



premises on locks purchased from the retail establishment; in addition, an unlicensed agent or employee of the retail establishment may not represent himself or herself to be a licensed locksmith, redesign or implement a master key system, perform locksmithing services on automotive locks, or possess specified locksmith tools. The bill would also exempt a law enforcement officer who performs locksmith services in the course of his or her professional duties from BSIS' licensing requirements. [A. CPGE&ED]

AB 53 (Murray), as introduced December 15, would establish procedures for the DCA Director, through BSIS, to issue a permit allowing private investigators, private security services licensees, and alarm company operators and agents to carry a pistol, revolver, or other firearm capable of being concealed upon the person in a concealed manner. The bill would provide that on or after January 1, 1997, this procedure is the exclusive means whereby these persons may carry a concealed weapon. This bill would provide procedures for the sheriff or the chief or other head of a municipal department wherein the applicant for a permit resides or maintains a business to object to the issuance of a permit by the DCA Director. This bill would also authorize the DCA Director to adopt and enforce reasonable rules to establish qualifications to be a bodyguard. [A. CPGE&ED]

LITIGATION

On October 7, the Third District Court of Appeal issued its third decision in *Funeral Security Plans, Inc. v. State Board of Funeral Directors and Embalmers*, 28 Cal. App. 4th 1470 (1994). [14:4 CRLR 22] Once again, the court decided several important issues arising under the Bagley-Keene Open Meeting Act, Government Code section 11120 *et seq.*, including the following:

- The court interpreted the "pending litigation" exception to the Act's open meeting requirement, Government Code section 11126(q), which permits state bodies "to confer, and receive advice from, legal counsel," to include the communication of facts (as well as legal advice) from legal counsel, and to include the state body's deliberations and decisionmaking thereon.

- With regard to the Act's procedural requirements accompanying the use of the "pending litigation" exception, the court noted that section 11126(q) requires the state body's legal counsel to prepare and submit to it, preferably prior to the closed session but no later than one week after the closed session, a memorandum stating the

specific reasons and legal authority for the closed session. The court rejected the Board's assertion of a "substantial compliance" defense for failure to comply with these procedures.

- The court also interpreted section 11126(d), which—at the time relevant to this litigation—provided that state bodies may meet in closed session "to deliberate on a decision to be reached based upon evidence introduced in a proceeding required to be conducted pursuant to [the Administrative Procedure Act]." Because the language of the statute expressly contemplated (1) deliberation, (2) decision, (3) evidence, and (4) APA proceedings, the court held that state bodies are not permitted to meet in closed session under section 11126(d) to consider petitions to terminate license probation, for license reinstatement, or to reduce a penalty unless it has previously held an APA hearing to receive evidence on the licensee's rehabilitation. Further, the court held that state bodies may not meet under section 11126(d) to consider proposed disciplinary settlements which involve a stipulated set of facts: "Subdivision (d)...does not permit deliberations to provide cover for receiving and considering evidence in closed session. It is only deliberation, and not the introduction of evidence, which can be conducted in closed sessions pursuant to the subdivision (d) exception." To the extent that evaluation of a proposed settlement is part of the Board's litigation strategy, the court found that it may be reviewed with legal counsel under section 11126(q), but not under section 11126(d). The court noted that several of the Board's arguments for closed sessions to consider stipulated settlements are better addressed to the legislature, because "subdivision (d) simply does not go that far."

- And once again, the court held that the Board's two-member advisory committees are state bodies under section 11121.7, and fully subject to the Act's open meeting requirement. Although two-member advisory committees of a state body appear to be exempt from the open meeting requirement under section 11121.8, the court held, in effect, that when even one member of a state body serves on an advisory committee in his/her official capacity as a representative of the state body, and the state body finances the member's participation, the open meeting requirements of the Bagley-Keene Act "follow" that member and his/her official participation.

On November 7, the Third District denied BFDE's motions for rehearing and for depublishing of its decision. On January 5, the California Supreme Court de-

nied BFDE's petition for review and depublished the Third District's decision, thus negating the precedential impact of five years of litigation.

