



• 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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**E**stablished 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-



cause of the state's ongoing economic difficulties. Among other things, the report includes the following information about the seven measures:

• **Proposition 181**, the Passenger Rail and Clean Air Bond Act of 1994, was placed on the ballot by the legislature as part of AB 973 (Costa) (Chapter 108, Statutes of 1989), which authorized three \$1 billion bond issues to appear on state ballots in 1990, 1992, and 1994 to pay for capital costs of rail transit; voters approved the 1990 measure (Proposition 108), but rejected the 1992 measure (Proposition 156). Specifically, Proposition 181 would authorize a bond issue of \$1 billion for the purchase of rights-of-way, rail cars, locomotives, and other capital expenses for state and local passenger rail systems. If Proposition 181 is approved, fifteen different urban, commuter, and intercity rail projects would be eligible for extension, improvement, or construction with rail-bond money.

• **Proposition 183**, regarding elections to recall state officers, was placed on the ballot by SCA 38 (Marks). Proposition 183 would allow elections to recall state officers to be scheduled within 180 days, rather than 80 days, from the date that sufficient signatures are certified as valid on petitions seeking the recall; this would enable the consolidation of a recall election with a regularly scheduled election.

• **Proposition 184**, the so-called "three strikes" initiative, would increase sentences for repeat felons who have been previously convicted of violent or serious felonies. The measure is identical to AB 971 (Jones, Costa), which was signed by Governor Wilson on March 7 (Chapter 12, Statutes of 1994), and which took effect immediately. If Proposition 184 is approved by the voters, the provisions of AB 971 would become inoperative; however, the defeat of Proposition 184 would have no effect on the current law as amended by AB 971.

Under AB 971 and Proposition 184, first-time felons must serve the sentence required by law. Second-time felons with one prior serious or violent felony must serve double the recommended sentence. If there are two prior serious or violent felonies, any new felony conviction carries a life sentence; the minimum term for a third-time felon without prior serious crimes is calculated as the greater of three times the term otherwise provided, 25 years, or a term determined by the court using other applicable sentencing provisions of existing law. If a gun was used in any one of the felonies, a term of 25 years to life would be automatically required. According to SOR, it has been estimated

that implementation of the "three strikes" provisions will result in at least \$6 billion in direct costs and an unknown amount in indirect costs over the next five years.

• **Proposition 185**, the California Clean Air, Jobs, and Transit Initiative, is sponsored by the Planning and Conservation League. The measure would impose a 4% sales tax on gasoline to fund mass transit and other projects. Revenues would be used for capital and operating expenses for rail lines and electric buses, transit for the elderly and disabled, bicycle and pedestrian projects, and land conservation, wetlands, and parks projects to mitigate the impacts of transportation projects. The measure would establish a three-member committee of the California Transportation Commission to oversee all state rail-funding decisions, including programs that are not included in the initiative.

• **Proposition 186**, the California Health Security Initiative, would replace California's current health care system with a "single payer" system; all California residents would be eligible for comprehensive health benefits with out-of-pocket payments limited to certain benefits. The system would directly negotiate payment rates with providers for these benefits, substantially reducing the role of private health insurance plans in delivering these benefits. Among other things, the initiative would establish the California State Health Commissioner as an elected office; the Commissioner would have broad powers to plan, regulate, and set the budget for most health care services provided in the state. The Commissioner would be required to implement eligibility standards, adopt a benefits package that meets or exceeds the minimum benefits required by the initiative, develop budgets for payments to health facilities and providers, establish an enrollment system, and contract for prescription drugs. The Commissioner would have the power to negotiate reimbursement rates with providers operating in the system and would have ultimate authority to set rates; also, the Commissioner would determine factors affecting the quality of health care services, such as nurse staffing ratios and the distribution of medical technology in each region of the state.

Funding sources for the system would include health security payroll taxes, ranging from 4.4% of payroll for employers with fewer than ten employees to 8.9% of payroll for employers with more than fifty employees; a 2.5% health security income tax of not less than \$50 per household per year; an additional 2.5% income surtax on net taxable incomes in excess of \$250,000

for individuals and \$500,000 for joint returns; and a tax on the distribution of tobacco products equivalent to five cents per cigarette.

