

CITY COUNCIL MEETING
AUGUST 21, 1985

REPORT REGARDING
VOTING BY SENATE
JUDICIARY COMMITTEE
ON AB 200

Council Member Pinkerton gave a report on a recent newspaper article he had read concerning AB 200 (an act to add section 847 to the civil code relating to liability) and the actions of members of the Senate Judiciary Committee as it relates to this bill.

Following discussion, Council, on motion of Council Member Pinkerton, Olson second, directed the City Clerk to check with FPPC to ascertain the amount of campaign contributions that were received by members of this Committee from the Trial Lawyers Association.

Further, the City Attorney was directed to write a "scathing" letter, on behalf of the Council, to the members of the Senate Judiciary Committee setting forth the facts set out in this newspaper article and urging their vote for justice.

cc 18

CITY COUNCIL

DAVID M. HINCHMAN, Mayor
FRED M. REID
Mayor Pro Tempore
EVELYN M. OLSON
JAMES W. PINKERTON, Jr.
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634

THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

August 26, 1985

Senator Milton Marks
Senate Judiciary Committee
State Capitol, Room 2070
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Marks:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

It is difficult for the Lodi City Council to understand the need to protect a felon when the felon wrongfully enters your property. What possible rationale could the California Trial Lawyers Association be giving to the Legislature in order for the Legislature not to speedily pass AB 200?

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With the number of attorneys in this State, I am sure that the passage of AB 200 will not deter the attorneys for a long period of time from making an adequate living. Please support AB 200 and show your commitment to the good people of this State.

Very truly yours,



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August 26, 1985

Assemblyman Elihu Harris
Assembly Judiciary Committee
State Capitol, Room 6005
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Harris:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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August 26, 1985

Assemblyman Wayne Grisham
Assembly Judiciary Committee
State Capitol, Room 4017
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Grisham:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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August 26, 1985

Assemblyman Lloyd G. Connelly
Assembly Judiciary Committee
State Capitol, Room 2179
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Connelly:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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August 26, 1985

Assemblywoman Jean Duffy
Assembly Judiciary Committee
State Capitol, Room 2176
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblywoman Duffy:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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City Attorney

August 26, 1985

Assemblyman Gerald N. Felando
Assembly Judiciary Committee
State Capitol, Room 2114
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Felando:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

August 26, 1985

Assemblyman Pat Johnston
Assembly Judiciary Committee
State Capitol, Room 4112
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Johnston:

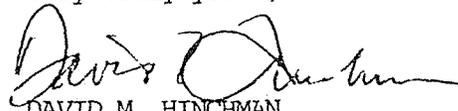
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RONALD M. STEIN
City Attorney

August 26, 1985

Assemblywoman Maxine Waters
Assembly Judiciary Committee
State Capitol, Room 5016
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblywoman Waters:

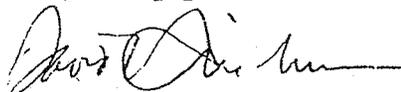
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RONALD M. STEIN
City Attorney

August 26, 1985

Senator Art Torres
Senate Judiciary Committee
State Capitol, Room 4058
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Torres:

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August 26, 1985

Assemblyman Phillip D. Wyman
Assembly Judiciary Committee
State Capitol, Room 5135
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Wyman:

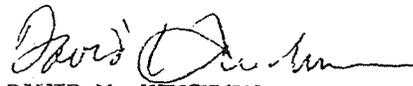
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August 26, 1985

Assemblyman Richard Robinson
Assembly Judiciary Committee
State Capitol, Room 5155
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Robinson:

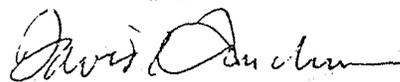
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August 26, 1985

Senator Bill Lockyer
Senate Judiciary Committee
State Capitol, Room 2032
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Lockyer:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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August 26, 1985

Assemblyman Sunny Mojonier
Assembly Judiciary Committee
State Capitol, Room 4005
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Assemblyman Mojonier:

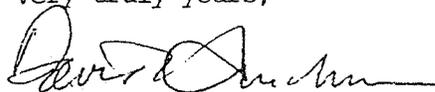
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Re: Re Assembly Bill 200

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Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

It is difficult for the Lodi City Council to understand the need to protect a felon when the felon wrongfully enters your property. What possible rationale could the California Trial Lawyers Association be giving to the Legislature in order for the Legislature not to speedily pass AB 200?

To allow an alleged felon to gain by his misdeeds, runs counter to any system of logic. Whatever happened to personal responsibility in accepting the logical consequences of one's acts?

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Very truly yours,



DAVID M. HINCHMAN
MAYOR, CITY OF LODI

RMS:vc

CITY COUNCIL

DAVID M. HINCHMAN, Mayor
FRED M. REID
Mayor Pro Tempore
EVELYN M. OLSON
JAMES W. PINKERTON, Jr.
JOHN R. (Randy) SNIDER

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
CALL BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 334-5634

THOMAS A. PETERSON
City Manager
ALICE M. REIMCHE
City Clerk
RONALD M. STEIN
City Attorney

August 26, 1985

Senator Barry Keene
Senate Judiciary Committee
State Capitol, Room 313
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Keene:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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August 26, 1985

Senator Robert Presley
Senate Judiciary Committee
State Capitol, Room 4048
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Presley:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

August 26, 1985

Senator H. Richardson
Senate Judiciary Committee
State Capitol, Room 3063
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Richardson:

Yet again, another battle faces the public entities. The California Trial Lawyers Association in this case is holding up the "poor plaintiff" and says "Who should suffer, the poor plaintiff or the wealthy public entity?" Unfortunately in this case, you are dealing with a plaintiff who may very well have been involved in criminal activity at the time the poor plaintiff was injured on public or private property. To argue that the public or private entity should still be liable for injury to said poor plaintiff is an absolute outrage. It is a public shame that public entities cannot expend the monies that the California Trial Attorneys do in gaining access to the legislators in order to continue the drain on public entities' coffers. I believe this year alone, the California Trial Lawyers Association spent over \$600,000 gaining access to the Legislature.

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THOMAS A. PETERSON
City Manager

ALICE M. REIMCHE
City Clerk

RONALD M. STEIN
City Attorney

August 26, 1985

Senator Ed Davis
Senate Judiciary Committee
State Capitol, Room 2048
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Davis:

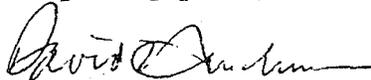
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City Manager
ALICE M. REIMCHE
City Clerk
RONALD M. STEIN
City Attorney

August 26, 1985

Senator Diane Watson
Senate Judiciary Committee
State Capitol, Room 4040
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Watson:

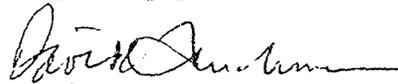
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RONALD M. STEIN
City Attorney

August 26, 1985

Senator John Doolittle
Senate Judiciary Committee
State Capitol, Room 5082
Sacramento, CA 95814

Re: Re Assembly Bill 200

Dear Senator Doolittle:

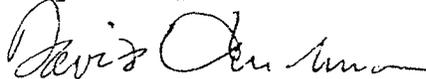
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1983-84 Contributions from California Trial Lawyers Association

Senate Judiciary Committee		Assembly Judiciary Committee	
Milton Marks	\$ 7,000.00	Elihu Harris	\$ 9,600.00
John Doolittle	10,750.00	Wayne Grisham	
Diane Watson	8,250.00	Lloyd G. Connelly	5,224.00
Ed Davis	5,000.00	Jean Duffy	
H. L. Richardson		Gerald N. Felando	1,000.00
Robert Presley	1,500.00	Pat Johnston	13,400.00
Barry Keene	4,000.00	Sunny Mojonnier	5,600.00
Nick Petris	12,500.00	Richard Robinson	37,000.00
Art Torres	9,500.00	Maxine Waters	13,800.00
Bill Lockyer	4,000.00	Phillip D. Wyman	

Alise,

A Regarding Jim P. Motion Re AB200
we should get a copy of same so we
know what we are talking about.