Malibu Video Systems, et al. v. Kathleen Brown, Treasurer of the State of California, et al., No. CV942093-RMT(EX) (C.D. Cal.), and *Malibu Video Systems, et al. v. Kathleen Brown, et al.*, No. BC082830 (Los Angeles County Superior Court), are still pending; the parties are engaged in discovery. These cases are class actions filed in both state and federal court by Los Angeles attorney Richard I. Fine on behalf of state licensees, alleging that the State of California illegally diverted money from the reserve funds of special-funded agencies in California. "Special-funded agencies" (including all the regulatory programs in DCA) receive funding support not from the general fund but from licensing and other fees imposed on their licensees; those fees are generally passed on by the licensees to the consumers of their services as a cost of doing business. In the Budget Acts of 1991-92, 1992-93, and 1993-94, the legislature included provisions which reduced the reserve funds of special-funded agencies down to three months' worth of operational expenses, and diverted the rest to the general fund. In his lawsuits, Fine claims that these diversions reduced the total amount in special-funded agencies' reserve funds by 46% (from \$1.569 billion in 1991 to \$848.5 million in 1994). Fine alleges that the funds were collected for consumer protection purposes, and that diverting them to help pay the state's deficit both deprives consumers of protection from incompetent and dishonest practitioners and serves to double-tax taxpayers who are consumers of the services of state licensees. [14:4 CRLR 22; 12:4 CRLR 1] At this writing, Fine plans to file another lawsuit challenging similar budget transfers included in the state's 1994-95 budget.

OFFICE OF THE LEGISLATIVE ANALYST

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Created in 1941, the Legislative Analyst's Office (LAO) is responsible for providing analysis and nonpartisan advice on fiscal and policy issues to the California legislature.

LAO meets this duty through four primary functions. First, the office prepares



a detailed, written analysis of the Governor's budget each year. This analysis, which contains recommendations for program reductions, augmentations, legislative revisions, and organizational changes, serves as an agenda for legislative review of the budget. Second, LAO produces a companion document to the annual budget analysis which paints the overall expenditure and revenue picture of the state for the coming year. This document also identifies and analyzes a number of emerging policy issues confronting the legislature, and suggests policy options for addressing those issues. Third, the Office analyzes, for the Assembly Ways and Means Committee and the Senate Appropriations and Budget and Fiscal Review Committees, all proposed legislation that would affect state and local revenues or expenditures. The Office prepares approximately 3,700 bill analyses annually. Finally, LAO provides information and conducts special studies in response to legislative requests.

LAO staff is divided into nine operating areas: business and transportation, capital outlay, criminal justice, education, health, natural resources, social services, taxation and economy, and labor, housing and energy.

MAJOR PROJECTS

The Federal Crime Bill: What Will it Mean for California? (September 27, 1994) is an LAO policy brief analyzing the effects of the federal Violent Crime Control and Law Enforcement Act of 1994 on the state. Among other things, the measure increases federal penalties for many crimes and adds new offenses which may be punished by death; makes a variety of offenses (such as "drive-by" shootings and carjacking) new federal crimes; increases funding for federal law enforcement, including significant increases for the Border Patrol and the Immigration and Naturalization Service; and provides federal funding for state and local law enforcement crime prevention programs and the construction of new state prisons.

In its policy brief, LAO noted that the measure will have the following implications for California:

- Between 3,000 and 4,000 new law enforcement officers could be hired as California's share of the "Cops On the Beat" grant program designed to provide community-oriented policing. The addition of new law enforcement personnel will likely result in significant increases in the costs of the state and county criminal justice system, and significant short-term and long-term costs related to the hiring of the new officers—none of which are funded by federal grant monies.

- California could qualify for up to \$1.2 billion in grants for state prison construction, enough for the construction of five prisons.

- California and local entities stand to receive millions of dollars in federal grant monies over the next six years for crime prevention.

- Funding for most programs will depend on future federal appropriations which may be less than the amounts authorized in the bill.

- Most federal funding will require a match by the state and local governments.

LAO recommended that the state develop a policy direction for California to follow as it decides which funds to apply for, how to use the funds, and what policies it should enact to further the measure's purposes or receive additional federal funds.

The "Trigger" Mechanism (October 1994) is an LAO Update explaining this feature of the 1994-95 state budget; according to LAO, a trigger was included in the budget to ensure the timely repayment of money—borrowed from investors—that was needed to finance the budget plan. [14:4 CRLR 23] LAO explained that the trigger is driven by what happens to the state's year-end cash position: If the state's cash position worsens relative to what it was estimated to be when projected in July 1994, then the trigger is "pulled." If the trigger is pulled during the 1994-95 fiscal year, the Governor—in presenting the 1995-96 budget plan in January—is required to propose ways to eliminate any cash deterioration; the legislature then has until February 15 to enact that legislation, or alternative measures, to address the shortfall. If legislation is not enacted, the Director of Finance is required to make automatic spending cuts to address the cash shortfall; these cuts would apply to all general fund programs, except those required by the state constitution.

