LOS ANGELES COUNTY ECONOMIC DEVELOPMENT CORPORATION

January 26, 2011

Senate President Pro Tempore Darrell Steinberg
State Capitol Building, Room 205
Sacramento, CA 95814

Re: California Senate Democrats Jobs Agenda: "Regulatory Review and Streamlining"

Dear Senate President Pro Tempore Steinberg:

On behalf of the Los Angeles County Economic Development Corporation (LAEDC), an organization dedicated to promoting job growth, economic expansion and preserving the overall global competitiveness of California and the Los Angeles region, we want to strongly commend you for your recent announcement to pursue emergency legislation directing California's state agencies to review all regulations and recommend a comprehensive restructuring of the state's regulatory scheme. The importance of this regulatory review and streamlining effort cannot be overstated. To many job seekers, entrepreneurs, and businesses both inside and outside of the state, it signifies that "California is open for business."

At the LAEDC, we have long advocated for state agencies to review and streamline regulations as they relate to businesses – the creators of private sector jobs and the tax revenue generated by those jobs – by eliminating unnecessary or counterproductive regulations as well as by refining overly complex, complicated regulatory processes to be more consistent in interpretation and predictable in application. The purpose of such an effort would be, as you so eloquently said: "not to weaken or undermine public health, environmental or worker safety protections, but rather to make it easier for businesses to wade through the often difficult, complicated, duplicative bureaucracies that delay economic investment and job growth." To be sure, our shared goal is to increase efficiency so businesses can focus on their core operations, increase revenue and hire workers – without compromising substantive environmental quality or other public interest standards.

Unquestionably, improving California's regulatory climate will make the state a more attractive place for businesses to invest and create much-needed jobs. But it means even more than that; it is, in fact, a "life blood" issue for our state. There can be little doubt that having a regulatory structure that is more competitive for private sector business and conducive with innovation and the growth of entirely new industries along with new jobs in those industries (coupled with more investment in research and innovation infrastructure, e.g., smart grid, digital infrastructure) should be a core strategy for long-term, sustainable economic and job growth. We believe that it is an elemental strategy that both political parties, Democratic and Republican, can – and should – get behind.

With the aforementioned goals in mind, and as follow-up to the Senate Democratic Caucus meeting on January 19th (and in particular the briefing by the LAEDC's Senior Vice President for Strategic Initiatives, David Flaks), we have identified (and offer) with the input from a number of entities

444 SOUTH FLOWER STREET 34TH FLOOR LOS ANGELES CA 90071
t 213.622.4300 f 213.622.7100 www.LAEDC.org

throughout the state several examples of regulations/rules that are archaic, duplicative, inconsistent (in application or result) or produce unintended consequences (in contravention of legislative intent). Please keep in mind that the below list of examples represents only a very small fraction of what can best be described as the "low-hanging [regulatory] fruit" and, as such, eliminating these is just the first-step – or the "tip of the iceberg" – of what must be an overall, wholesale regulatory review and streamlining effort that includes benchmarking our state's regulatory environment against other states (and even countries – as we represent the world's 8th largest economy), having each agency review its regulatory scheme and processes, expunging rules from the 5,000-page California Code of Regulations, eliminating duplication – whether interagency, between federal and state agencies or between state and local regulatory agencies, and as you said in your recent announcement, "doing a whole lot better in providing a friendlier business climate."

- **"4/10" Work Week** – In the manufacturing sector, especially high tech/green tech, employers are not permitted to operate using "4/10" work week (working 10 hours/day for four days) schedules without having to pay overtime (for the two hours over eight in any given day) has the unintended consequence of being one of our state's biggest business (and, as such, job) attraction/retention problems. (This is a labor rule which was removed during the Wilson administration and reinstituted in the Davis administration.) The rule should be amended to allow "4/10's." As a fall back, the law should be amended to allow "4/10's" when supported by a majority of a manufacturer's work force, whether unionized or not. In sum, manufacturing jobs represent a critical pathway into the middle class for many of our state's residents; allowing "4/10's" would open the "middle class" door to many more Californians.

