



✓

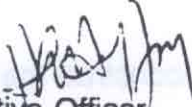
COUNTY OF LOS ANGELES CHIEF ADMINISTRATIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION/LOS ANGELES, CALIFORNIA 90012
(213) 974-1101

HARRY L. HUFFORD
CHIEF ADMINISTRATIVE OFFICER

May 10, 1993

To: Each Supervisor

From: Harry L. Hufford 
Chief Administrative Officer

Subject: **ECONOMY AND EFFICIENCY COMMISSION LEGISLATIVE
RECOMMENDATIONS ON THE BOARD'S MAY 11, 1993 SUPPLEMENTAL
AGENDA - ITEM 55B**

The Economy and Efficiency Commission's report with recommendations on legislation to improve the economy and business climate of California through workers' compensation reform, civil litigation reform (tort reform) and streamlining the permitting process is on your Board's May 11, 1993 Supplemental Agenda - Item 55B. We have reviewed the Commission's recommendations and will support workers' compensation provisions for which there is specific policy and have identified other key provisions of workers' compensation legislation for which there is no specific policy as discussed below and in the attachments. We are also advising on your Board's direction for further reports on tort reform issues from the Judicial Procedures Commission. Finally, we can support legislation to streamline the State permitting process based on Board policy, as recommended by the Economy and Efficiency Commission.

Workers' Compensation Reform

The Commission has recommended support of AB 110 (Peace), SB 30 (Johnston) and SB 55 (Leonard). We have reviewed these measures with the County's Risk and Insurance Management Agency (RIMA) and County Counsel and can support specific provisions of these bills, which are consistent with specific Board policy. These are:

- Increasing the standard for stress claims
- Prohibiting physician self-referrals

agenda-5.11

WE CONSERVE PAPER - COPIES OF THIS DOCUMENT ARE TWO-SIDED

Each Supervisor
May 10, 1993
Page 2

There are other key provisions of these bills for which there is no specific policy. These are:

- Reduced employer liability for post-termination claims
- Limiting costs and duration of vocational rehabilitation program responsibility of employers
- Limiting the court's obligation to liberally construe the law in favor of employees
- Reducing medical-legal costs
- Giving employers greater latitude in using managed medical care programs
- Providing benefit increases to employees

The bills' provisions are summarized in Attachment I and detailed in Attachment II.

Usually we would recommend to your Board a position on bills in their entirety. However, the Assembly Finance and Insurance Committee and the Senate Industrial Relations Committee held separate hearings on each of the provisions as these bills were drafted, and they represent a compilation of provisions taken from a number of bills. AB 110 and SB 30 are the primary vehicles for reform legislation which will go to Conference Committee this month, and the Conference Committee will consider the various provisions of these bills, in an attempt to hammer out a comprehensive workers' compensation reform package. SB 55 has been held in the Senate Industrial Relations Committee.

The bills' provisions are the subject of negotiation among employee groups, employer groups and other interested parties such as insurers and legal and medical associations. The California State Association of Counties has supported the process by which the Assembly and Senate Committees developed legislative reform proposals and supports SB 30 while continuing to review AB 110. As yet, there is no consensus, and our Sacramento legislative representatives advise that the primary sticking points have been the stress standard, vocational rehabilitation benefits and how benefit increases for employees will be calculated and granted.

Civil Litigation Reform (Tort Reform)

The Commission has recommended support for six tort reform bills that are basically court procedural changes giving the court more latitude to settle or dispose of cases

sooner. On February 23, 1993 and March 9, 1993 your Board considered Judge Arguelles' report and recommendations together with County Counsel's recommendations relating to general public entity tort reform which were substantive changes in various tort liability laws. Your Board voted to sponsor a number of legislative proposals and referred others to the Commission on Judicial Procedures. County Counsel is working with our Sacramento Legislative Representatives to identify the appropriate vehicles for proposals approved by your Board and with the Judicial Procedures Commission on those proposals referred for further study. The Judicial Procedures Commission has conducted public hearings, has received material from County Counsel and the Trial Lawyers Association and will report to your Board with recommendations on the tort issues and specific legislation as their work is completed.

Streamlining Permit Process

The Economy and Efficiency Commission recommends support of SB 1185 (Bergeson) to streamline and shorten the State permitting process and create cost savings. We have reviewed this measure with the Public Works and Regional Planning Departments, and we and the Departments recommend support based on Board policy to improve the business climate, reaffirmed in the State and Federal Agenda approved on January 26, 1993. It is also consistent with the Board's position adopted on April 13, 1993 to participate in the State's One-Stop Permitting Center in Los Angeles to coordinate and provide permit/regulatory assistance.