LAO opined that it is a "close call" as to whether the trigger will be pulled in 1994-95, stating that the biggest uncertainty on the expenditure side concerns the budget assumption that the state will receive \$762 million in new immigration-related federal funds; also, with regard to revenues, LAO noted that there is both up- and down-side risk, primarily depending on how the economy performs relative to what was assumed in the budget.

The 1995-96 Budget Outlook (December 1994) is an LAO Update which reviews the state's progress in implementing its two-year plan for eliminating the budget deficit carried over from 1993-94 and balancing the state's budget by year-end 1995-96. [14:4 CRLR 23] According

to LAO, the state is currently running slightly ahead of schedule in its two-year plan to eliminate the budget deficit; recent developments indicate that the anticipated 1994-95 year-end deficit of \$1 billion has declined to approximately \$800 million.

However, LAO predicted that there are several budget risks and uncertainties that could hamper the state's efforts to achieve a balanced budget in 1995-96. For example, the budget plan assumes that the federal government will provide \$762 million in 1994-95 and \$2.8 billion in 1995-96 to reimburse the state for costs related to illegal immigrants and refugees; to date, the federal government has committed to providing only about \$100 million of this amount. Also, the budget plan counts on federal approval of \$400 million in county claims for Medicaid administrative and case management funds; however, the federal government has deferred approval of these claims and has expressed significant concerns about whether they are appropriate. Finally, LAO noted that four existing trial court decisions pose potential risks totalling \$4.2 billion unless they are overturned or modified.

LAO concluded its report by opining that assumptions about the continuation of recent spending and revenue trends, and whether budget-related risks and uncertainties are realistically addressed, will be the most important elements to evaluate in the Governor's 1995-96 budget proposal.

On January 10, Governor Wilson released his proposed 1995-96 budget; at this writing, LAO is preparing an overview of the proposal.

California Defense Conversion: Technology Reinvestment Project (December 27, 1994) is an LAO status update on California's participation in the federal government's Technology Reinvestment Project (TRP). The TRP awards grants nationwide to defense conversion projects; emphasizing partnerships among industry, government, and universities, the TRP reflects a strategy for integrating defense and commercial technologies. To date, the federal government has approved TRP grants totalling \$805 million to 251 partnerships; 87 partnerships that involve California industry, government, and academic institutions have received federal funding.

According to LAO, to help California compete for these grants, the state set aside over \$50 million in matching funds and established the Defense Conversion Matching Grant Program. However, only 8% of the 225 proposals that received a commitment for state funds were approved by the TRP; as a result, only \$6.4 million of the \$50 million set aside by the



state will be needed for these defense conversion proposals.

LAO concluded its report by noting that the state's Defense Conversion Council is required to submit to the legislature a report on the effectiveness of the matching grant program, on or before January 1, 1995, and again on or before January 1, 1997, and a strategic plan for defense conversion; the Trade and Commerce Agency has scheduled release of the first draft of this plan in March, followed by public hearings to be held in April.

The "Three Strikes and You're Out" Law—A Preliminary Assessment (January 6, 1995) is an LAO status update which discusses the early implications and effects of AB 971 (Jones) (Chapter 12, Statutes of 1994) and Proposition 184, which enacted the so-called "three strikes" criminal sentencing measure. The "three strikes" law significantly increases the prison sentences of those persons convicted of felonies who have previously been convicted of a "violent" or "serious" felony, and eliminates the possibility that these offenders will receive a punishment other than a prison sentence. Noting that the measure has been in effect for only a short time, LAO cautioned that considerable uncertainty exists regarding its precise impact; however, LAO contended that the following preliminary trends have begun to emerge:

- Thousands of offenders have been charged with crimes under the measure.

- Many cases are backing up in the local criminal justice system because most offenders are refusing to plead guilty and instead are taking their cases to trial; also, counties are experiencing significant increases in the number of jury trials and in the number of persons held in county jails awaiting trial.

- In order to handle the increased number of cases, some counties have augmented the budgets of their criminal justice agencies, while others have increased the number of non-"three strikes" inmates who are released early from jail; and some courts are diverting their resources from civil cases to criminal cases. For example, in Los Angeles County, more than half of the fifty courtrooms in the central district that are normally used for civil cases are being diverted to criminal trials; the County estimates that two-thirds to three-fourths of all courtrooms that normally hear civil cases will be devoted entirely to criminal trials before the end of 1995.