• **Proposition 187**, the so-called "Save Our State" initiative, would deny public education, non-emergency health care, and public social services to people who are not legally in this country, and require health care facilities, educators, social workers, and law enforcement officers to report suspected undocumented aliens to the U.S. Immigration and Naturalization Service (INS) and other authorities. According to SOR, the initiative appears to conflict with state and federal laws, constitutional protections, and court rulings in many respects; in fact, the Legislative Analyst's Office has warned that the measure could jeopardize up to \$15 billion in federal health, welfare, and education funding to California because of conflicts with federal requirements. Specifically, SOR made the following comments regarding the initiative:

-The measure may violate the state's requirement that an initiative measure may not embrace more than one subject; although all of Proposition 187 deals with undocumented immigration, its provisions cover multiple subjects such as public schools, public colleges and universities, health services, social services, law enforcement, and forged documents.

-Proposition 187 appears to conflict with federal caselaw which provides that undocumented immigrant students may not be denied access to public elementary and secondary schools on the basis of their immigration status. Also under federal law, schools can lose their federal funding for releasing information about students without first obtaining parental consent; reporting undocumented students to the INS might jeopardize \$2.3 billion in federal monies for California schools in 1994-95 alone.

-Proposition 187 appears to contain contradictory language regarding health services for the undocumented, as it suggests it intends to limit publicly funded health services for undocumented immigrants, but in reality bans virtually all hospital or clinic care, other than emergency care, to the undocumented regardless of who pays.

-Because the measure would require every law enforcement agency in California to cooperate with the INS regarding any person who is arrested if he/she is suspected of being present in the United States in violation of federation immigration laws, significant law enforcement resources may be utilized in determining whether arrested individuals are citizens,



lawfully admitted immigrants, or undocumented immigrants by questioning the persons or demanding documentation.

—The measure fails to indicate which entities would be authorized to enforce it.

Interestingly, SOR noted that one potential consequence of the initiative may occur even if it does not win voter approval: It might motivate some of the state's many legal immigrants to become naturalized citizens and registered voters in order to have a say in the initiative's outcome.

• **Proposition 188**, the California Uniform Tobacco Control Initiative, is supported by Philip Morris, Californians for Statewide Smoking Restrictions, and approximately 600–700 individual restaurants, hotels, and bars. The measure, which is opposed by (among others) the American Cancer Society, American Heart Association, American Lung Association, California Medical Association, Planning and Conservation League, Americans for Nonsmokers' Rights, California Nurses Association, California Common Cause, and numerous cities and counties, would establish uniform statewide standards limiting smoking in public places, restaurants, and workplaces, and restrict the sale, distribution, advertising, sampling, promotion, or display of tobacco products. The measure would repeal and preempt approximately 270 local smoking ordinances—many of which are much more strict than Proposition 188.

The measure's proponents contend that there is a need for statewide regulation of smoking in public to assure that those who wish to avoid second-hand tobacco smoke have the same protections wherever they go and those who smoke have fair notice of where smoking is prohibited; these proponents also claim that tougher limits contribute to the perceived "negative business climate" in California and result in substantial losses to the hospitality, tourism, and convention industries. However, opponents of Proposition 188 argue that the statewide standards established by the initiative are too weak and fall considerably short of the ban on workplace exposure contained in AB 13 (T. Friedman) (Chapter 310, Statutes of 1994). Opponents also cite research which indicates that there is little or no economic impact associated with more aggressive smoking restrictions.

[*Editor's Note:* California's November 1994 ballot also contains three late additions: Proposition 189, which would allow judges to deny bail to anyone accused of felony sexual assault; Proposition 190, which would make significant changes to the Commission on Judicial Performance; and Proposition 191, which would convert

the state's 47 justice courts in rural counties to municipal courts. These measures were added to the ballot by the legislature in late September and thus were not available for SOR's review in conjunction with this report.]

**Are Seniors Leaving California?** (July 1994) discusses the migration of seniors into and out of California; how the addition or loss of seniors affects various communities; factors that may affect where older Americans choose to live after they retire; and government policies that influence those decisions. Among other things, the report notes that most California seniors continue to live in California, both after retirement and after reaching very old age; however, during the five-year period from 1985–90, more seniors left California than came from other states. According to SOR, the slight out-migration of seniors did not significantly impact California's overall economy. However, SOR notes that some local economies, particularly foothill and mountain counties, may have been impacted by the reduced "mailbox economy" of retirees, who typically inject into their local economy funds which were generated elsewhere—such as Social Security, Medicare, pensions, and dividend checks.

According to SOR, California law already includes the provisions identified by researchers as most helpful in either attracting retirees or keeping residents after their retirement; such provisions include the state's graduated income tax, low inheritance tax, and low property tax. Additionally, Proposition 13 keeps the property taxes of long-time homeowners artificially low, and various tax credits benefit the state's senior citizens.

