



and the bill that enacts the statute is presented to the Governor at the same time as the bill that enacts the Budget Act; and **ACA 21 (Areias)**, which would have provided that if the Governor fails to sign a budget bill on or before June 30, then on July 1 an annual budget that is the same amount as that which was enacted for the immediately preceding fiscal year shall become the state's interim budget for the new fiscal year and the balance of each item of that interim budget shall be reduced 10% each month, commencing August 1, until a new budget bill has been signed by the Governor.

ASSEMBLY OFFICE OF RESEARCH

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

Defense Conversion Resource Guide, Third Edition (July 1994). In October 1993, AOR prepared a resource guide to assist the Assembly Task Force on Defense Conversion in achieving its mission to maximize federal defense conversion funding for California and assist communities affected by military base closures and the conversion of defense-related industries in California. [14:1 CRLR 24] AOR supplemented the 1993 edition with a second edition in January 1994. [14:2&3 CRLR 26] In July, AOR published a third edition, which provides contact names for federal, state, and other resources; updates selected 1994 federal and state grant information; summarizes recent federal and state legislation affecting defense conversion; and provides a list of selected reference materials. Copies are available through the Assembly Publications Office at (916) 445-4874.

Gender Pricing Surveys (June 1994). At the request of Assemblymember Jackie Speier, AOR conducted two telephone surveys to determine whether California merchants charge higher prices for goods and services based on a person's gender. In the first AOR survey in March 1993, AOR surveyed hair salons and dry cleaners; for each of the services, AOR randomly selected five businesses in each of five cities—Fresno, Los Angeles, Sacramento, San Diego, and San Francisco. Representing themselves as consumers, AOR staff members inquired about prices. Ten of the 25 hair salons surveyed quoted higher prices for women's services than for similar men's services, with an average difference of \$5. Seven of the 25 dry cleaners surveyed charged more for cleaning women's suits, with an average difference of 58 cents. Larger differences, however, were found in prices for laundering men's and women's shirts or blouses; sixteen of the establishments charged more for washing women's blouses, with an average difference of \$1.71. AOR's second survey, which was completed in June 1994, showed that women also pay more than men for suit alterations at Nordstrom, Macy's, and Weinstock's; in some instances, women are required to pay \$6–\$25 for services which men receive for free.

Assemblymember Speier used AOR's surveys—which were released in June—to build support for AB 2418 (Speier), the Equal Pricing Act of 1994, which would have prohibited businesses from pricing good or services based upon gender. On September 30, however, Governor Wilson vetoed AB 2418, contending that the Unruh Civil Rights Act already prohibits unlawful gender-based pricing practices, and stating that the legislation "failed to provide explicitly that businesses do have a right to base prices upon legitimate factors." However, the Governor did approve SB 1288 (Calderon), which directs the Department of Consumer Affairs, by June 1, 1995, to provide notice to licensees of the Board of Barbering and Cosmetology that the Unruh Civil Rights Act prohibits gender-based pricing; SB 1288 was signed by the Governor on September 11 (Chapter 535, Statutes of 1994).

AOR Investigates Department of Fish and Game. Again at the request of Assemblymember Jackie Speier, AOR recently conducted an investigation to review allegations of illegal contracting procedures and improper use of public funds, among other things, by the California Department of Fish and Game (DFG). In December 1992, DFG regional manager James Messersmith allowed a California Department of Transportation (Caltrans) contractor to replace a Ryer Island ferry

pier with creosote-treated timber, despite state statutes which prohibit the placement of creosote-impregnated wood into state waters; creosote is a derivative of coal tar, a known human carcinogen which—according to Solano County officials—is harmful to salmon and other wildlife that inhabit Solano County's Cache Slough. The Solano County District Attorney filed misdemeanor criminal charges against Messersmith in June 1993, but agreed to drop them in April 1994 after DFG agreed to pay \$5,000 to cover court costs and to adopt a policy prohibiting the use of creosote in state waterways. Due to the Messersmith incident, Solano County was also forced to excuse a stipulated \$300,000 criminal fine against Santa Fe Railway for the same violation, noting that, "at a minimum it seems unjust to file a criminal case and fine a large reputable corporation...for creosote contamination when Fish and Game's management allows another agency to violate a strict liability law concerning water pollution." Instead of the stigma of having to pay criminal fines for allegedly dumping thousands of tons of creosoted timbers into state waterways, Santa Fe was permitted to "donate" \$300,000 to state and local accounts.

AOR conducted the investigation to determine whether Messersmith—who was later promoted—took the blame for higher government officials (including Wilson administration appointees) who may have ordered the project to go forward "despite the fact that creosote played a major role in two controversies in [Messersmith's] region in the past year, and despite the fact that his subordinates and the contractors all objected vociferously to its use." AOR's investigative report includes the following findings:

- Messersmith apparently knew (or believed) that the disposal of creosote-treated lumber in state waters is illegal under Fish and Game Code sections 5650 and 5652, because he signed an April 1992 letter citing those statutes and warning United Transportation Union that creosote dumping is unlawful. Further, during 1992, his office participated in the widely-publicized investigation of Santa Fe Railway which resulted in a multiple-count indictment against the corporation for violation of those statutes, at the exact time Messersmith was ordering his subordinates to approve Caltrans' Ryer Island ferry pier project.

- DFG apparently circumvented state contracting procedures by hiring—without the required written consent of the Attorney General's Office—a private attorney to defend Messersmith against the Solano County misdemeanor charges.



• DFG apparently paid the private attorney \$20,000 from the Fish and Game Preservation Fund, public funds which are constitutionally reserved for activities which promote "protection or propagation of fish and wildlife...."

