



SB 1036 (Killea and Rosenthal), as amended July 10, would establish state policy on the use and operation of "900/976" telephone numbers by state agencies. [A. U&C]

AB 126 (Moore), as amended July 10, would enact the "One-Day Cancellation Law," which would provide a car buyer with the right to rescind a contract until the close of business on the first business day after the day of the sale. [S. Jud]

AB 1555 (Filante) would, among other things, require DCA to administer and enforce the provisions 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. [S. B&P]

AB 735 (Areias) would have included provisions prescribing the maximum lawful finance charge which may be imposed on any retail installment account with respect to amounts charged to the account on or after January 1, 1992. This bill died in committee.

AB 168 (Eastin) would have created the Board of Legal Technicians in DCA and required every person who practices as a legal technician to be licensed or registered by the Board. This bill died in 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:

Analysis of the 1992-93 Budget Bill. In February, LAO released its detailed examination of the Governor's proposed 1992-93 budget; the analysis includes findings and recommendations on the budget's proposed funding levels. The analysis identifies and assesses the major areas of the Governor's budget, including the following:

-State and Consumer Services. Budget expenditures for State and Consumer Services Agency programs are proposed to increase in the 1992-93 budget year due to increases in audit, compliance, and enforcement programs, as well as additional funding to implement SB 2375 (Presley) (Chapter 1597, Statutes of 1990), which requires the Medical Board of California to improve its disciplinary process. In addition, LAO recommended consolidation of 37 regulatory boards, bureaus, programs, committees, and commissions within Department of Consumer Affairs (DCA) into the Department itself. According to LAO, the elimination of these regulatory agencies as separate entities and consolidation of their licensing, administrative, and regulatory programs within DCA would improve the effectiveness and efficiency of the programs and result in better service to consumers at a lower cost. (See *supra* agency report on DCA for related discussion.)

-Health and Social Services. In a two-part analysis, LAO assesses both general health issues and various social services issues, including Aid to Families with Dependent Children (AFDC). Governor Wilson proposes to cut health services expenditures from state funds in 1992-93, primarily due to the proposed elimination of almost \$1 billion for one-time Medi-Cal accrual accounting costs in the current year. LAO contends that the Governor's proposed health budget assumes that the federal government will provide California with \$637.1 million in State Legalization Impact Assistance Grant (SLIAG)

funds; however, it is possible that California will receive only \$180 million in SLIAG funds. LAO also contends that the proposed budget assumes that the state may use \$122.8 million in Proposition 99 (cigarette tax) funds to replace a like amount of general fund expenditures for Medi-Cal in 1991-92 and 1992-93. However, it appears that such use of these funds would require voter approval, as one court has already invalidated the Governor's use of Proposition 99 funds for Medi-Cal (see *supra* report on AMERICAN LUNG ASSOCIATION OF CALIFORNIA).

LAO states that the estimated amount budgeted for social services remains virtually unchanged, as increases to fund projected caseload growth are offset by savings resulting from the Governor's "welfare reform" proposals. Such savings would be achieved primarily through reductions in the maximum aid payments under the AFDC program.

-Higher Education. According to LAO, the proposed funding level for the University of California (UC) and the California State University (CSU) does not provide sufficient support to continue the current level of services and falls short by 12,000 students of fully funding the master plan level of enrollment for the CSU. The 1992-93 budget gap is estimated at \$124 million for the UC and \$219 million for the CSU. Among other things, LAO recommends that UC professors be required to teach six, rather than five, classes per academic year and that a new benchmark be used to set UC faculty salaries. Combined, LAO estimates that the two proposals could save \$64 million per year. LAO also recommends redirecting (on a voluntary basis) 10% of the freshman class at the UC and the CSU to specific local community colleges, which would save an additional \$25 million.

-General Government. LAO recommends that the homeowner property tax exemption, in addition to the renters' credit, be eliminated. LAO notes that the Governor's proposal to wipe out the renters' tax credit program eliminates tax relief benefits for renters while maintaining them for homeowners. Noting that the budget offers no policy justification for continuing to provide property tax relief to homeowners—many of whom receive substantial benefits from Proposition 13, LAO recommends that both programs be eliminated.