- Some judges, juries, and victims have responded to the "three strikes" law in ways that reduce the intended effects of the measure. For example, LAO stated that some judges have reduced minor fel-

ony criminal charges to misdemeanors when a felony conviction under the "three strikes" law would require a lengthy prison sentence; LAO also contended that some juries have refused to convict persons for relatively minor felony offenses which would have resulted in longer prison sentences under the "three strikes" law, and some victims of crime have refused to cooperate and testify in such cases.

- Most offenders are being prosecuted and convicted under the measure for non-violent, nonserious offenses; according to LAO, about 70% of all second- and third-strike convictions during the first eight months of the law's implementation were for nonviolent and nonserious offenses, such as possession of controlled substances and petty theft.

Although recent data indicate a reduction in the state's crime rate, LAO noted that the reduction probably should not be attributed to the "three strikes" legislation, because the state's crime rate had been falling prior to the enactment of the law and is also reflective of national trends. However, LAO acknowledged that the law could result in a reduction in crimes committed by repeat offenders incarcerated for longer periods under its provisions.

According to LAO, the state must address several issues regarding the measure's implementation in the coming months and years. For example, LAO noted that the state should address the authority of a judge to ignore a prior "strike" conviction without a specific request of the district attorney; the authority of a court to consider a prior conviction to be a misdemeanor instead of a felony, thus eliminating consideration of the "three strikes" law for a new offense; and whether a crime committed by a minor can be considered a strike. LAO concluded by noting that the state should continue to monitor the measure's implementation and its effects on crime and the state's criminal justice system; LAO will continue to monitor implementation and include issues for the legislature's consideration in its *Analysis of the 1995-96 Budget Bill*, which will be released in February.

LAO Testifies Regarding State's Use of Information Technology. In June 1994, LAO released a report entitled *Information Technology: An Important Tool For a More Effective Government*, which reviewed the state's use of information technology (IT) as part of California's operational infrastructure; among other things, LAO concluded that fundamental problems prevent the state from realizing a better return on its IT investments. [14:4

CRLR 24] In October, the newly-created Joint Committee on Information Technology in State Government conducted an interim hearing on the state's use of IT. At that hearing, Legislative Analyst Elizabeth Hill and Deputy Legislative Analyst Bob Dell'Agostino testified on LAO's findings, opining that the state lacks centralized technological leadership despite spending over \$1 billion annually on computer and telecommunications equipment. (See agency report on BUREAU OF STATE AUDITS for related discussion.)

In order to improve the overall use of IT, LAO recommended that the state establish a new central oversight office and an advisory panel to help with technology policy development; develop a plan of corrective action for current problems; improve interagency electronic mail and other forms of electronic communication; use binding arbitration to settle vendor bid protests that tie up computer procurement contracts; and maintain records of poor or outstanding vendor performance. In January, Senator Alfred Alquist introduced SB 1, which addresses many of the issues raised by LAO (see LEGISLATION).

■ LEGISLATION

SCA 2 (Kopp). The California Constitution requires the legislature to pass the budget bill for the ensuing fiscal year by midnight on June 15. As introduced December 5, this measure would amend the California Constitution to require the legislature to instead pass the budget bill by midnight on June 30, and to require the forfeiture, in any year in which the budget bill is not passed by the legislature before midnight on June 30, of any salary or reimbursement for travel or living expenses for the Governor and each member of the legislature for the period from midnight on June 30 until the date that the budget bill is passed by the legislature.

Under existing law, the California Constitution contains no provision requiring that the total of all state expenditures authorized under the budget act for any fiscal year not exceed the total of all state revenues anticipated for that fiscal year. This measure would require that the total of all expenditures that are authorized to be made from the general fund for any fiscal year under the budget act and any other statute, combined with the total of all general fund reserves that are authorized to be established by the state for that fiscal year and any general fund deficit remaining from the preceding fiscal year, shall not exceed the total of all revenues and other resources that are available to the state for general fund purposes for that fiscal year.



The California Constitution requires that the legislature establish a prudent state reserve fund in an amount it deems reasonable and necessary. This measure instead would require that the budget bill enacted for each fiscal year provide for a state reserve fund in an amount equal to 3% of the total of expenditures authorized to be made from the general fund for that fiscal year. This measure would authorize the legislature to appropriate money deposited in the state reserve fund pursuant to the vote requirements set forth in current provisions of the California Constitution, or upon a majority vote for the funding of any programs for which funding is appropriated in the current budget act. This measure would provide further that the minimum amount required to be deposited in the state reserve fund for the 1997-98 fiscal year shall be equal to one-third, and for the 1998-99 fiscal year shall be equal to two-thirds, of the amount that otherwise would be calculated for that fiscal year. The measure also would reduce the minimum amount to be deposited for each of the two fiscal years succeeding a fiscal year in which the year-end balance in the state reserve fund is less than 50% of the amount required to be deposited in the fund for that year.

