipment represents a sizable investment. Increased property taxes, triggered by installation of conservation equipment, may very well make the difference as to whether a farmer determines such business to be economically feasible.

SB 50 (Thompson) -- Ch. 1058, Statutes of 1993
SCA 4 (Thompson) -- Ch. 93, Statutes of 1993

Existing provisions of the State Constitution exclude construction of, or additions to, real property from the term "newly constructed" for purposes of defining a parcel's "full cash value." Exempt from the definition of new construction are the following improvements: seismic safety; fire prevention or suppression; active solar energy systems; accessibility for disabled persons; and, post-disaster reconstruction.

SCA 4, if enacted by California voters on the June 1994 ballot, would exempt water conservation devices from appraisal as new construction. SB 50 enacts implementation language defining water conservation equipment as any device, system, pipeline, mechanism, or improvement that is installed to replace or improve an existing system for the purpose of reducing water usage.

Although water suppliers have implied authority to encourage water conservation through rate structure design, there is currently no specific authority applicable statewide for the use of rate structure design -- a process that provides incentives to customers to reduce average and/or peak use. Such pricing includes rates designed to recover the cost of providing service and billing for water service based on water use.

AB 1712 (Lee) -- Ch. 313, Statutes of 1993

Although no current complete data exists as to the number of entities that have water conservation pricing through rate structure design, it is estimated that over 30 urban retail water agencies have some form of tier pricing.

In 1993, the legislature passed and Governor Wilson signed into law AB 1712, which allows local public water suppliers to encourage water conservation through rate structure design. Supporters of AB 1712 contend that in order to serve the water needs of the state's population and its diverse, unique ecosystems, it is imperative that all reasonable water conservation efforts be a high priority of California's water policy.

Groundwater Management

Because of the drought, farmers and other water users have been forced to rely more heavily on groundwater supplies. Groundwater supplies comprise a significant source of total water supplies but this added burden has raised serious concerns about its reliability.

AB 1152 (Costa) -- Ch. 320, Statutes of 1993

In 1991, the legislature passed and Governor Wilson signed AB 255 (Costa), which provided areas of the state that have critically overdrafted basins -- primarily in the San Joaquin Valley -- with specific legal authorization to manage groundwater resources. In 1992, the Statewide Groundwater Management Authority Law (AB 3030/Costa) was passed into law. This measure allowed local water agencies to enact groundwater management programs. Its purpose was to ensure that all areas of the state have specific legal authorization to manage groundwater resources.

Complicating the implementation of AB 3030 was the need to clarify the procedures to amend a groundwater management program. The legislature also passed and Governor Wilson signed AB 1152 (Costa), which will clarify AB 3030 in order to provide a process for local agencies to amend their groundwater management programs to include any of the plan components set forth in AB 3030.

Concerns had been expressed that if an agency that serves water determines not to implement a groundwater management program, another entity that does not serve water may not be able to assume management of that portion of the basin and no groundwater management process will take place. AB 1152 will provide a process for a water service agency's board of directors to decline to exercise the authority and enter into a joint powers agreement or memorandum of understanding to authorize an agency to manage the groundwater.

AB 1152 also corrects an inadvertent deletion of a provision contained in an early version of AB 3030 to clarify that water stored pursuant to a groundwater storage contract not be subject to extraction fees or assessment. This correction was requested by the Southern California Metropolitan Water District because of its concern that districts could be limited in their ability to enter into conjunctive use programs since extraction of stored water should not involve replenishment obligation.

Conclusion

While the 1993 California Legislature took the positive steps of passing measures addressing urban and agricultural water conservation issues, and groundwater management, its inability to enact long-term, comprehensive reforms leave our state's business community further susceptible to economic ruin should another drought occur.

1994 Legislative Session

Even though another drought situation may be imminent, little will change in terms of what water issues legislators will address this year. This is in part due to the impending elections, which means legislators may decline to offer California the kind of long-term, comprehensive water program reforms it needs. Bills this session include creating a system for transferring water rights and expanding regional authority. Some of the revisions that have been ignored for the coming year include changing the way water rights are currently restricted into a more market-based system. Also, in the event of another drought, it may be necessary to produce more reservoir space and more dams to make more efficient use of the water that is available.

Water Transfers

During the 1991-92 Legislative Session, efforts were made to enact a process to allow individual water users, who are not necessarily the holders of the water right, to transfer their share of water allocated by their water supplier. Two measures -- AB 2020 (Costa) and AB 2090 (Katz) were introduced but were sent to interim study by the Senate Agriculture and Water Resources Committee. Since 1992, negotiations were undertaken by urban, agricultural and environmental interests to reach consensus on a "user-initiated" water transfer program.

AB 97 (Cortese)

AB 97 would allow water to be transferred by individual water users under various conditions. The measure would sunset on January 1, 1998. Its purpose is to facilitate voluntary transfers by authorizing water users to transfer all or a portion of their allocation for use outside a water supplier's service area. AB 97 was passed by the Assembly on a 54-18 vote on June 7, 1993 and is currently before the Senate Agriculture and Water Committee.

Conservation

Changes in water policy have dramatically reduced the availability of water to agricultural users over a very short period of time. Many farmers do not have the capital necessary to purchase equipment that will allow them to stay in business in light of reduced water allocations.

Regional Authority

By moving control of water more toward localities, more efficient decisions can be made concerning water policy.

SB 1291 (Kelley)

While the State Water Resources Control Board is the governing state agency, there are also nine regional water quality control boards. SB 1291 establishes a separate public entity responsible for jurisdiction over any water quality issue subject to regulation by more than one regional district, providing both regions consent.

SB 1291 was passed by the Senate Agriculture and Water Resources Committee on March 15. It has moved to the Senate Appropriations Committee where it will be heard on April 11.

Conclusion

Control of water is slipping from California water owners to federal and environmental authorities, and the results could be disastrous. If water regulation at the state level cannot be secured, Californians will find it difficult to control their own destiny. Aggressive campaigns should be directed toward giving Californians control of their water. To that end, the state must establish a water plan which focuses on market demand rather than government edicts.