• Top officials in the Attorney General's Office, which drafted an *amicus curiae* brief in the Messersmith matter, attended a meeting during the drafting of the contract with the private attorney and apparently failed to advise DFG to secure the AG's written permission.

• There is evidence that Jerry Mensch, the DFG "whistleblower" employee who brought the pollution matter to the attention of the Solano County District Attorney after unsuccessfully protesting the use of creosote-laden timber to his superiors, was improperly demoted by DFG.

• Although Messersmith testified that he consulted with his superiors about the creosote project, the superiors denied any role in the decision to approve the project.

AOR's report concluded by identifying a number of questions which remained unanswered, and recommended that the Assembly conduct a factfinding hearing in order to resolve those questions. Accordingly, the Assembly Committee on Consumer Protection, Governmental Efficiency and Economic Development (which is chaired by Assemblymember Speier) and the Assembly Committee on Water, Parks and Wildlife scheduled a joint hearing on June 28 to receive testimony from the involved officials at DFG.

At the hearing, Solano County officials testified that DFG's approval of Caltrans' project was "outrageous" and that creosote contamination is extremely harmful to wildlife in the Delta. Jerry Mensch testified that it was unlikely Messersmith would make such a decision on his own—"he characteristically would seek the advice of his superiors." DFG officials first balked at giving testimony under oath, arguing that Mensch, who has filed a lawsuit challenging his demotion as retaliatory, was misusing the legislative forum to obtain discovery and testimony to which he might not otherwise be entitled. Eventually, DFG representatives denied any illegality or impropriety, and accused the Assembly of holding the hearing for political purposes. In subsequent written testimony, DFG argued that no statute specifically outlaws the placement of creosote-treated lumber in state waters, and characterized Mensch's transfer as a "lateral move" rather than a demotion.

When the hearing was interrupted for a state budget debate, DFG officials held a press conference to denounce the hearing. DFG Director Boyd Gibbons, DFG

Chief Deputy Director John Sullivan, DFG General Counsel Craig Manson, and Resources Agency Assistant Secretary Andy McLeod reiterated their claims that DFG had done nothing illegal or improper, and called the hearing "cheap, political theater."

At this writing, this matter is being further investigated by the Bureau of State Audits.

■ LEGISLATION

AB 3135 (McDonald), as amended August 17, would have required AOR to convene a broad-based group representing private managed care organizations, foundations that focus on child health issues, the Los Angeles County Health Department and other interested county health departments, and several divisions of the state Department of Health Services to develop a strategy for maximizing child immunization. This bill was vetoed by the Governor on September 30.

AB 2623 (Connolly), as amended July 4, would have required AOR, in consultation and cooperation with the Department of Forestry and Fire Protection, the Adjutant General, the commanding officer of the California Air National Guard, the Office of Emergency Services, the State Fire Marshal, and organizations representing private airtanker and commercial helicopter operators, to conduct a feasibility study addressing the issues of adding fire suppression duties to the mission of the California Air National Guard, and the safety practices and investigative procedures for accidents involving aircraft owned by the Department of Forestry and Fire Protection. On September 15, this bill was vetoed by Governor Wilson, who expressed doubt about the necessity of the study. Further, Wilson stated that he is "puzzled by the legislature sending me a bill that mandates that the Assembly Office of Research conduct a study. Clearly, the AOR falls within the legislature's jurisdiction; therefore, this measure is unnecessary and ill conceived."

AB 3019 (Napolitano), as amended June 22, would have requested the University of California, subject to the consent of the Regents of the University of California, to conduct a prescribed study of the costs and contributions of immigrants in the state, and to submit a report of the study to the legislature by June 30, 1995. The bill would have requested the University of California, for purposes of the study, to consult with the directors of AOR, the Senate Office of Research, the California Research Bureau, and the Legislative Analyst, or their designated representatives; and required these consulting

entities to provide advice and consultation on the issues to be addressed in the study and to review and comment on the findings and recommendations contained in the report. This bill was vetoed by the Governor on September 30.

AB 3129 (Bustamante), as amended August 25, would have declared legislative intent to revise California law to meet funding eligibility requirements of the federal Violence Against Women Act of 1993 and directed AOR, in consultation with the Senate Office of Research and the Office of Criminal Justice Planning, to establish a five-member Violence Against Women Task Force to participate in activities that facilitate and encourage the state's eligibility for funds under the Act. This bill was vetoed by the Governor on September 30.

AB 2498 (Burton), as amended June 21, would have required AOR, not later than August 31, 1995, to prepare and submit to the legislature a study examining the ways to best protect the safety and confidentiality of law enforcement officers and other persons by restricting access to certain public records. This bill died in committee.

SENATE OFFICE OF RESEARCH

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Established and directed by the Senate Committee on Rules, the Senate Office of Research (SOR) serves as the bipartisan, strategic research and planning unit for the Senate. SOR produces major policy reports, issue briefs, background information on legislation and, occasionally, sponsors symposia and conferences.

Any Senator or Senate committee may request SOR's research, briefing, and consulting services. Resulting reports are not always released to the public.

■ MAJOR PROJECTS

Analysis of State Propositions on the November 1994 Ballot (August 1994) offers background information on seven of the initiatives which will appear on the state's November ballot. Five of the measures are citizens' initiatives placed on the ballot by the signatures of registered voters, and two measures were put before the voters by the legislature. According to SOR, an eighth measure (Proposition 182, a proposed housing bond measure) was dropped from the ballot by the legislature and Governor Wilson in mid-August due to concerns that voters would reject it be-