SB 1185 would require certain State permit issuing agencies to establish an appeals process to allow applicants to appeal directly to the Secretary or Agency head for timely resolution of disputes regarding violation of the time period for issuing permits. It authorizes establishment of a lead permit agency process to consolidate permitting activities of the offices and departments within the Environmental Protection Agency (EPA) and authorizes establishment of an appeals process so that applicants can appeal a determination of incompleteness by any office or department within the EPA. Finally, AB 1185 allows California Regional Water Quality Control Boards to delegate to administrators the issuance, modification or revocation of waste discharge requirements. These provisions should speed up the State permitting process or, at minimum, allow permit applicants to better plan for the time lapse between permit application and issuance.

SB 1185 is scheduled to be heard in the Senate Committee on Governmental Organization on May 18, 1993. According to the author's office, Southern California Edison, Rohr, Inc., Northrop Corporation and Rockwell International support the measure, and the Northern California Association of Metal Finishers, Inc., is opposed.

If you have any questions, please call me or your staff may contact Gerri Kariya at 974-1100.

HLH:GK
DD:ne

Attachments

- c: Executive Officer, Board of Supervisors
- County Counsel
- Department of Public Works
- Department of Regional Planning

The Executive and Efficiency Commission recommends support of SB 1151 (Assembly Bill) and other the State Planning Council and other state agencies. We have reviewed the measure with the Public Works and Regional Planning Department, and we and the Department recommend support based on Board policy to ensure the business climate remains in the State and Federal Agency approved on January 26, 1993. It is also consistent with the Board's position adopted on April 18, 1993 to continue in the State's One-Stop Planning Center in Los Angeles to coordinate and provide regulatory assistance.

SB 1151 would require certain state permit issuing agencies to establish an appeals process to allow applicants to appeal directly to the Secretary of Agency need for final resolution of disputes regarding violation of the time period for issuing permits. It requires establishment of a local permit agency process to conduct permit processing activities in the office and departments within the Environmental Protection Agency (EPA) and authorized establishment of an appeals process that applicants can appeal a determination of noncompliance by any office or department within the EPA. Finally, AS 1151 allows California Regional Water Quality Control Boards to designate to nonmember the various institution or institution to waste discharge requirements. These provisions should speed up the State permitting process or at minimum allow permit applicants to better plan for the time lapse between permit application and issuance.

SB 1151 is intended to be heard in the Senate Committee on Governmental Operations on May 19, 1993. According to the author's office, California Regional Water Quality Control Board and Regional Planning Department, and the National Council Association of Water Planning, and is consistent.

**BOARD POLICY ON WORKERS' COMPENSATION REFORM
APPLIED TO MAJOR PROVISIONS OF AB 110, SB 30 AND SB 55 (SUMMARY)**

Following are Board policies on workers' compensation reform:

General Policies

The County supports measures seeking reasonable workers' compensation benefits for injured employees while controlling the fraud, abuse and inequities that occur under current law based on Board action of January 31, 1989 and reaffirmed in the State and Federal Agenda approved on January 26, 1993.

The County opposes increases in benefits without substantial reforms based on Board actions of January 31, 1989 and reaffirmed in the State and Federal Agenda approved on January 26, 1993.

Specific Policies

The County supports measures which would decrease workers' compensation fraud generally, and, in particular, seeks to expand the prohibition on any offer of consideration for referrals by physicians to include attorneys, employees, and others, and reduce medical expenditures by banning physician referrals to medical facilities in which they have a financial interest, as included in Board policy memo of May 15, 1992 and reaffirmed in the State and Federal Agenda approved on January 26, 1993.

The County supports legislation increasing the stress standard for all private sector employees and general members of public retirement systems, by requiring that employment be a substantial contributing factor to an injury, as included in Board policy memo of May 15, 1992 and reaffirmed in the State and Federal Agenda approved on January 26, 1993.

Attachment I

Following is a summary of provisions of AB 110, SB 30 and SB 55 indicating which are consistent with existing specific Board policy and those for which there is no specific policy. Attachment II contains descriptions and estimated County fiscal impact of these provisions as well as the recommendations.