- **"Independent Discretion and Judgment Provision"** – California overtime laws can be interpreted as requiring the payment of overtime to engineers freshly out of college even though they are doing very sophisticated work and being paid upwards of $60,000. It's the unintended result of the "independent discretion and judgment" provision. In order to be exempt (not paid overtime), engineers have to exercise independent discretion and judgment over matters of significance (employees are presumed to be non-exempt (eligible for overtime) and the employer has to prove an exemption). Plaintiffs argue that engineers just out of school need too much direction and don't have enough experience to be exercising such discretion and judgment. Under California wage-and-hour laws (unlike federal law), less than fifty percent of exempt duties (involving "independent discretion and judgment") automatically renders the overtime exemption unavailable. So, to avoid that argument, companies pay lower-level engineers hourly, plus they must be paid overtime for hours worked over eight in a day or 40 in a week (see number one above). For a high-tech company, the overtime can become quite expensive and the hourly/overtime situation can become disruptive to high-level, complex work. For a state trying to retain its high-skilled, high-wage jobs, this provision has the unintended consequence of making California far less attractive and competitive for quality engineers – at a time when many companies (e.g., aerospace)are facing critical shortages in qualified engineers.

- **California's Private Attorney General Act (PAGA)** –Under PAGA, major employers can be hit with millions of dollars of liability for not having a proper address for a bank on a pay stub (as

well as a number of other minor, technical violations of the labor code). And, 75 percent of the recovery goes to the state with only 25 percent going to employees. PAGA has an attorneys' fees provision so it really acts as a "green light" for plaintiffs' lawyers to lodge suits.

- **California Environmental Quality Act (CEQA) Minimum Thresholds** – Currently there is no guidance on minimum thresholds ("de minimis" clause) for de minimis activities that will not have an impact on the environment. There must be a set standard (e.g., how small is too small) for what kinds of projects must submit a lengthy and expensive environmental impact report (EIR).

- **CEQA Administrative Record** – In CEQA litigation, a petitioner is permitted to create the administrative record for the challenge. This makes little sense, and leads to abuse, inefficiency, delay and extra expense. The record should always be prepared by the reviewing (lead) agency, which, by definition, has the complete set of documents.

- **Immigration and I-9s** –Employers can't use E-Verify *prior to interviewing* to determine if an applicant has the right to work in the United States. Instead, an employer has to go through the interview process, make an offer, wait until they start work and verify at that time. By then, 2+ weeks have passed and all other top candidates are lost only to find out that the applicant does not have the right to work in the U.S. Then, an employer can't fire the person for another 4+ weeks, while waiting for the U.S. Citizenship and Immigrations Services to confirm what is now known. *This is federal law, but California is one of the states that requires use of E-Verify for certain employers.*

- **Vendor Sales License** – In California, if a vendor doesn't have a state sales license, then the contractor must withhold three percent of the total contract amount and remit that to the state when the contractor submits its quarterly state sales tax to the state. However, the federal government already requires contractors (of any size) to remit this for IRS purposes. In other words, the state is now using the federal model to collect additional sources of revenue, then returning the amount when the sales license is presented.

- **Caltrans' "Guide for the Preparation of Traffic Impact Studies"** – In 2006, the California Department of Transportation developed a "Guide for the Preparation of Traffic Impact Studies" to improve the Caltrans local development review process. However, not all local districts insist on using this guide, which creates inconsistency in project reviews and confusion for private and public developers.

We look forward to continuing to work with your office, other members of the Senate Democratic Caucus and the entire Legislature to adopt and implement an overall state regulatory review and restructuring effort as well as to ensure that other important job growth initiatives are considered, adopted and implemented in a way where jobs are created, the state's economy is strengthened, and

our overall quality of life is preserved. Please do not hesitate to contact me or any member of my management team with questions or comments regarding the above.

Sincerely,

William C. Allen
President & CEO
LAEDC

444 SOUTH FLOWER STREET 34TH FLOOR LOS ANGELES CA 90071
t 213.622.4300 f 213.622.7100 www.LAEDC.org