RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes___ No___)
Resolution in Support of National Governors' Association Resolution Regarding Application of Federal Fair Labor Standards Act (FLSA)
Overtime Pay Regulations to Public Employers and Request to Legislators to Adopt Legislation Eliminating Retroactively the Fiscal Liability to Public Sector Employers as a Result of FLSA Litigation

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The National Governors' Association adopted the attached resolution regarding application of federal Fair Labor Standards Act (FLSA) overtime pay regulations to public employers. Governor Wilson is requesting that governments support the resolution by writing to the Secretary of Labor to request that the current FLSA overtime pay regulations be revised with an alternative that more appropriately addresses public sector executives and administrators.

Federal Court interpretations regarding the FLSA overtime regulations have resulted in huge overtime judgments against public employers to plaintiffs earning annual salaries of $40,000 and $90,000 and considered by their public employers as executive or administrative employees exempt from overtime. Because of the fiscal burden of these liabilities to the public employers, Governor Wilson has also requested local governments to contact their legislators urging them to pass legislation eliminating retroactively the fiscal liability which is now accruing to public sector employers as a result of ongoing FLSA litigation. The State already has settled two cases at a price tag of roughly $5 million, while a current pending case could cost the State $100 million.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
1. Do not adopt the Resolution and Mariposa County will not support the resolution.

COSTS:  (x) Not Applicable
A. Budgeted current FY
B. Total anticipated costs
C. Required additional funding
D. Internal transfers

SOURCE:  ( ) 4/5ths Vote Required
A. Unanticipated revenues
B. Reserve for contingencies
C. Source description:
Balance in Reserve for Contingencies,
if approved:

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
Letter from Governor Wilson dated 10/4/93

ADMINISTRATIVE OFFICER’S RECOMMENDATION:
This item on agenda as:
Recommended
Not Recommended
For Policy Determination
Submitted with Comment
Returned for Further Action
Comment:

A.O. Initials:

11-23FLS
Action Form Revised 5/92
GOVERNOR PETE WILSON

October 4, 1993

The Honorable Eric J. Erickson
Chair
Mariposa County Board
of Supervisors
Post Office Box 784
Mariposa, California 95338

Dear Supervisor Erickson:

At its annual meeting this summer, the National Governors' Association adopted a resolution that I put forward regarding the application of federal Fair Labor Standards Act (FLSA) overtime pay regulations to public employers. Please find enclosed a copy of this resolution.

Federal Court interpretations regarding the FLSA overtime pay regulations have resulted in the accrual of dramatic fiscal liability on the part of public employers. Federal courts already have awarded huge back overtime pay judgements against state, county, and city governments. Cases brought against the State of California have included plaintiffs earning annual salaries of between $40,000 and $90,000, a category which represents approximately 35 percent of State employees.

Many local jurisdictions here in California are now in litigation over this overtime pay issue and could be subject to dramatic fiscal liability. Potential litigation and fiscal liability threatens all local governments. The State already has settled two cases at a price tag of roughly $5 million, while a current pending case could cost the State $100 million.

The court rulings are denying public employers the ability to exempt their highly paid professional employees from the FLSA overtime pay requirement, despite the fact that the Act provides for just such an exemption. In effect, the courts are telling state and local governments that they cannot utilize personnel practices which hold their employees accountable for time spent on the job. As public officials we know such a concept is antithetical to the idea of holding governments accountable for the expenditure of public funds.
In a time of tightly constrained public budgets, state and local governments should not be forced to pay huge financial windfalls to highly paid public executives and administrators simply because a federal regulation is being inappropriately applied to public employers. The federal government must take action to resolve this problem of critical concern to state and local governments.

I ask that you contact Labor Secretary Reich to request that the U.S. Department of Labor replace its current FLSA overtime pay regulations with an alternative approach which more appropriately addresses the circumstances of public sector employment. In addition, I ask that you contact our Senators and your congressional representative and ask that they pass legislation eliminating retroactively the fiscal liability which is now accruing to public sector employers as a result of ongoing FLSA litigation.

I hope that you will join with me in urging the federal government to resolve this issue of such critical importance to public sector employers in California. Please feel free to contact my Director of Intergovernmental Affairs, Carol Whiteside, at (916) 323-5446, if you have any questions.

Thank you for your consideration of my request. I look forward to hearing of your initiatives.