PROVISIONS	POLICY POSITIONS		
	AB 110	SB 30	SB 55
1. Psychiatric Injury (Stress)	Support based on specific Board policy	Support based on specific Board policy	Support, except that includes public safety employees who are not included in specific Board policy
2. Post-Termination Claims	No specific Board policy	No specific Board policy	No specific Board policy
3. Vocational Rehabilitation	No specific Board policy	No specific Board policy	No specific Board policy
4. Conditions of Compensability	No specific Board policy	N/A	No specific Board policy
5. Medical-Legal Costs (Note: Recently enacted SB 31 contains provisions similar to AB 110, SB 30 and SB 55)	N/A	N/A	N/A
6. Use of Managed Medical Care Programs	No specific Board policy	No specific Board policy	No specific Board policy
7. Prohibit Physician Self-Referral	Support based on specific Board policy	Support based on specific Board policy	Support based on specific Board policy
8. Benefit Increases	No specific Board policy	No specific Board policy	No specific Board policy

COMPARISON OF MAJOR PROVISIONS OF AB 110, SB 30 AND SB 55

Psychiatric Injury (Stress)

Current Law

Existing law requires an employee claiming psychiatric injury to demonstrate by a preponderance of the evidence that the job was responsible for at least 10% of the total causation from all sources.

AB 110

Would require that an employee claiming psychiatric injury prove by a preponderance of evidence that the job was the predominant cause. Excludes public safety employees from the higher standard.

County Impact Estimate:

Approximately \$1.5 million cost avoidance annually

Position: Support based on specific Board policy

SB 30

Same as AB 110 and further requires that the employee prove by a preponderance of evidence that the factors of stress are not common to all fields of employment and not generally inherent in the employee's job. Excludes public safety employees from the higher standard.

County Impact Estimate:

Approximately \$2 million cost avoidance annually

Position: Support based on specific Board policy

SB 55

Would require that an employee prove by clear and convincing evidence that the psychiatric injury was caused by a sudden and extraordinary employment event not generally inherent in the job.

County Impact Estimate:

Approximately \$2 million cost avoidance annually

Position: Support, except that includes public safety employees who are not included in specific Board policy

Comment:

Provisions to eliminate cumulative stress claims have proven to be a major obstacle to workers' compensation reform.

Note:

These are the provisions of AB 110 as passed by the Assembly and SB 30 as passed by the Senate and referenced in the Economy and Efficiency Commission letter. Subsequently, in order to move these bills into Conference Committee, the Senate amended SB 30 into AB 110 and the Assembly amended its bill into the Senate bill.

Post-Termination Claims

Current Law

Current law does not treat claims filed after notice of termination or layoff any differently than other workers' compensation claims.

AB 110

Presumption that a claim filed after notice of termination or layoff is not compensable unless the employee proves that the job was the predominant cause of injury and that the injury was reported to the employer prior to notice of termination or layoff or the employee's medical records contained evidence of treatment prior to notice or the injury is a latent occupational disease not evident until after termination.

County Impact Estimate:

Approximately \$250,000 annually or more if the County experiences significant workload reduction

Position: There is no specific Board policy

SB 30

Essentially same as AB 110

Position: No specific Board policy

SB 55

Essentially same as AB 110

Position: No specific Board Policy

Note: These are the provisions of AB 110 as passed by the Assembly and SB 30 as passed by the Senate and referenced in the Economy and Efficiency Commission letter. Subsequently, in order to move these bills into Conference Committee, the Senate amended SB 30 into AB 110 and the Assembly amended its bill into the Senate bill.

Vocational Rehabilitation

Current Law

Current law requires employers to provide a vocational rehabilitation program(s) for workers who are disabled and unable to return to their jobs. The program(s) is not limited by time nor cost and the employee may elect to enter more than one program unless the employer can prove that the request is unreasonable.

AB 110

Places an as yet unspecified limit on cost and time of vocational rehabilitation programs. Limits the employee to one vocational rehabilitation program unless the disability progresses so that the employee can no longer meet the demands of the program or unless the program is disrupted for reasons beyond the employee's control. Ends liability of employer for vocational rehabilitation benefits if the employer provides modified or alternative work that meets specified criteria.

County Impact Estimate: Unknown.

Position: There is no specific Board policy.

Comment: Proposals to limit vocational rehabilitation benefits have been a major obstacle to workers' compensation reform.

Note: These are the provisions of AB 110 as passed by the Assembly and SB 30 as passed by the Senate and referenced in the Economy and Efficiency Commission letter. Subsequently, in order to move these bills into Conference Committee, the Senate amended SB 30 into AB 110 and the Assembly amended its bill into the Senate bill.

SB 30

Limits vocational rehabilitation time to 18 months and the total cost to \$10,000.

Also limits employee to one plan with the same exceptions as in AB 110.