- (I called together to Sunday Same)

B We should also check with FPPC on
Assembly Judiciary as well as
Senate Judiciary member for
Contribution of or to California Aff.

However, I believe if you call Connie
Baker for the League (05) Speed
Call) she would have all the
information - My concern is the

matter is that we are involved
(we mean the League) with negotiation
with the California Aff. + if we
are to Student we might be causing
a problem for the League -

Let's Discuss

Ran

erase a paint smear than it pray one on a car or bus. The e destroyers run wild, the costs the rest of us to clean them.

y considerations aside, you wonder at what all this ut the state of civilization. In times it was said in sorrow barbarians were at the our own time they're within s. I guess, and that much difficult to deal with.

in group of distinguished cit- view salaries every four id make a recommendation resident. The president's pro- nless disapproved within 30 either house of Congress, en take effect.

result has been a series of endations that were cut by its and then, in most cases, l by Congress. On top of the primary mechanism of vision, the so-called "legisla- o," was, quite properly, de- nstitutional in 1983.

first step toward resolving s, the present commission ely refrained from making endations on salary levels. it has proposed a simple but is "fix" to both the political stitutional problems.

ort, action by both houses of s would be required to reject ent's pay recommendations. action would then be subject ential veto, which could on- rriden by the traditional ds vote in both houses.

resident is expected to re- o the commission's proposal he next weeks. He would be accept it and Congress ised to support that decision. appens we will have a new or halting the drift toward ent by the rich.

mechanisms by themselves the job. By Jan. 1, 1986, the ion will make a specific pro- pay adjustment. And that is e rubber will meet the road. president and the Congress e to decide whether to pay or public servants enough to he best.

s Angeles Times Syndicate

Criminal rights

IF A BURGLAR invades your home, beats you bloody and then breaks his leg on a loose stair step while carrying off your family jewels, he can sue you for damages for not warning him about that step.

That's the law in California, thanks to the feverish reasoning of the state Supreme Court.

Two examples of how it works:

• In San Benito County a thief stole a motorbike, went joyriding across a farmer's field, turned down his private lane, hit a pothole and was thrown off the bike. The thief sued the farmer and won \$425,000 for back injuries.

• A young burglar fell through the skylight of a high school in Redding and hurt his spine. He sued the school and the city, charging they "failed to warn him the skylight was unsafe."

Because of the Supreme Court precedent, he was granted an out-of-court settlement for \$260,000 plus \$1,200 a month for life.

On Tuesday 10 members of the state Senate will have a chance to do their part toward ending such nonsense. Incredibly, there is no assurance they will do so unless voters put the pressure on them. They passed up that chance last month.

The 10 senators make up the Senate Judiciary Committee, and what they should do is to send Assembly Bill 200 to the full Senate with a do-pass recommendation. AB 200 is a simple, sensible bill by Assemblyman Alister McAlister to stop the kind of suits I described.

McAlister says the main opposition comes from the California Trial Lawyers Association, which bristles when anything threatens the lawyers' gravy bowl of personal injury suits.

Last month its opposition was enough. At a hearing on July 9 only three members of the Judiciary Committee voted for it — Milton Marks, John Doolittle and Diane Watson. Three were absent — Ed Davis, H. L. Richardson and Robert Presley. Four members sat on their hands — Barry Keene, Nick Petris, Art Torres and Bill Lockyer.

A similar sorry performance Tuesday and AB 200 will die, just as three previous attempts at correction died before it.

The injustice is compounded by the court's more recent "deep pockets" rule: Make some wealthy sucker pay even though he was only a little bit to blame.

McAlister has been working to correct the Supreme Court's folly since 1979, when a bill denying trespassers the right to sue was passed by the Legislature but vetoed by Gov. Jerry Brown. Two subsequent bills were killed in committee.

Alliance of California Taxpayers and Informed Voters.

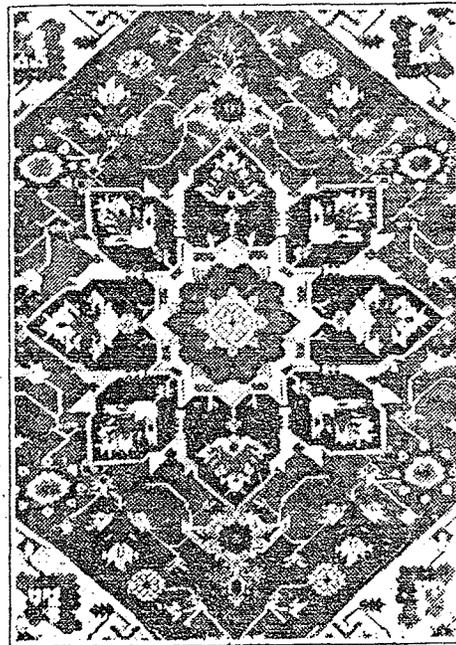
Phelps hopes a similar effort will persuade those 10 key senators to shape up. But he concedes the Trial Lawyers Association speaks the language best understood in the Legislature — campaign donations totaling more than \$600,000 in two years.

In a sense the 10 senators will be on trial. Will they vote for justice or for juice?

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State of California



RECEIVED
AUG 10 1985
Fair Political Practices Commission

ALICE M. REINCHE
CITY CLERK
CITY OF LOS ANGELES

News Release: 85-21
July 10, 1985

For Further Information Contact:
Lynn Montgomery (916) 322-5901

INTEREST GROUPS SPEND \$112.5 MILLION
TO LOBBY STATE GOVERNMENT

The Fair Political Practices Commission reported today that \$112.5 million was spent over the past two years by private and public interest groups to lobby California legislative and administrative decisions.

At the same time, most of the private organizations involved in lobbying provided an additional \$19.5 million in campaign contributions to state politicians, primarily incumbent state officeholders, the FPPC said.

The FPPC issued a lengthy report detailing lobbying activities during the 1983-84 legislative session which disclosed that lobbying expenditures nearly doubled since 1979-80, the last time the agency analyzed such spending. During that earlier period, total spending to influence state government was \$59 million.

The FPPC's report identifies 1,425 organizations which spent sums ranging from a few thousand to millions of dollars in 1983-84 in an effort to influence the direction of state government. Of that total, 448 spent \$50,000 or more.

Participants in the lobbying process ranged from the largest corporations, banks, utilities, financial institutions, agricultural interests and labor organizations to cities, counties, school districts and public employees.

"The report vividly details the vast array of interest groups that have a stake in California state government," FPPC Chairman Dan Stanford said. "The fact that those stakes may be quite high in economic terms is obvious judging by the huge amounts of money some of these organizations are willing to spend," Stanford added.

