



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



within the proper prison security levels. Inmates are classified on a points-based system involving the evaluation of 38 factors, including criminal history, length of sentence, behavior during prior terms, and escape history. However, the report notes that apart from this points-based classification system, DOC utilizes administrative determinants that may override an inmate's points-based score. Many of these administrative determinants, including such factors as sex problems, time to serve, escape risk, and known enemies are already encompassed in the points-based system. According to AOR, these subjective determinants often result in the placement of inmates into higher security settings than warranted.

Also, the report addresses the manner in which prison programs are delivered to inmates. According to the report, DOC acknowledges that substance abuse treatment, education, job training, and work programs have suffered as a result of the need to devote funding to the housing of the rapidly growing prison population. For example, nearly 80% of inmates have a substance abuse history, but only 3% of inmates in the California prison system receive intensive drug treatment. According to the report, inmates must wait as long as two years to get access to any kind of educational or work program.

Finally, AOR makes five policy recommendations which would enable DOC to manage its current and future inmate populations more successfully and, according to the report, enable DOC to save \$1.5 billion in capital construction costs and \$21.7 million in annual operating costs by 1996. AOR recommends that the legislature:

- amend DOC's building program to reflect prison inmate population more accurately by mandating that DOC house inmates in facilities commensurate with their security classification level; making double-celling a DOC policy; adopt a Community Corrections Act which would provide a wide range of punishment options at the state and local levels; and create a sentencing reform commission to study the implementation of sentencing guidelines which incorporate the expansion of state and local intermediate punishment options;

- append cost appropriations to legislation that adds to the prison population;

- amend the Penal Code, which now defines the purpose of imprisonment as punishment alone, to add that commitment should provide convicts a path for successful community re-entry via work experience, educational, voca-

tional training, and substance abuse programs;

- develop formal statewide parole revocation criteria to be used by all parole agents when determining who should be continued on parole and who should be referred to the Board of Prison Terms for review; and

- request that the California congressional delegation introduce legislation to require the U.S. Immigration and Naturalization Service and the Federal Bureau of Prisons either to provide for the transfer of aliens to appropriate federal facilities, or to pay for the cost in California of incarcerating undocumented criminal aliens who have deportation orders.

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:

Reducing Automobile Pollution (September 1991) focuses on the California Smog Check Program for automobiles, identifying problems with the Program and making recommendations for improvement.

The report includes a brief overview of the current Smog Check Program. Federal law requires states to implement inspection and maintenance (I/M) programs in urban areas that fail to meet federal clean air standards. In response to this federal mandate, California's Smog Check Program was established in 1982 by SB 33 (Presley) (Chapter 892, Statutes of 1982). In 1984, the Program began operation through the Department of Consumer Affairs' Bureau of Automotive Repair (BAR), and calls for mandatory biennial smog inspections prior to vehicle registration. Vehicles which fail the smog test are subject to mandatory maintenance repairs up to a specified repair cost ceiling. The current ceiling ranges from \$50 to \$300, depending on the age of the vehicle.

Although California has the toughest emission standards in the country and the Smog Check Program appears to be cost-effective, the report states that the Program needs overhauling. California's air is the most polluted in the nation; 90% of Californians live in areas that violate state and federal air quality standards. Automobiles are the single largest contributor to the state's polluted air, with a small minority of cars of all ages producing the majority of auto emissions. According to SOR, random roadside checks performed in 1989 by the Air Resources Board (ARB) and the California Highway Patrol revealed that the cleanest 50% of the cars on the road produce only 3% of the tailpipe carbon monoxide emissions from cars. However, 7% produced 50% of the tailpipe carbon monoxide emissions; the report notes that both old and new cars were found to be among the worst polluters.

SOR offered the following recommendations to improve the Program:

- The legislature should authorize ARB and BAR to inspect vehicles more frequently than biennially and authorize the use of random roadside inspections and remote emissions sensing when it is more cost-effective to do so.

- The legislature should require ARB to evaluate the cost-effectiveness of remote emissions sensing to augment the Smog Check Program.

- The legislature should require ARB, BAR, and the I/M Review Committee to report to the legislature on options for creating a Smog Check Inspection and Repair Fund to help defray the costs of smog check tests and required repairs for economically needy vehicle owners.

- The legislature should require ARB, BAR, and the I/M Review Committee to research and present options for adjusting the current repair cost ceilings.

- The legislature should establish fines for owners of vehicles that have missing, modified, or disconnected emission control components. Further, BAR and ARB should explore ways to differentiate vehicle owner tampering from normal wear and tear of emission control components.

The report also recommends alternative pollution-reducing measures to supplement the Smog Check Program. First, SOR recommends that auto manufacturers be required to produce cars that emit lower levels of pollution. SOR notes that ARB regulations require automobile fuel refiners, blenders, and importers to distribute enough alternative fuels to fuel vehicles not dedicated to gasoline.