Sincerely,

PETE WILSON

Enclosure
8.1

PREAMBLE

RECENT FEDERAL COURT INTERPRETATIONS REGARDING THE APPLICATION OF THE FAIR LABOR STANDARDS ACT (FLSA) REGULATIONS TO PUBLIC EMPLOYERS HAVE RAISED SEVERAL ISSUES OF GREAT CONCERN TO GOVERNORS. THESE COURT DECISIONS HAVE RESULTED IN HUGE AWARDS OF BACK OVERTIME PAY TO EXECUTIVE, PROFESSIONAL, AND ADMINISTRATIVE PUBLIC EMPLOYEES EARNING ANNUAL SALARIES OF BETWEEN $40,000 AND $90,000. DOZENS OF SUITS AGAINST STATE AND LOCAL GOVERNMENTS HAVE BEEN DECIDED ACROSS THE NATION AND SCORES MORE ARE PENDING. THE EXISTING LIABILITY IS IN THE HUNDREDS OF MILLIONS OF DOLLARS, WHILE THE POTENTIAL LIABILITY FOR STATES AND LOCALITIES COULD MEAN FISCAL DISASTER.

THE GOVERNORS BELIEVE THAT UNDER FLSA AND THE CORRESPONDING REGULATIONS, EXECUTIVE, PROFESSIONAL, AND ADMINISTRATIVE EMPLOYEES WERE INTENDED TO BE EXEMPT FROM THE TIME-AND-A-HALF OVERTIME PAY REQUIREMENTS. HOWEVER, THESE REGULATIONS WERE DRAFTED ALMOST FIFTY YEARS AGO WITH MANUFACTURING WORKERS IN MIND, LONG BEFORE FLSA APPLIED TO PUBLIC SECTOR EMPLOYEES. THESE REGULATIONS WERE NOT REVISED UPON FLSA'S APPLICATION TO STATE AND LOCAL GOVERNMENTS IN 1985, EVEN THOUGH THE U.S. DEPARTMENT OF LABOR ACKNOWLEDGED THE NEED FOR SUCH REVISION.

THE APPLICATION OF THESE FLSA REGULATIONS TO PUBLIC SECTOR EMPLOYERS IS WHOLLY INAPPROPRIATE AND PLACES AN ENTIRELY UNANTICIPATED AND UNACCEPTABLE BURDEN ON STATE AND LOCAL GOVERNMENTS AT A TIME WHEN THEY CAN LEAST AFFORD IT. THE COURTS HAVE RULED THAT ANY FORM OF ACCOUNTABILITY FOR TIME SPENT ON THE JOB IS A VIOLATION OF FLSA REGULATIONS AND THEREFORE PREVENTS ANY EXEMPTION FROM THE ACT'S OVERTIME PAY REQUIREMENTS. THIS NOTION IS ANTITHETICAL TO THE NEED FOR GOVERNMENT TO BE ACCOUNTABLE TO ITS TAXPAYERS FOR THE EXPENDITURE OF PUBLIC FUNDS.
8.2 RECOMMENDATIONS

THE GOVERNORS URGE THE FEDERAL GOVERNMENT TO ACT IMMEDIATELY TO RESOLVE THE CRISIS THAT HAS ARisen BECAUSE OF THE MISAPPLICATION OF FLSA REGULATIONS TO PUBLIC SECTOR EMPLOYERS. THE GOVERNORS BELIEVE THAT THE FEDERAL GOVERNMENT SHOULD TAKE THE FOLLOWING STEPS.

- THE DEPARTMENT OF LABOR SHOULD, WITHOUT DELAY, ABOLISH THE "SALARY BASIS" REGULATION AND REPLACE IT WITH AN ALTERNATIVE APPROACH THAT MORE EFFECTIVELY ADDRESSES PUBLIC SECTOR EMPLOYMENT. THE DEPARTMENT ALSO SHOULD REVISE THE "DUTIES TEST" REGULATIONS.

- CONGRESS SHOULD IMMEDIATELY PASS LEGISLATION THAT WOULD ELIMINATE RETROACTIVELY THE LIABILITY THAT HAS THUS FAR ACCRUED TO STATE AND LOCAL GOVERNMENTS AS A RESULT OF FLSA REGULATIONS.

Time limited (effective August 1993-August 1995).
November 30, 1993

The Honorable Robert B. Reich
Secretary of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Dear Secretary Reich:

On November 23, 1993, the Mariposa County Board of Supervisors voted unanimously to adopt Resolution No. 93-587, which supports the National Governors' Association resolution regarding the application of federal Fair Labor Standards Act (FLSA) overtime pay regulations to public employers.

We are requesting that the current FLSA overtime pay regulations be revised with an alternative that more appropriately addresses public sector executives and administrators. We are also requesting the retroactive elimination of the fiscal liability which is now accruing to public sector employers as a result of on-going FLSA litigation.

We appreciate your consideration of this request, and urge you to resolve this matter of utmost importance to public sector employers in California.

Sincerely,

Eric J. Erickson, Chairman
Mariposa County Board of Supervisors

cc: Governor Wilson
U.S. Senator Boxer
U.S. Senator Feinstein
Congressman Lehman
State Senator McCorquodale
Assemblywoman Snyder
Regional Council of Rural Counties
California State Association of Counties