The California Constitution empowers the Governor to reduce one or more items of appropriation while approving other portions of a bill, including the budget bill. This measure would require that the annual budget bill include a budget adjustment plan that would set forth budget adjustments to reduce appropriations for that fiscal year or increase general fund revenues, or both, as necessary to eliminate designated imbalances in the general fund budget, as identified by one or more quarterly reports prepared by the Department of Finance and certified for accuracy by the Legislative Analyst. The measure would require that separate legislation be enacted to identify the conditions under which the Governor is authorized to implement the budget adjustments and, in the event of the exercise of that authority, to make any changes in law that are necessary to the implementation of that plan. The measure would provide that the separate legislation would take effect immediately upon enactment, and would be exempt from the two-thirds-vote requirement that applies to general fund appropriations. The measure would specify that the budget bill would not become operative prior to the operative date of that separate legislation.

Under the California Constitution, appropriations from the general fund, except appropriations for the public schools, re-

quire the approval of two-thirds of the membership of each house of the legislature. This measure would specify that the provisions described above would apply to the budget and budget bill for the 1997-98 fiscal year and each subsequent fiscal year, and would be operative for all purposes commencing on July 1, 1997. This measure would additionally exempt appropriations in the budget bill from that two-thirds-vote requirement, and would specify that a statute enacting a budget bill go into effect immediately upon its enactment. [S. RIs, B&FR, CA]

SB 1 (Alquist). The Office of Information Technology in the Department of Finance is charged with identifying new applications for information technology, improving productivity and service to clients, and assisting agencies in designing and implementing the use of information technology; OIT operates under the direction of the Director of the Office of Information Technology, who is prescribed specified responsibilities. As introduced December 5, this bill would replace OIT with the Information Services Agency and that Agency would be managed by the Secretary of Information Services, who would have prescribed responsibilities. The Agency would be charged with improving the state's ability to apply information technology effectively, and assisting state agencies in identifying, designing, and implementing these applications. This bill would require the Information Services Agency or its secretary to, among other things, create a Department of Information Services within the Agency to perform the operational duties and responsibilities of the Agency, including performing the duties and responsibilities of the former OIT, as modified; consolidate state information technology services in a manner to be determined by the executive branch, which may include the consolidation of existing data centers; establish policies regarding an independent validation and verification of state information technology projects; perform responsibilities currently performed by the Department of General Services with respect to the acquisition of information technology and telecommunication goods and services; and form user committees and advisory committees. [S. GO]

ASSEMBLY OFFICE OF RESEARCH

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Established in 1966, the Assembly Office of Research (AOR) brings to-

gether legislators, scholars, research experts, and interested parties from within and outside the legislature to conduct extensive studies regarding problems facing the state.

Under the director of the Assembly's bipartisan Committee on Policy Research, AOR investigates current state issues and publishes reports which include long-term policy recommendations. Such investigative projects often result in legislative action, usually in the form of bills.

AOR also processes research requests from Assemblymembers. Results of these short-term research projects are confidential unless the requesting legislators authorize their release.

MAJOR PROJECTS

The Status of Wine-Related Research in California and the United States: A Survey and Analysis (September 1994) describes and compares the status of wine-related research projects, funding, and public-private partnerships in California, other U.S. wine producing states, and two major global wine producers, Australia and France. AOR prepared the report at the request of Assemblymember Dominic Cortese, Chair of the Assembly Select Committee on California Wine Production and Economy, to quantify current levels of research and provide the basis for discussions involving government, industry, and the research community.

AOR surveyed wine industry organizations in the major wine producing states and Australia and France in order to gather data necessary to evaluate support for wine research in California compared with other states and countries. The report discusses the current status of research projects and funding of the wine industry, based upon telephone interviews with U.S. university researchers in seven wine producing states, and summarizes the status of wine production and sales, government-private cooperative efforts, and research funding and priorities in Australia and France. AOR's major findings are as follows:

- California's wine industry spends only .1% of its \$4 billion in annual sales revenue for research.

- California's wine and grape industry spends more for research than all other states; however, while 92% of U.S. wine production occurs in California, only 54% of total U.S. research funds were allocated to the state in 1993.

- Total grape- and wine-related research estimates in California amounted to over \$1.7 million in fiscal year 1993-94, including grant and contract funding