Under the voter-approved Political Reform Act of 1974, lobbyists and their employers are required to file quarterly reports in Sacramento revealing their lobbying expenses and campaign contributions. That data was used to compile today's FPPC report. The disclosure statements are available for public and press inspection at the Secretary of State's office.

The FPPC report classifies lobbying interests into 11 general categories. The business category was the largest, with corporations, banks and insurance companies spending more than

(more)

\$44 million, or nearly 40 percent of all lobbying payments during the two-year period. In 1979-80, the total for business was \$21 million.

Utilities ranked second, spending \$26 million or approximately 23 percent of the total, compared to only \$6 million in 1979-80. The FPPC pointed out, however, that most utility expenditures are related to legally required Public Utility Commission regulatory proceedings, and not to traditional state capitol lobbying efforts. For example, Pacific Gas and Electric Company is listed as having reported the largest expenditure, \$14,357,288, of any lobbyist employer. However, 97 percent of that total was related to public PUC hearings, and only 3 percent, or about \$400,000, to Sacramento lobbying during the two years.

Health care providers and health related organizations accounted for 10.4 percent of the lobbying expenditures, or \$11.7 million, followed by cities, counties and other local governmental entities with expenditures totaling \$8.5 million, or 7.6 percent.

Spending figures for the other seven categories of lobbying entities in rank order are as follows:

Education	\$5,210,776
Miscellaneous	\$4,650,939
Public Employees	\$4,591,447

(more)

Agriculture	\$2,631,432
Legal	\$2,596,548
Labor	\$2,530,427

The amounts reported by the 1,425 lobbyist employers and others listed in the report include payments for salaries for lobbyists and their support staffs, research and other overhead. (Beginning on page C-1 of the report, the amounts paid to lobbyists, "other payments to influence" and campaign contributions are shown separately for each filer.)

Excluding utility companies, the top ten spenders for lobbying activity were Western Oil and Gas Association, \$1,879,119; the California Medical Association, \$1,517,447; Chevron USA, \$1,126,207; California State Employees Association, \$1,060,179; the California Teachers Association, \$807,108; Association of California Insurance Companies, \$800,882; California Building Industry Association, \$773,901; the California Railroad Association, \$757,070; the County of Los Angeles, \$729,390; and the California Council for Environmental and Economic Balance, \$724,991.

The Commission report also lists lobbyists and lobbying firms and the payments they received from clients beginning on page D-1. Of the firms providing lobbying services, A-K Associates received the most from clients with a total of \$2,424,249 during 1983-84. The firm employed 11 lobbyists to provide services to its 44 clients.

(more)

Advocation Inc., another large lobbying firm, received the second largest amount, \$1,954,454, from its 33 clients during the two year period. Advocation Inc. employs three lobbyists and shares some of its clients with another lobbying firm, Capital Advocates Inc.

Carpenter-Zenovich and Associates ranked third among the lobbying firms with total receipts of \$1,069,376 during 1983-84. (The individual lobbyists employed by lobbying firms are listed in Appendix I at the back of the report.)

The FPCC report also shows campaign contributions to state officials from lobbying entities or their affiliated political action committees. (See page E-1 for a list of contributors and recipients.) A total of \$19,488,612 was contributed by these lobbying organizations from January 1, 1983 through December 31, 1984.

All of the top 50 lobbyist contributors gave contributions to legislative incumbents, and averaged 73 contributions to incumbents. The average number of contributions to non-incumbent candidates during the 1984 Primary and General election period from this same group was five.

About half of the top 50 lobbying interest groups gave to competing candidates during the primary and general elections. The California Association of Realtors contributed to competing

(more)

candidates in 13 races, the most of any in the top 50. (A list of incumbent legislators' committee assignments is in Appendix II at the back of the report.)

Copies of the 1983-84 lobbying report are available from the Commission offices at 1100 K Street, Sacramento for \$5 each or by calling the Commission's Technical Assistance and Analysis Division at (916) 322-5662.

##

AMENDED IN SENATE JULY 8, 1985
AMENDED IN ASSEMBLY MAY 30, 1985
AMENDED IN ASSEMBLY MAY 16, 1985

CALIFORNIA LEGISLATURE—1985-86 REGULAR SESSION

ASSEMBLY BILL

No. 200

Introduced by Assembly Member McAlister
(Principal coauthor: Senator Presley)

January 8, 1985

An act to add Section 847 to the Civil Code, relating to liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 200, as amended, McAlister. Liability.

Existing law does not provide immunity from liability for a person who has an interest in real property for an injury or death that occurs upon that property during the course of or after the commission of any felony, or any attempt to commit a felony, by the injured or deceased person.

This bill would provide that an owner, including a public entity, as defined, having an interest in real property shall not be liable for any injury or death that occurs upon that property during the course of or after the commission of any of specified felonies, or any attempt to commit any of those felonies, by the injured or deceased person, *if the injured person's conduct in furtherance of the felony was a proximate or legal cause of the injury*, as specified. However, this bill would not limit the liability of an owner or the owner's agent which otherwise exists for willful, wanton, or *felonious criminal* conduct or for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 847 is added to the Civil Code,
2 to read:

3 847. (a) An owner, including, but not limited to, a
4 public entity, as defined in Section 811.2 of the
5 Government Code, of any estate or any other interest in
6 real property, whether possessory or nonpossessory, shall
7 not be liable to any person for any injury or death that
8 occurs upon that property during the course of or after
9 the commission of any of the felonies set forth in
10 subdivision (b) by the injured or deceased person.

11 (b) The felonies to which the provisions of this section
12 apply are the following: (1) Murder or voluntary
13 manslaughter; (2) mayhem; (3) rape; (4) sodomy by
14 force, violence, duress, menace, or threat of great bodily
15 harm; (5) oral copulation by force, violence, duress,
16 menace, or threat of great bodily harm; (6) lewd acts on
17 a child under the age of 14 years; (7) any felony
18 punishable by death or imprisonment in the state prison
19 for life; (8) any other felony in which the defendant
20 inflicts great bodily injury on any person, other than an
21 accomplice, or any felony in which the defendant uses a
22 firearm; (9) attempted murder; (10) assault with intent
23 to commit rape or robbery; (11) assault with a deadly
24 weapon or instrument on a peace officer; (12) assault by
25 a life prisoner on a noninmate; (13) assault with a deadly
26 weapon by an inmate; (14) arson; (15) exploding a
27 destructive device or any explosive with intent to injure;
28 (16) exploding a destructive device or any explosive
29 causing great bodily injury; (17) exploding a destructive
30 device or any explosive with intent to murder; (18)
31 burglary; (19) robbery; (20) kidnapping; (21) taking of a
32 hostage by an inmate of a state prison; (22) ~~attempt to~~
33 ~~commit a felony punishable by death or imprisonment in~~
34 ~~the state prison for life;~~ (23) any felony in which the
35 defendant personally used a dangerous or deadly
36 weapon; ~~(24)~~ (23) selling, furnishing, administering, or

1 providing heroin, cocaine, or phencyclidine (PCP) to a
2 minor; ~~(25)~~ (24) grand theft as defined in Sections 487
3 and 487a of the Penal Code; and ~~(26)~~ (25) any attempt
4 to commit a crime listed in this subdivision other than an
5 assault.