SOR concludes that demographic forces, as well as economics, have more to do with seniors' decisions than government policy; according to SOR, California's rapidly changing demographics may influence "some older whites of European ancestry" to retire to states which are "more in their image and likeness."

**California's Response to Domestic Violence** (July 1994) seeks to inform policymakers and the public about California's existing domestic violence laws as they relate to family abuse in general, and to the domestic violence aspects of the highly publicized case of O.J. Simpson and his former wife, Nicole Brown Simpson, in particular; the report also discusses pending legislative proposals which would revise those laws. According to SOR, domestic violence is generally defined as physical abuse committed by one adult against another adult in an ongoing or prior intimate relationship. The victims

of domestic violence are overwhelmingly female; in 1992, the U.S. Surgeon General ranked physical abuse by husbands and boyfriends as the leading cause of injuries to women aged 15–44.

SOR notes that the major domestic violence laws enacted in California include the following:

- SB 91 (Presley) (Chapter 892, Statutes of 1977) enacted the Domestic Violence Center Act, providing safe houses for battered women at the local level. Also, SB 5 (Presley) (Chapter 420, Statutes of 1993) raised the marriage license fee by \$4 to provide increased funding for domestic violence shelters, which now receive \$23 from every marriage license issued.

- AB 1019 (Fazio) (Chapter 720, Statutes of 1977) gave courts the authority to grant temporary restraining orders in domestic violence situations. Also, SB 1058 (Lockyer) (Chapter 1387, Statutes of 1985) created mandatory jail time of at least 48 hours for persons who violate domestic violence restraining orders.

- AB 546 (Mori) (Chapter 994, Statutes of 1979) made spousal rape a crime in California, punishable as a felony or misdemeanor. AB 187 (Solis) (Chapter 595, Statutes of 1993) made all forms of rape, including spousal rape, essentially the same crime.

- SB 1472 (Watson) (Chapter 1609, Statutes of 1984) sought to make police intervention more effective in domestic violence cases by requiring written policies on police responses, statewide training of officers, and data gathering on domestic violence calls.

- AB 785 (Eaves) (Chapter 812, Statutes of 1991) permits the "battered woman syndrome" to be used as evidence in a criminal trial.

- AB 890 (B. Friedman) (Chapter 1234, Statutes of 1993) requires health care providers to be trained in the detection of domestic violence, and directs hospitals and clinics to adopt written procedures on how to treat abused patients.

- AB 1652 (Speier) (Chapter 992, Statutes of 1993) updates and expands the law requiring health professionals to report all domestic violence to police as soon as possible by phone and in writing within 48 hours.

At the time of SOR's report, approximately 35 measures affecting domestic violence laws were pending before the California legislature. Additionally, SOR noted that community efforts to curb domestic violence have increased in the recent years, and medical associations are now educating their physician members to recognize, diagnose, and treat domestic



violence as a health issue. In conclusion, SOR states that the nation's heightened awareness of domestic violence issues due to the O.J. Simpson case may precipitate the passage of more legislation aimed at reducing domestic violence in the future.

**Highlights of the Legislative Accomplishments of 1994** (September 1994) contains a review of significant legislative proposals which were enacted, or at least sent to the Governor, during the 1994 legislative session; the report details legislation in 22 different areas, including the state budget, children's services, civil rights, women's issues, consumer law, crime, defense conversion, domestic violence, economic competition, election and campaign reform, the environment, family law, health, immigration, and insurance.

Among other things, the report discusses the "three strikes" bill, an anticrime measure which requires third-time felons to be sentenced to prison for life if their prior convictions were for serious or violent felonies; a measure which requires a car owner, if previously convicted of driving without a license or with a suspended license, to surrender his/her vehicle permanently to the state if he/she is caught driving without a license again; a measure now on the November 1994 ballot which would expand independent oversight of the judicial discipline process and open judicial disciplinary hearings to the public; legislation which ends the state's 55-year requirement that applicants for marriage licenses obtain health certificates and blood tests for syphilis and rubella; a new law which permits public schools to require students to wear uniforms, with some exceptions; environmental legislation which bans new offshore oil drilling along 840 miles of California's coastline in the state-controlled waters; and a measure which prohibits smoking in enclosed workplaces, with some limited exemptions.

## ■ LEGISLATION

**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 SOR, the Assembly Office of Research, the California Research Bureau, and the Legislative Analyst, or their designated representatives; and required these con-

sulting 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 above-referenced 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 would have directed the Assembly Office of Research, in consultation with SOR 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, as provided. This bill was vetoed by the Governor on September 30.

