



visions of the Filante Tanning Facility Act of 1988; make it unlawful for any and all tanning facilities to operate at a specific location without a license issued by DCA; and permit DCA to deny, suspend, or revoke a license. This two-year bill passed the Assembly on June 18 and is pending in the Senate Business and Professions Committee.

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 consists of approximately 75 analysts and 24 support staff. The 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:

State's Budget Woes Continue. In a December 1991 Policy Brief, LAO presents a perspective on California's short-term and long-term fiscal problems. According to LAO, the state is facing three phases of troubled financial times. First, LAO estimates that revenues in

the current fiscal year are likely to fall short of budget estimates by \$2.5 billion, and spending is likely to exceed estimates by \$850 million. Without corrective action, LAO states that California will end fiscal year 1991-92 with no reserve and a deficit of \$2.2 billion.

Second, LAO estimates that fiscal year 1992-93 will bring another multibillion-dollar gap between revenues and spending, due primarily to the cumulative effect of the recession on the state's revenue base. This estimate also reflects the scheduled expiration of one-time revenue measures that were used to help balance the 1991-92 budget.

Finally, LAO predicts that the state will still face increasing multibillion-dollar budget gaps after 1992-93, due to the basic structural imbalance between the growth of revenues and expenditures.

In order to assist the legislature in developing solutions to the state's fiscal problems, LAO suggests that the following principles guide the legislature in its decisionmaking:

- Make significant reductions in major programs. Because more than 80% of the state's budget is spent on education, Medi-Cal, welfare, and corrections, LAO contends that there is no way to achieve multibillion-dollar savings without affecting these programs.

- Restructure programs. According to LAO, significant changes in the organization, delivery, and financing of government services will be necessary to enable reduced levels of spending to more effectively address basic program objectives in the major program areas.

- Make choices rather than "across-the-board" cuts. LAO notes that by making specific choices, the legislature could provide adequate funding to the programs with the highest priority.

- Use one-time solutions appropriately. Often, one-time solutions can be justified only if used in conjunction with necessary structural changes.

- Avoid short-term savings that increase long-term costs. LAO notes that the budget imbalance is already a long-term one; shifting costs to the future will only make subsequent budget problems worse.

- Examine tax base and coverage in order to determine if it can be made more responsive to economic growth in all sectors of the state's economy.

Regarding strategies for achieving long-term fiscal balance, LAO recommends that the state decide which programs are the most important, restructure and reform programs to operate at optimum efficiency, improve

intergovernmental relationships, and make California's economy more productive by, for example, providing a well-educated workforce, efficient transportation facilities, and adequate water supplies.

A Review of the State Bar Court (December 1991). The attorney discipline system of the State Bar has undergone dramatic structural changes over the past five years; the centerpiece of the legislature's reform efforts in this area was its enactment of SB 1498 (Presley) (Chapter 1159, Statutes of 1988) which, among other things, professionalized the adjudicative decisionmaking function of the State Bar. SB 1498 wiped out the Bar's old system—which used hundreds of volunteer practicing attorneys as "hearing referees" to preside over evidentiary discipline hearings of their colleagues and competitors, and then subjected all hearing referee decisions to review by an eighteen-member Review Department, again dominated by practicing attorneys (twelve attorney members and six public members). Instead, SB 1498 created a six-judge Hearing Department and a three-judge Review Department. All nine judges are full-time professional judges appointed by the California Supreme Court; one of the Review Department judges is a non-lawyer. (See CRLR Vol. 8, No. 4 (Fall 1988) pp. 123-24 for background information on SB 1498.)

SB 1498 also directed LAO to review the workload of the State Bar Court, based upon quarterly statistical reports submitted by the State Bar. LAO first described the attorney discipline system of the State Bar, and then focused on three areas of the State Bar Court's operation—workload, productivity, and cost-effectiveness. LAO concluded that the State Bar Court has generally done an effective job of managing and processing its workload following the transition to the new attorney discipline system created by SB 1498, and made the following specific findings and recommendations.

Regarding workload, LAO noted that the number of cases filed with the State Bar Court by the Bar's prosecutorial office has steadily increased over the past four years, culminating in a record high of 368 cases filed during the third quarter of 1991. This dramatic increase is due to the efforts of the Bar's investigative and prosecutorial offices to decrease a long-standing backlog of consumer complaints, and to a longer-term trend of increases in the number of disciplinary complaints lodged by consumers against California attorneys. LAO



also noted that the total number of dispositions in discipline and related matters increased significantly with the advent of the revised State Bar Court system in 1989: "[T]he total number of attorneys removed from the system (either through disbarment or through resignation with disciplinary charges pending) in [1989 and 1990] was substantially higher than in prior years."

LAO then examined the workload and productivity of specific staff categories, including the following:

-The Review Department. Here, LAO noted that the three-judge Review Department appears to be able to handle its workload comfortably; in fact, "if the general trend (of decreasing numbers of matters pending) were to continue, there could soon be insufficient workload to fully occupy three full-time judges." LAO suggests that the number of staff attorneys assigned to the Review Department be reduced.