6 (c) The limitation on liability conferred by this section
7 arises at the moment the injured or deceased person
8 commences the felony or attempted felony and extends
9 to the moment the injured or deceased person is no
10 longer upon the property.

11 (d) *The limitation on liability conferred by this*
12 *section applies only when the injured person's conduct in*
13 *furtherance of the commission of a felony specified in*
14 *subdivision (b) proximately or legally causes the injury or*
15 *death.*

16 (e) The limitation on liability conferred by this
17 section arises only upon the charge of a felony listed in
18 subdivision (b) and the subsequent conviction of that
19 felony or a lesser included felony or misdemeanor arising
20 from a charge of a felony listed in subdivision (b). During
21 the pendency of any such criminal action, a civil action
22 alleging this liability shall be abated and the statute of
23 limitations on the civil cause of action shall be tolled.

24 ~~(e)~~
25 (f) This section does not limit the liability of an owner
26 or an owner's agent which otherwise exists for willful,
27 wanton, or ~~felonious~~ *criminal* conduct, or for willful or
28 malicious failure to guard or warn against a dangerous
29 condition, use, structure, or activity.

30 ~~(f)~~
31 (g) The limitation on liability provided by this section
32 shall be in addition to any other available defense.

O



LEGISLATIVE BULLETIN

League of California Cities AM 10: 05

1400 K Street • Sacramento 95814 • (916) 444-5790

ALICE M. REIMCHE
CITY CLERK 7-1985
CITY OF LODI

MAYORS AND COUNCIL MEMBERS
LEGISLATIVE CONFERENCE
SACRAMENTO COMMUNITY CENTER
MAY 20-21

All city officials are urged to attend this important and extremely useful lobbying conference. Up to date briefing sessions will be devoted to gas tax, tort reform, over-sized truck access, absentee ballots, partisan involvement in local elections, the Governor's hazardous waste reorganization plan, infrastructure financing, implementation of the F.L.S.A., and the FPPC's newly focused attention on local elected officials. Registration opens at 8:30 a.m. and the program begins at 10:30 on Monday, May 20.

May 10, 1985

*****LEGISLATIVE ACTIVITIES*****

1. SENATE BUDGET ACTION: GENERAL REVENUE SHARING.
2. Compulsory and Binding Arbitration for Peace Officer and Firefighter Labor Negotiations. SB 1398 (Dills). Oppose.
3. State Public Employment Relations Board. Unfair Labor Practices. Public Employees Strikes. SB 1254 (Dills). Passes Senate Governmental Organization Committee - Next Hearing: Senate Appropriations. Oppose.
4. Property Tax Allocation. Voted Pension Overrides. AB 13 (Roos). Hearing: Senate Local Government Committee, Wednesday, May 15. Support.
5. Tort Reform. Some Progress Being Made.
6. Rent Control Bill Reported Out of Assembly Housing and Community Development Committee. AB 483 (Costa). Oppose.
7. Restriction on Local Taxing Authority. Hearing: Assembly Revenue and Taxation Committee, Monday, May 13. ACA 26 and AB 1366 (Johnson). Oppose.
8. Brown Act. Attorneys' Fees. AB 1129 (Chacon). Oppose
9. Brown Act Bill Advances to Senate. AB 1001 (McAlister). Oppose.
10. Naylor Act Repeal. AB 2198 (Felando). Hearing: Assembly Education Committee, Tuesday, May 21. Oppose.
11. Vehicle Registration Fee Amnesty Program. AB 2000 (Davis). Passes Assembly Transportation Committee. Support.

12. Local Sales Tax Records Under Control of Board of Equalization. Availability to City Officials and Consultants Under Contract to Cities. AB 1611 (Cortese). Support.
13. Compensation for Downzoning. SB 615 (Seymour). Sent to Interim Study.
14. Cable Television. Cities Mandated to Support Foundation for Public Service Television. AB 1372 (Moore), SB 683 (Montoya). Postponed Until 1986.
15. Hazardous Materials Transportation. AB 1861 (Campbell). Review and Comment.
16. Shift of Lien Date from March 1 to January 1. SB 917 (Vuich). Review and Comment.
17. Alcoholic Beverages. Service Station Mini-Marts. AB 1433 (Duffy). Information.
18. Changed Status of Bills Previously Reported. (a) SB 1454 (B. Greene), (b) AB 1091 (Campbell)

FEDERAL ACTIVITIES

19. Mandatory Retirement/Age Discrimination. H.R. 1435 (Hughes, D-NJ).
20. IRS Recordkeeping Rules. H.R. 1869.
21. Minimum Corporate Tax.
22. Fair Labor Standards Act, (FLSA).

1. Senate Budget Action: General Revenue Sharing. The Senate Republican leadership successfully engineered the passage of the "Dole II" deficit reduction package on Thursday night, May 9. Final action came at 2 a.m. on a 50 to 49 vote with Vice President Bush casting the tie breaking vote. Senator Pete Wilson, (R-CA) was brought in by ambulance to vote for the plan. The major provisions of the bill which affect cities are as follows:

General Revenue Sharing - Funding at FY 85 level, (\$4.6 billion) for FY 86. Required termination thereafter.

Community Development Block Grants, (CDBG) - 10% cut from the program beginning October 1, 1986.

Mass Transit Funding - Operating Assistance would be cut by 20% in FY 86.

Urban Development Action Grants, (UDAG) - Cut 20%.

The "Dole II" package will reduce the deficit by an estimated \$56 billion. This Budget Resolution now goes to the House where swift action is expected. Markup hearings will begin Tuesday, the 14th, in the House Budget Committee on their version of the budget. Substantial portions of the House budget are rumored to be already decided. However, the fate of General Revenue Sharing is still unclear. It is yet to be determined whether GRS will be retained or how much of a cut the program will suffer in the House.

It is essential that you contact your Representatives in the House immediately to urge them to retain General Revenue Sharing in the House Budget Package.

2. OPPOSE

Compulsory and Binding Arbitration for Peace Officer and Firefighter Labor Negotiations. SB 1398 (Dills). Reported out of Senate Governmental Organization Committee. Next Hearing: Senate Appropriations

Committee. The Senate Governmental Organization Committee easily passed SB 1398 on Tuesday. The vote on the bill was: Ayes (7) Alquist, Carpenter, Dills, B. Greene, Keene, Robbins, Rosenthal. Noes (2) Beverly and Maddy; Not voting (2) Campbell and Foran. SB 1398 will be heard next in the Senate Appropriations Committee. The bill is definitely alive and city officials must once again lobby forcefully the members on the Senate Appropriations Committee.

SB 1398 imposes compulsory and binding arbitration for the settlement of "economic issues." The proponents argue that the tradeoff for compulsory and binding arbitration is the prohibition against strikes and other job actions on economic issues. In short, this authorizes strikes on "non-economic" issues. The irony of SB 1398 is that it institutes a system of compulsory and binding arbitration and legalizes public employee strikes in California.