County Impact Estimate:
Approximately \$2 million cost avoidance annually

Position: No specific Board policy

SB 55

Limits vocational rehabilitation program cost to \$9,000 and limits subsistence benefit paid to employee during rehabilitation program to 26 weeks, after which the employee must draw upon permanent disability benefits, thereby providing an incentive for the employee to complete a program.

County Impact Estimate:
Approximately \$2 million cost avoidance annually

Position: No specific Board policy

Conditions of Compensability

Current Law

Current law requires courts to construe the law in a liberal manner in order to extend benefits to employees.

AB 110

Does not include provision.

SB 30

Does not include provision.

SB 55

Limits liberal construction to specific (as opposed to cumulative) injuries and to "serious" injuries as defined in the bill.

County Impact Estimate:
Approximately \$2 million cost avoidance annually

Position: There is no specific Board policy

Medical-Legal Costs

Current Law

SB 31 which was recently enacted and signed by the Governor as an urgency measure requires the State to set a new fee schedule for medical-legal evaluations and reports. It also clarifies authority of judges to reject unnecessary reports.

AB 110

Contains provisions similar to SB 31 and therefore, unless substantially amended, would have no impact as written.

Position: N/A

SB 30

As AB 110

As AB 110

SB 55

Note: These are the provisions of AB 110 as passed by the Assembly and SB 30 as passed by the Senate and referenced in the Economy and Efficiency Commission letter. Subsequently, in order to move these bills into Conference Committee, the Senate amended SB 30 into AB 110 and the Assembly amended its bill into the Senate bill.

Use of Managed Medical Care

Current Law Programs

Current law allows the employer to direct the injured employee to a medical provider of the employer's choice for the first 30 days (unless employee has previously requested referral to his personal physician); thereafter, employee has free choice of medical providers.

AB 110

Gives the employer the right to use a managed care program for treatment of the injured employee for the first six months (with same exception as in current law).

County Impact Estimate:

Approximately \$1.5 million cost savings annually

Position: There is no specific Board policy

SB 30

Gives employer the right to use a managed care program for treatment of the injured employee for one year unless employee's personal physician agrees to abide by the managed care program guidelines

County Impact Estimate:

Approximately \$2 million cost savings annually

Position: No specific Board policy

SB 55

Gives employer the right to use a managed care program for treatment of the injured employee for one year

County Impact Estimate:

Approximately \$2 million cost savings annually

Position: No specific Board policy

Comment:

Managed care in general has become a national and State issue. It is unclear how these workers' compensation proposals will be affected.

Physician Self Referral

Current Law

Current law does not prohibit physicians from referring injured employees to medical facilities in which they have a financial interest.

AB 110

Prohibits physician self-referrals

County Impact Estimate: Unknown

Position: Support based on specific Board policy

SB 30

Prohibits physician self-referrals

County Impact Estimate: Unknown

Position: Support based on specific Board policy

SB 55

Prohibits physician self-referrals

County Impact Estimate: Unknown

Position: Support based on specific Board policy

Note: These are the provisions of AB 110 as passed by the Assembly and SB 30 as passed by the Senate and referenced in the Economy and Efficiency Commission letter. Subsequently, in order to move these bills into Conference Committee, the Senate amended SB 30 into AB 110 and the Assembly amended its bill into the Senate bill.

Benefit Increases

Current Law

Benefits for injured employees are currently established by law. Benefits directly received by employees are lower than the average among all states.

AB 110

Includes legislative intent that savings derived from bill be used equally to increase benefits to injured workers and reduce costs to employers through workers' compensation insurance rate reductions.

County Impact Estimate: Will reduce savings potentially accruing to County by one half.

Position: There is no specific Board policy

SB 30

Includes specific benefit increases for employees injured after July 1, 1994. Requires savings to be divided equally as in AB 110.

County Impact Estimate: Will increase County costs by approximately \$5 million annually. Cost will accrue gradually over a period of several years.

Position: No specific Board policy

SB 55

Includes no immediate increases in benefits but requires that savings be divided equally as in AB 110 one year after effective date of the legislation

County Impact Estimate: Will reduce savings potentially accruing to County by one half

Position: No specific Board policy

Comment:

A major issue regarding benefit increases has been whether benefits should begin immediately or after measurable savings have been accrued.

Note:

These are the provisions of AB 110 as passed by the Assembly and SB 30 as passed by the Senate and referenced in the Economy and Efficiency Commission letter. Subsequently, in order to move these bills into Conference Committee, the Senate amended SB 30 into AB 110 and the Assembly amended its bill into the Senate bill.