-The Hearing Department. A steadily increasing number of filed disciplinary cases has resulted in "a growing backlog in the number of matters pending before the Hearing Department." Since the second quarter of 1990, the six-judge Hearing Department has been supplemented with 12 or 13 *pro tempore* judges to assist it in handling its large caseload. LAO found that the use of *pro tem* judges is not as cost-effective as using full-time hearing judges. This and other considerations prompted LAO to suggest that the Bar consider adding an additional full-time judge to the Hearing Department instead of using *pro tem* judges. The new judge position could be funded either by eliminating one of the eight attorney positions serving the hearing judges, or one of the four attorney positions serving the review judges.

A Perspective on the Drought in California. On November 21, LAO released an issue paper addressing California's water system, the impact of the current five-year drought, water needs in the future, and legislative options for coping with water supply limitations.

In a "normal" water year, approximately three-quarters of the developed water in California comes from surface water supplies; groundwater accounts for most of the remaining supplies. Agriculture uses about 80% of the state's developed water. In part due to increases in groundwater pumping, the negative effect of the drought on agriculture has been limited thus far. However, due to the lack of good information on the size and geology of many of the state's groundwater basins and the extent of

groundwater pumping by basin, LAO notes that it is difficult to evaluate the long-term effect of the drought on the groundwater basins. The drought has already had negative effects on the environment, particularly on fish, sensitive ecological areas, and endangered species.

In its issue paper, LAO concluded that the state faces both near-term and long-term water supply problems; identified a variety of water supply, conservation, and market options the legislature might consider in debating water policy; and specifically recommended that the legislature consider implementing a coordinated mix of these options due to the interrelationships among them. For example, LAO stated that construction of supply alternatives should be linked to water market reform to assure efficient use of existing and newly-developed water; market reforms should consider the interests of "third parties"—those who are not directly involved in the transaction but who feel its impact, such as other water users and the environment; and either market reforms or construction of new supply facilities should be accompanied by effective management of groundwater resources.

LEGISLATION:

Preprint AB 5 (Isenberg), as proposed October 24, would establish a twelve-member Commission on California Fiscal Affairs, with four members each to be chosen by the Governor, the Speaker of the Assembly, and the Senate Rules Committee. The Commission would be authorized to select the Legislative Analyst and be responsible for reviewing and making recommendations on the state budget, analyzing fiscal bills, analyzing initiatives and ballot measures, conducting program performance reviews, and conducting other policy and fiscal studies relevant to the well-being of the state. This measure would expressly establish LAO in state government and provide that the Legislative Analyst is a civil executive officer. The measure would create the Legislative Analyst Fund in the State Treasury and provide that it is continuously appropriated for the expenses of LAO. In effect, this measure would create an independent Office of the Legislative Analyst, thus removing it from the budget cuts mandated by Proposition 140. (See *infra* LITIGATION; see also CRLR Vol. 11, No. 4 (Fall 1991) pp. 53-54 for background information on Proposition 140 cuts.)

AB 34 (Wyman), as amended June 19, would require LAO to prepare a

condensed version or digest of each impartial analysis which the Office is required to prepare for each measure appearing in the official ballot pamphlet. This bill is pending in the Senate Elections Committee on Elections and Reapportionment.

AB 1303 (Lempert) would require LAO to perform, or cause to be performed, a study regarding both the extent to which the state's public elementary and secondary schools would benefit from the temporary service of employees of California businesses who have expertise in mathematics, science, or other subject areas as teachers in those subject areas, and the nature and amount of tax benefit that would be appropriated for use as an incentive to California businesses to grant a paid leave of absence or sabbatical to qualified employees to permit them to provide that temporary teaching service. This bill is pending in the Assembly Education Committee.

SB 1179 (Alquist) would amend existing law which authorizes the Joint Legislative Budget Committee to appoint a Legislative Analyst, and formally establish the Office of the Legislative Analyst in state government. This bill is pending in the Senate Rules Committee.

SB 986 (Alquist), as amended April 18, would delete obsolete provisions and revise others relating to the duties of the Legislative Analyst, and transfer various annual report duties of the Legislative Analyst to specified state agencies. This bill is pending in the Assembly Rules Committee.

AB 1258 (Polanco), as amended April 24, would require the Legislative Analyst to study the efficiency of the state's permitting process as it relates to various environmental protection laws and permit requirements on industrial facilities. This bill is pending in the Assembly Natural Resources Committee.

LITIGATION:

On October 10, the California Supreme Court upheld the constitutionality of Proposition 140, the term limits initiative approved by voters in November 1990. In *Legislature v. Eu*, No. S019660, the court rejected arguments that the initiative improperly infringes on the voters' right to their choice of candidates or the candidates' right to run for public office. Although the court struck down a provision of Proposition 140 that abolished the legislature's pension system, it upheld the initiative's mandated 38% cut in the legislature's operating budget. Legislative leaders,



including Assembly Speaker Willie Brown, had threatened to eliminate LAO and the Office of the Auditor General if the budget cuts were upheld. Following the court's decision, however, Speaker Brown stated that the legislature will probably find a way to make the cuts without eliminating those offices. For example, the legislature may place LAO in an independent commission, possibly requiring funding from the executive branch. (See *supra* LEGISLATION; see also CRLR Vol. 11, No. 4 (Fall 1991) pp. 53-54 and Vol. 11, No. 3 (Summer 1991) pp. 49-50 for background information.)