There are many arguments against a system of compulsory and binding arbitration (see Legislative Bulletin #14-1985). The Senate Appropriations Committee will focus on the fiscal aspects of the bill which are the most detrimental aspects of compulsory and binding arbitration. When discussing SB 1398 with members of the Appropriations Committee, point out the following:

1. State action to mandate compulsory and binding arbitration is a major fiscal cost for which the state is responsible. The Legislative Counsel has ruled the state is fiscally responsible for the costs of the arbitration process plus the amount of an arbitration award above the employer's last best offer. Also, given recent Supreme Court rulings, a compulsory and binding arbitration bill mandated on local government has no force and effect if the state does not reimburse local government for the cost.
2. Compulsory and binding arbitration removes over 50% of the city budget from the control of the city council and gives it to an outside, non-elected, unaccountable third party.

Contact the members of the Senate Appropriations Committee and ask for a "NO" vote on SB 1398. The members of the Committee are: Alquist, Chair; Beverly, Vice Chair; Ayala, Boatwright, Campbell, Deddeh, Dills, Foran, and Maddy.

3. OPPOSE

State Public Employment Relations Board. Unfair Labor Practices. Public Employee Strikes. SB 1254 (Dills). Passes Senate Governmental Organization Committee - Next Hearing: Senate Appropriations. The Senate

Governmental Organization Committee, composed of union-oriented members who are inclined to support bills such as SB 1254, did just that on Tuesday of this week. The vote on the bill was: Ayes (7)-Alquist, Carpenter, Bill Greene, Keene, Robbins, Rosenthal, and Dills; Noes (2)-Beverly, and Maddy; Not Voting (2)-Foran, and Campbell. SB 1254 places local governments under the jurisdiction of the State Public Employment Relations Board for the determination of unfair labor practices. SB 1254 defines unfair labor

practices in the Meyers-Miliias-Brown Act and permits the party bringing the unfair labor practice charge to choose either the Superior Court or the State Public Employment Relations Board to resolve the charge. Since virtually all unfair labor practice charges are brought by public employee organizations, cities can expect to find themselves appearing often before the state PERB under the provisions of this bill.

Our primary objection to extending State Public Employment Relations Board jurisdiction over local governments is the legalization of public employee strikes. The PERB has already ruled under the collective bargaining law for schools that a public employee strike in response to an unfair labor practice, as defined in this bill, is a protected activity (i.e., legal). This PERB ruling runs counter to every appellate court decision on this issue, each of which has indicated that employees do not have the right to strike unless expressly permitted to do so by the Legislature. The Legislature has never adopted a policy on this issue but has indicated its intent in all the collective bargaining laws to prohibit public employee strikes.

In addition, SB 1254 is a major state-mandated cost on cities. The state is now reimbursing school districts for all of the additional collective bargaining requirements which have been mandated on schools, including the defense of unfair labor practice charges by employer organizations. There is no difference between the requirements in SB 1254 and these costs of school district collective bargaining now paid by the state.

SB 1254 is sponsored by the Peace Officers Research Association of California and is clearly priority legislation for that Association. Because PORAC members will demand that Legislators support SB 1254 to prove their loyalty to law enforcement, city officials must not take this serious threat lightly. The bill will be heard next in the Senate Appropriations Committee. Please contact the members of that Committee and ask for a "NO" vote on SB 1254. The members of that Committee are: Alquist (Chair), Beverly (Vice-Chair), Ayala, Boatwright, Campbell, Deddeh, Dills, Foran, and Maddy.

4. SUPPORT

Property Tax Allocation. Voted Pension Overrides. AB 13 (Roos). Hearing: Senate Local Government Committee, Wednesday, May 15. Senator Milton Marks and Assemblyman Mike Roos have now decided to proceed

with just a single bill, which will be AB 13 (Roos), to extend the current moratorium on any property tax reallocation, to prevent any new property tax levy for a voted pension system and to permit current levies to remain in place without any increase in the tax rate.

SB 149, therefore, will not move ahead unless amended to address another subject.

5.

Tort Reform. Some progress being made. Numerous tort reform bills were heard this week. Some passed, some failed, and some were held in committee for further amendment and vote in the next few weeks.

At the request of the Assembly Judiciary Committee, League-sponsored AB 1256 (Campbell) was taken off calendar to be included in a comprehensive study this fall of governmental tort liability problems. AB 1256 authorizes large judgments to be paid in installments.

League-sponsored AB 230 (McAlister) limits liability to persons who were injured as a result of being under the influence of alcohol or drugs. It has been held in the committee for two weeks for further amendment and vote. The

committee asked that the bill be limited solely to persons who were driving under the influence of alcohol or drugs, and those amendments are being prepared. It is expected that AB 230 will pass the committee in that form.

✓ League-supported AB 200 (McAlister) was also held in the committee for a vote in one to two weeks. This bill protects land owners against liability to criminals who trespass on their property. As introduced, the bill was limited to felons, but the felony could be proved in the civil trial. As the bill will be amended, it will require that the plaintiff be convicted of a crime, but the crime could be a felony or misdemeanor as long as it was included within the classifications created by the bill. The crimes covered by the bill are generally violent crimes.

SB 885 (Maddy) has passed the Senate Judiciary Committee on a 5-0 vote. Voting Aye were: Doolittle, Keene, Presley, Watson, and Davis. Absent or not voting were: Lockyer, Torres, Marks, and Petris. As amended in the committee, SB 885 gives public entities, who perform rescues in the water, protection from liability for the rescue operations unless the rescuers were grossly negligent. The bill is supported by the League.

SB 969 (Robbins) has passed the Senate Judiciary Committee on an 8-0 vote. As introduced, SB 969 would have authorized government entities to buy insurance for themselves and their employees against punitive damages. The portion of the bill authorizing the purchase of insurance was stricken. Instead, the bill authorizes public entities to pay punitive damages for a public employee if the city council makes the following findings:

- (1) That the payment of the damages would be in the best interest of the public;
- (2) That the public employee was acting within the course and scope of his or her employment when the activity occurred which gave rise to the punitive damages claim;
- (3) That the public employee was acting in good faith and without malice at the time of the occurrence;
- (4) That payment of the claim or judgment is in the best interest of the public entity.

These findings could only be made after the governing body has reviewed the facts and circumstances giving rise to the claim or judgment. The League has not yet taken a position on the bill in its current form.

SB 433 (Bergeson) failed to pass the committee and was held in committee to be heard again next year. It would partially reverse a recent court decision which has eroded cities' immunities from liability for injuries caused by the natural condition of unimproved public property.

As previously reported, SB 75 (Foran), which limits joint liability, passed the Senate Judiciary Committee in mid April. We expect Senator Foran to bring the bill before the full Senate for a vote within the next two weeks.

Finally, we are attaching to this Bulletin the President's Message from the latest edition of the California Trial Lawyer Magazine. The column is of interest because for the first time the plaintiffs' attorneys are acknowledging the problems of public entities. Although the solutions which they propose may be different from the ones we propose, it is encouraging that the problem is at last being recognized. This acknowledgment is occurring

because of the fine work that city officials have been doing to carry out message to the public.

6. OPPOSE Rent Control Bill Reported Out of Assembly Housing and Community Development Committee. AB 483 (Costa). On May 6, AB 483, which preempts local rent control ordinances, passed out of the Assembly Housing and Community Development Committee on a 6 to 3 vote. Voting Aye were: Ferguson, Bader, Chacon, Costa, Grisham, and Lewis. Voting No were: Davis, Eaves, and Bates. Not voting was: Elder. AB 483 now goes to the Assembly floor where it is also expected to pass. It will probably be taken up within the next few days, and interested city officials should immediately contact their Assembly members urging them to vote no on AB 483. The bill prohibits all rent control ordinances, including those that apply only to mobilehome parks.

7. OPPOSE Restriction on Local Taxing Authority. Hearing: Monday, May 13, Assembly Revenue and Taxation Committee. ACA 26 and AB 1866 (Johnson). These two measures are identical to SCA 27 and SB 730, which were described in the May 3 Legislative Bulletin (#16-1985).

They would reverse the 1982 San Francisco v. Farrell California Supreme Court decision and would require cities to submit general purpose tax increases to a majority vote of the people. In addition, all city tax increases which have taken effect since 1978, and which were not approved by at least a majority vote, would have to be submitted to the voters and be approved within four years of the effective date of the Constitutional Amendment. If such tax increases failed to receive voter approval, collection of the tax increase must cease. Refunds are not required. ACA 26 and AB 1866 will be considered by the Assembly Revenue and Taxation Committee on Monday, May 13.

8. OPPOSE Brown Act. Attorney Fees. AB 1129 (Chacon). Under current law, a court may award attorneys' fees to a plaintiff who prevails in Brown Act litigation, but may only award attorneys' fees to the public entity if the case were frivolous. This week, AB 1129 (Chacon) was amended to require the court to award attorneys' fees to a plaintiff who successfully sues a city for a Brown Act violation. It is unfair and an inappropriate drain on city budgets to further unbalance that already unbalanced standard to mandate the award of court costs and attorneys fees even in very close cases where there is not legal precedent. The bill is set for hearing before the Assembly Judiciary Committee on May 21, and city officials should contact the members of that Committee to oppose the bill. The members of that Committee are: Harris, Chair; Grisham, Vice-Chair; Connelly, Duffy, Felando, Johnston, Mojonnier, Robinson, Maxine Waters, and Wyman.

9. OPPOSE Brown Act Bill Advances To Senate. AB 1001 (McAlister). AB 1001, which we described fully in the April 12 Bulletin, has passed the Assembly and has been assigned to the Senate Governmental Organization Committee. The bill has not yet been assigned a hearing date. City officials should contact the members of the Senate Governmental Organization Committee in opposition to the bill. The members are: Dills, Chair; Campbell Vice-Chair; Alquist, Beverly, Carpenter, Foran, Bill Greene, Keene, Maddy, Robbins, and Rosenthal.

May 10, 1985

10. OPPOSE

Naylor Act Repeal. AB 2198 (Felando). Hearing:
Assembly Education Committee, Tuesday May 21. AB 2198
(Felando) would repeal the "Naylor Act," which
requires school districts to offer a percentage of

their playing fields to cities and park districts for purchase at prices that are sometimes below market value. The bill has been set for hearing in the Assembly Education Committee on May 21. City Officials should contact the members of that committee urging them to vote NO on the bill when it comes before the Committee. The Committee members are: Hughes, Chair; Bader Vice-Chair; Allen, Bradley, Campbell, Clute, Farr, Hayden, Johnston, Leonard, McClintock, O'Connell, and Vasconcellos.

11. SUPPORT

Vehicle Registration Fee Amnesty Program. AB 2000
(Davis) Passes Assembly Transportation Committee.
This bill is modeled after the state tax amnesty program enacted last session. It establishes a

vehicle registration amnesty program to be administered by the Department of Motor Vehicles. The amnesty period is from March 1, 1986 through May 31, 1986. During this period any motor vehicle owner paying the full amount of delinquent registration fees owed on or prior to February 28, 1985 may register the vehicle without the payment of any fines or penalties. In addition, the bill contains the following provisions:

1. Requires the Department of Motor Vehicles, in coordination with the California Highway Patrol, to conduct a publicity program from January 1, 1986 to May 31, 1986.
2. Appropriates an unspecified amount from the general fund to the DMV for implementing and publicizing the amnesty program and requires the DMV, from registration payments received, to repay the general fund for the amount of the appropriation plus a specified interest rate.
3. The bill also revises the penalties for delinquent registration starting June 1, 1986 to be as follows:
 - a. 20% of the vehicle registration fee for a delinquency period of one year or less;
 - b. 40% of the fee for a delinquency period of more than one year up to two years;
 - c. 80% of the fee for a delinquency period of more than two years.
4. Imposes a mandatory fine not to exceed \$250 on every person convicted of violating registration requirements starting June 1, 1986.
5. States legislative intent that local government should enact parking violation amnesties. One of the reasons many people do not re-register vehicles is because of outstanding parking tickets. Before registration, the person is required to pay any outstanding parking tickets.

The Department of Motor Vehicles has estimated approximately \$16.8 million more in revenue from the program. Cities and counties of course will benefit because the proceeds from the amnesty program will return to cities and counties through the vehicle license fee. In addition, there is the potential for increased revenues to cities and counties from the maximum \$250 fine established on June 1, 1986. The bill will be heard next in the Assembly Ways and Means Committee. To date there is no opposition to this proposal.

12. SUPPORT

Local Sales Tax Records Under Control of Board of Equalization. Availability to City Officials and Consultants Under Contract to Cities. AB 1611 (Cortese). This measure, which was approved by the Assembly Local Government Committee this week, would expressly authorize persons under contract to a city, in addition to a city employee or officer, to have access to Board of Equalization local sales tax information. The Board is permitted to protect the confidentiality of these records by imposing conditions on such access. AB 1611 will next be heard by the Assembly Ways and Means Committee. To date there is no opposition to this proposal.

13. INTERIM STUDY

Compensation for Down Zoning of SB 615 (Seymour) Sent to Interim Study. SB 615 would require cities and counties to pay property owners compensation when a zoning action resulted in a taking of property. It has been referred to interim study, and will not be heard again this year, although it could resurface next year. The bill is sponsored by the State Department of Housing and Community Development. Although the sponsors indicated that their intent was to require compensation only when a downzoning resulted in a complete and permanent taking of property, the League and CSAC were unsuccessful in getting amendments to the bill which would limit it to that purpose. Following intense lobbying, the Senate Judiciary Committee chair and the author agreed that the bill would be referred to interim study for further work.

14. FURTHER STUDY

Cable Television, Cities Mandated to Support Foundation for Public Service Television. Postponed until 1986. AB 1372 (Moore) and SB 683 (Montoya). Two bills which would require cities to transfer a portion of their cable television franchise fees to a state-created foundation formed to promote community service cable programming will not be heard this year. The authors of both of the measures, AB 1372 (Moore) and SB 683 (Montoya), do not intend to have the bills heard until 1986. By waiting until next year, the authors are allowing time for the parties involved in cable television (the cable industry, cities, and the organizations representing programmers) to seek mutually-satisfactory methods of funding the foundation established on a state level to encourage the development of community cable programming.