In *Claypool v. Wilson*, No. C011580, the Public Employees Coalition is petitioning the Third District Court of Appeal in Sacramento for a stay of legislation—AB 702 (Frizzelle)—that uses \$1.6 billion in Public Employees' Retirement System (PERS) pension reserves to help balance the state budget. Several groups throughout the country have submitted *amicus* briefs in support of the employee coalition, including the Los Angeles County Employees' Retirement Association, the San Jose Police and Fire Department Retirement Plan, the Teacher Retirement System of Texas, the Colorado Public Employees Retirement Association, the New Hampshire Retirement System, the Utah State Retirement Office, the National Conference on Public Employee Retirement Systems, the National Council on Teacher Retirement, and the American Association of Retired Persons. At this writing, no hearing date had been scheduled.

In *Tirapelle v. Davis*, No. 368222, the suit filed by Department of Personnel Administration (DPA) director David Tirapelle against state Controller Gray Davis, Sacramento County Superior Court Judge James Ford upheld a 5% wage cut ordered by Governor Wilson for 28,500 state officials, legislators, managers, and supervisors on November 15. (See CRLR Vol. 11, No. 4 (Fall 1991) p. 54 for background information.) Ford rejected labor union lawyers' arguments that DPA had not complied with a law that requires the state to consider prevailing wages paid in comparable private sector and government jobs before changing the pay of employees. Instead, Ford found that Tirapelle complied with the law by reviewing a 1987 study of government salaries and inspecting turnover rates of state employees. The California State Employees Association is expected to appeal Judge Ford's ruling to the Third District Court of Appeal on the basis that the legislature authorized DPA only

to adjust salary ranges and not individual pay rates within those ranges, and that the Department failed to consider the prevailing wages of outside state jobs, as required by statute, when lowering those ranges.

In *Tirapelle v. Davis*, No. 367558, Tirapelle filed suit against Davis after Davis refused to withhold larger amounts of employees' salaries for health care coverage. The Controller, charged with cutting state pay checks, determined that DPA was not legally authorized to impose the increase in health care costs. Davis then ordered refunds for 90,000 employees who had the improper increase deducted from their July paychecks. Sacramento County Superior Court Judge James Ford dismissed the lawsuit; Tirapelle has appealed to the Third District Court of Appeal.

On November 27 in *Greene v. Department of Personnel Administration*, No. 368557, Sacramento County Superior Court Judge James Ford ruled that the Governor and DPA lack the authority to cut the salaries and health benefits of 150,000 unionized state employees, even if contract talks have stalled. The court ruled that only the legislature has the authority to change the salaries of such state workers under Government Code section 19825(b). However, Ford denied the plaintiffs' request for attorneys' fees, stating that the benefit of the ruling to the plaintiffs far exceeded that to the general public.

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:

An Analysis of the California Department of Corrections' Planning Process: Strategies to Reduce the Cost of Incarcerating State Prisoners (September 1991) addresses the significant problem of overcrowding in California's prisons and suggests strategies for cost-effective management of prison operations.

The report provides a historical review of the penological philosophy behind the California prison system and a descriptive analysis of the state inmate population. AOR notes that, in little more than a decade, California's prison population has more than quadrupled. As of June 1991, the California Department of Corrections' (DOC) institutionalized population reached 101,658 inmates housed in cells and dormitories that, according to DOC, are meant to hold 54,042 inmates.

Ten years ago, to accommodate the flood of inmates, DOC promulgated the largest prison building program in the history of the world. At the same time, DOC developed a revised classification system designed to ensure that convicts are housed in facilities which reflect the level of security needed to incarcerate them safely.

The report notes that one of the most unique shifts in DOC's prison profile over the last decade is the phenomenon of increasingly longer-term commitments for some types of inmates, coupled with a surge in the number of inmates with short-term commitments. According to AOR, this phenomenon is due largely to legislation which has lengthened and enhanced sentences for many crimes, especially drug-related offenses. Also, the number of undocumented criminal aliens has risen substantially in the last decade, compounding the short-term inmate problem. Prison officials estimate that undocumented criminal aliens may comprise as much as 20% (approximately 20,000 prisoners) of California's inmate population. The unmanageable number of short-term offenders has made it difficult for DOC to provide services and rehabilitative programming for significant segments of inmates. Reintegration of these inmates into the general population has also been resoundingly ineffective.

The report also addresses issues involved in the management of California's prison population, such as DOC's inmate classification system. The report describes DOC's current classification system and its difficulties in managing that system. The goal of the classification system is to place inmates