15. REVIEW AND COMMENT

Hazardous Materials Transportation. AB 1861 (Campbell). The Assembly Transportation Committee last week passed AB 1861 which governs the transportation of hazardous materials. The bill revises current law relating to the transport of hazardous materials in the following manner:

1. Allows vehicles carrying hazardous materials to travel up to 1/2 mile off designated routes for local pickup or delivery, reasonable access to fuel, repairs, rest, or food facilities when it is consistent with safe vehicle operation.
2. Allows use of highways restricted or prohibited by the California Highway Patrol (CHP) when no other lawful alternative exists.
3. Authorizes the CHP to prohibit the use of specified highways in consultation with the State Department of Transportation; or in consultation with the city or county agency having traffic control jurisdiction over the highway, after the concurrence of the appropriate regional transportation planning agency. The bill further provides that:

(b) No Property Tax Cities. AB 1091 (Campbell). This measure was approved by the Senate Appropriations Committee this week and sent to the Senate Floor. As amended, AB 1091 now provides an equivalent 10 cent property tax rate to all cities whose property tax revenue is less than an amount that would be generated by a 10 cent rate. In addition, AB 1091 is "double-joined" to SB 1415 (Campbell), which increases vehicle license fee revenue by more than \$200 million for counties. This means that neither bill can become effective without the Legislature approving and the Governor signing the other.

FEDERAL AFFAIRS

19. Mandatory Retirement/Age Discrimination. H.R. 1435, (Hughes D-NJ), would allow state and local governments to maintain mandatory retirement practices at an age below 65 for police and fire employees. This bill has been referred to the Employment Opportunities Subcommittee of the House Education and Labor Committee. No hearing has been scheduled for H.R. 1435. California co-sponsors of this measure are: Stark, Matsui, Badham, Lagomarsino, Lungren, Fiedler and Fazio.

20. IRS Recordkeeping Rules. The House voted 426-1 to repeal the much maligned law which required "contemporaneous" recordkeeping requirements for cars on which a business use was claimed. The compromise bill, H.R. 1869, repeals the recordkeeping requirements retroactively, to January 1, 1985. H.R. 1869 also allows employers the option of not withholding income taxes from the value of non-cash employee fringe benefits, such as the general use of a city car. However, the value must be reported on the employee's W-2 form as wages at the end of the year. Social Security must be withheld from such benefits retroactive to January 1, 1985. The measure exempts any substantiation requirement on vehicles that by reason of their nature are not likely to be used for personal purposes. In addition, marked police and fire vehicles will be exempt from any substantiation requirement. Unmarked police cars will also be exempt and officers who commute in them will not have to pay tax on that benefit. The bill is now before the Senate for approval.

21. Minimum Corporate Tax. A resolution was passed in the Senate by an overwhelming majority to include a minimum corporate tax as part of the tax simplification package. This vote is seen as an effort to prevent a minimum tax from being incorporated into the budget package. Supporters of tax simplification are concerned that a minimum corporate tax will be passed in place of a more comprehensive reform measure.

22. Fair Labor Standards Act, (FLSA). Cities should be assessing the fiscal impact of implementing FLSA immediately. Including an itemized cost estimate (if possible). This information is needed for Senator Wilson, who has volunteered to carry legislation on this matter. He will be needing the support information from cities as soon as possible. In addition, cities should be contacting their House and Senate members, expressing their concern about the issue. Congressional offices are saying that they have heard very little about this issue.

Please send FLSA cost estimates to Senator Wilson's office immediately:

Senator Pete Wilson
720 Hart Senate Office Building
Washington, D.C. 20510
Attention: Steve Clark

(Please send a copy to the League as well.)

Dan Walters



Duke bound on arbitration

For the most part, George Deukmejian's political ideology is as predictable as the daily sunrise in the east.

He is a moderately conservative Republican who believes in limited government, limited taxes and pro-business policies.

But there are a couple of issues on which Deukmejian breaks stride and one of the more intriguing deals with the complicated issue called "binding arbitration."

For years, the unions that represent police officers and firefighters have been trying to enact legislation under which their salary disputes with local governments could be submitted to arbitration. The arbitrator's decision would be imposed on both parties.

The police and fire unions want binding arbitration because as public employees they are denied the legal right to strike. Overall, the unions reason, they would be better off taking their chances with arbitration than in trusting to the wishes of city and county elected officials, who now have the final authority over salary matters if negotiations fail to achieve agreement.

Binding arbitration, however, is anathema to local officials. They contend that they, and neither the unions nor an outside arbitrator, were elected to govern. Binding arbitration, by compelling them to accept salary agreements they don't support, would undercut their elective powers, they contend. And since in many cities police and fire salaries consume more than half the budgets, such a shift of power is not inconsiderable.

What galls local officials is that Deukmejian, nominally a conservative Republican and an elected official himself, has backed the police and fire unions in their years-long quest for binding arbitration legislation, the latest version of which will be heard in a Senate committee next week.

Even before he was elected in 1982, Deukmejian had signaled that support to such organizations as the Police Officers Research Association of California (PORAC), the leading police lobby.

He would sign binding arbitration legislation if it reached his desk. Deukmejian told representatives of both sides on the issue, but would not lobby actively for it.

That promise of a gubernatorial signature has spurred continual efforts by the unions to gain enactment — and created a serious rupture between the governor and the otherwise supportive and mostly conservative local officials.

"I don't understand Duke," one county supervisor said recently in a private conversation. "He'd scream and yell if anyone wanted to take his power away. And yet he's willing to sell us down the river."

The issue also drives a wedge between Deukmejian and local sheriffs and police chiefs.

Occasionally, delegations of local officials have tried to dissuade Deukmejian from his position, knowing a change at that level would doom the legislation. They have, however, failed.

Asked about the issue Wednesday during a Capitol news conference, Deukmejian said he remains willing to sign a binding arbitration bill.

"I know, I know," Deukmejian replied when reminded that local government officials were upset.

But he offered this rationale for his position:

"When you get to . . . police and fire services, they are so absolutely essential to the well-being of the people of the community that if the employer and the employee cannot reach an agreement on those issues, I don't feel that the citizens in the community should be the ones who are penalized.

"And therefore, if . . . there's an impasse, then there should be some means available — binding arbitration is one — to resolve those differences."

In effect, Deukmejian is arguing that the only alternative to binding arbitration is the right to strike, which would leave communities unprotected from fire or crime — an argument that local officials dismiss as sophistry.

There is, however, a political element to the binding arbitration matter. Rod Blonien, the governor's one-time lobbyist, had forged strong political links between Deukmejian and PORAC, the not militantly political of the public safety organizations, that dated back prior to the 1982 election. Blonien himself had been a lobbyist for the California Police Officers Association.

Among the fruits of this relationship was Deukmejian's support for binding arbitration, a strange arrangement by which one of PORAC's own lobbyists, Joseph Farber, was placed on the state payroll as a consultant while continuing to represent the organization and PORAC influence over selection of a State Police chief.

RESIDENT'S MESSAGE

JOINT-AND-SEVERAL LIABILITY: STATUS OF THE DEBATE



ROBERT B. STEINBERG

From Weed and Napa to Coronado and Lemon Grove, Hanford to South Gate, Grass Valley, Placerville, Lodi, Santa Ana, the major metropolitan dailies in San Francisco, Los Angeles and San Diego, all have in recent months unleashed a blizzard of news releases and editorials about the "deep pocket" crisis. Invariably they call for a change in our present laws relating to the liability of joint tortfeasors in order to prevent the proverbial "two drunks going down the street and crashing into each other from suing the city because they couldn't see the center line."

The press just hasn't let up particularly since the first of the year. The San Mateo Times called for the Foran Bill to be enacted "without delay." The Santa Rosa Press Democrat while acknowledging the arguments of plaintiffs' lawyers "who share handsomely in the rewards" that joint and several liability serves as a deterrent compelling public and private agencies to maintain safe facilities and that it would be unfair for innocent victims to suffer concludes that these arguments although having some validity are "not enough to convince us that fundamental reforms are not necessary."

The theme being repeated in this most recent press barrage is that local public entities are going broke in their role as the ultimate "deep-pocket," having to pick-up the tab for every seriously injured victim of California's many uninsured and/or under-insured drunk and disoriented drivers. San Jose cannot afford its reported jump in municipal liability premiums from \$157,000.00 in 1984 to \$373,000.00 in 1985; Saratoga from \$48,000.00 to \$118,215.00; Mil-

pitias from \$24,800.00 to \$82,262.00 and so on.

Does this all sound familiar? Echoes out of the past when doctors complained about their inability to afford escalating medical malpractice insurance premiums? That "crisis" brought us the Medical Injury Compensation Reform Act of 1975 (MICRA). In 1985, we are confronted with SB 75 (Foran) which would essentially limit a joint tortfeasor's share of the liability for noneconomic damages to his proportionate share of total fault. While CTLA for at least the past six years has been successfully resisting this change, that task is getting tougher with the publication of each new editorial in support of the Foran Bill and each fresh multimillion dollar verdict in a road defect case against a marginally at fault public entity.

Unlike 1975 when trial lawyers were seen as a rag tag bunch of undermanned advocates in behalf of consumer causes, today with our higher political visibility and substantial reportable contributions to some of the mightiest movers and shakers in the Capitol, we have become convenient fat cat press targets depicted as standing in the way of progress and resisting rational change.

Nevertheless, I have to give the Cities and Counties their due. They have effectively carried their message to the public through an incessant media campaign since SB 575, the Foran Bill of the last legislative session, was defeated in the Assembly Judiciary Committee in August, 1984. Their pitch has been effective as can be seen from the substantial editorial support they have garnered for their position from a variety of

newspapers around the state.

Our position has been and continues to be that the public entities as the parties responsible for the design and maintenance of streets and highways, must *foresee* that some of society's less fastidious will use them in a variety of ways and therefore they must be designed and maintained so as to anticipate that accidents will happen. The public entities already enjoy sufficient immunities to adequately protect them from frivolous claims.

The public entities counter that they are doing the best they can with meager post-Prop. 13 funds to provide roads adequate to accommodate the demands of auto crazy Californians. That unlike doctors who have some say over whom they scrub with, hospitals which have some control over whom they allow to scrub on their premises and manufacturers who have some ability to choose who participates in their products' chain of distribution or the manner in which their products are to be used, public entities on the other hand have precious little ability to exercise control over the many who have the unlimited freedom and elect to use the streets and highways of our State as outlandishly as they please. In short, they argue that the State and the Cities and Counties have in fact become the "deep-pocket" of last resort, a charge which is sometimes difficult to deny when as a matter of everyday practice, plaintiffs in serious injury auto cases are commonly urged to seek out and allege a highway design defect cause of action. After all, how many adequately insured vehicles on our

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President's Message

highways carry anywhere near the amount of coverage that would compensate for quadriplegic injuries? If as in most cases there is insufficient motor vehicle coverage that can be tapped to compensate for the injuries involved, there is always the public treasury.

As trial lawyers, we respond to those seeking change in the existing rules on joint and several liability by urging continued adherence to our fault system of compensation. That the responsibility for making the injured whole should rest upon the parties at fault. In the event two or more are so adjudged and one or more unable to financially respond, fairness and equity dictate that the injured victim's interest should prevail over the concern of the extra financial burden to be assumed by a well-insured and/or financially sound joint tortfeasor even if only marginally at fault. This principle should hold even if the plaintiff is substantially at fault since he or she is already penalized by a reduction of their damages based upon their own contributory fault.

The merits of the issue aside, political imperatives appear to be winning over legal arguments. The public entities' plea that they cannot afford to be the "deep-pocket" of last resort is gaining acceptance among a budget conscious public, most of whom are constantly reminded of the cost of government and their responsibility for their share of it, but few of whom have ever met an honest to goodness severely injured road defect victim. The arguments advanced by the public entities are not only catching on with the press and public, but they risk poisoning the general debate on the issue as they give undue credibility to the positions advanced by other, less savory promoters of change in the present law.

The fact is, for a number of years now, public entities have been fronting the debate for an amalgam of suspect interests, primarily doctors and manufacturers. The public generally and most of the press might have a difficult time getting worked up over a well-insured but marginally at fault neurosurgeon having to pick up the entire tab for the cardiac arrest caused by a bare anesthesiologist falling asleep in the middle of

surgery or get excited over a financially sound manufacturer picking up for an under-financed, uninsured, out-of-business distributor or comp-immunity protected employer for adding a production enhancing foot switch to an unguarded power press causing the amputation of the operator's hand from the resulting absence of a point of operation guard. The public, however, is more likely to respond sympathetically to the pleas of local governments who have less ability to influence the conduct of their co-tortfeasors, particularly, the driving habits its citizenry, whose occasional abuse of highway privileges produces those tragic and devastating injuries commonly cited as the cause of the "deep-pocket" problem.

Is there a solution that will ease the pain of the public entities without beating up on the tort victims? The appropriate answer to the med. mal. "crisis" of a decade ago should have been the availability of affordable insurance to adequately fund the risk of those injuries produced by an exploding and increasingly complicated health care system. That did not happen. The easiest group to pick on were the victims. It would have been infinitely more difficult to undertake the tougher job of passing the hat among all the players in the health care system in order to come up with enough bucks to see that the victims were adequately compensated.

Ten years later we read about the AMI/American Hospital & Supply eight billion dollar merger and Fremont Indemnity's one hundred twenty two million dollar profit on the sale of its interest in MAXICARE, but still no adequate funding mechanism for medical malpractice. There exists

only a hodge-podge of under-financed ad hoc groups with one finger in the dike holding back a new rush of medical malpractice claims and the other pleading with the legislature in Sacramento for more limitations on the rights of malpractice victims. While the medical establishment appears to be willing to spend billions on gadgetry whose ability to extend or improve the quality of life is questionable and on the maintenance of overstaffed and underutilized health care facilities, they have set aside comparatively little to fund an adequate damage recovery for the system's victims.

If our experience with med. mal. "reform" over the past decade is at all instructive, it would seem that the public entities would be better served by getting about the business of finding the means to adequately insure the risk of injuries produced by their occasional transgressions. If the private market is unable to provide coverage at an affordable premium other mechanisms should be explored to provide a solution.

Earlier this year, the Cities and Counties themselves floated a proposal for a road liability superfund. The fund would be available for local entities to tap into to satisfy judgments or settlements in road defect cases to make up the difference between the total judgment or settlement and the public entities contributive share of fault. The fund would be created by adding an additional fee to auto registration or drivers license renewals.

The proposal appeared to die for lack of an author. Even its proponents now consider it to be a long shot. Obtaining necessary legislative and administration support might be difficult since this method of financing might be perceived as just another objectionable tax on the public. Nevertheless it may be a most appropriate solution to the public entities problem. While its acceptance, enactment and implementation are fraught with serious obstacles, the superfund concept should not be shot down before it is given a chance to be heard merely because dumping on the victims might be an easier road to take.