Within three months of the release of LAO's analysis, the Governor's proposed budget of \$60.3 billion for the 1992-93 fiscal year was estimated to fall \$9 billion short of anticipated spending needs. In addition, the 1991-92 fiscal year revenue



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was estimated to be \$400-600 million short of what the state needs to pay its bills. These revised figures portend major changes in the Governor's proposals. At this writing, the Governor and the legislature do not appear to be any closer to resolving the budget crisis than they were last year at this time. The major points of disagreement appear to be over which programs to cut and which tax loopholes can be closed with the least amount of protest; the Governor steadfastly refuses to raise taxes. On May 13, however, Wilson and legislative leaders agreed to attempt to meet a June 15 deadline for resolving the budget crisis.

The 1992-93 Budget: Perspective and Issues. This report, a companion to LAO's *Analysis of the 1992-93 Budget Bill* (see *supra*), presents a broad fiscal overview and discusses significant fiscal and policy issues concerning the state's budget. Part One of the February report, "State Fiscal Picture," warns that if no action is taken, the state will end the current year with a general fund deficit of \$2.8 billion, and will enter fiscal year 1992-93 \$6 billion short of the amount needed to pay off that deficit, maintain state services at their current levels, and establish a prudent reserve. LAO believes the Governor's 1992-93 budget relies too heavily on optimistic budget assumptions and represents a risky strategy that virtually assures a 1992-93 deficit.

Part Two, "Perspectives on the Economy," finds that the 1991 economic recession in California was more severe than had been anticipated by the administration, and that the administration expected the California economy to begin its recovery in early 1992. LAO believes there are significant risks to the administration's economic forecast. Generally, most of the risks point to a delay in the recovery, as opposed to further declines in the state's recovery.

Part Three, "Perspectives on State Revenues," provides a review of the revenue projections in the budget and an evaluation of their reliability. According to LAO, the administration's economic assumptions lead to a relatively strong forecast for state revenues. However, LAO's assessment of the budget's revenue forecast is that the legislature should anticipate downward revisions of \$1 billion in each of the current and budget years. LAO also notes that, in the longer run, low levels of interest rates and inflation, and the declines in consumer and business debt, should provide a solid basis for an economic upturn.

Part Four, "Perspectives on State Expenditures," provides a brief review of the

budget's overall spending plan, and discusses recent trends in state spending and issues raised in major expenditure proposals in the 1992-93 budget. LAO notes that the budget proposes an increase of \$1.9 billion, or 3.5%, in state spending in 1992-93 compared with 1991-92 spending. Of the programs with significant portions of total state spending, those with above-average spending growth since 1986-87 are Corrections, Business, Transportation and Housing, and Health and Welfare, while the rate of spending growth for both K-12 and higher education has been less than the overall average; and spending from special funds has been growing more than twice as fast as general fund spending.

Finally, Part Five, "State-County Partnership Issues," describes the realignment of state and local health and welfare programs and trial court funding, and explores the issues related to the successful implementation of each.

California's Child Support Enforcement Program. In January, LAO released a report on the state's child support enforcement program, the primary purpose of which is to collect child support payments for custodial parents; county district attorneys administer the program under the general supervision of the state. Collections made on behalf of persons receiving AFDC offset a portion of the public costs of the AFDC program; in fact, the program provided an estimated \$106 million in savings to the state in 1991-92 through the reductions in AFDC grant expenditures.

LAO found that, because of the manner in which the recoupment program is administered and funded, counties have a fiscal incentive to hold spending down to relatively low levels, even though increased spending on child support collection efforts is likely to be cost-beneficial from a statewide perspective. More specifically, LAO found evidence that marginal increases in spending—particularly in relatively efficient counties—are likely to result in net savings to the state and the counties.

LAO concluded that the child support enforcement program could be improved by changing the existing set of incentives that affect decisionmaking on program funding, and presented two options for the legislature. First, the responsibility for administration and funding of the program would be transferred from the counties to the state. This would permit the greatest degree of state control and facilitate an optimal allocation of resources to maximize net revenues. Second, the state would provide a state-funded incentive payment to augment program funding,

based on each county's efficiency as measured by the ratio of the marginal increase in child support collections to the marginal increase in administrative costs. According to LAO, this option would facilitate the efficient use of limited resources that might be made available for program expansion.

LEGISLATION:

SCA 33 (Boatwright), as amended February 24, would replace LAO with the Office of the California Analyst established in the California Constitution; require the Office to assist the legislature in its fiscal and policy functions; and require the Office to make recommendations to the legislature on the annual state budget, the revenues and expenditures of the state, and the organization and structure of state government, in order to make state government operations more effective and efficient. This measure also requires the Office to conduct its work in a strictly nonpartisan manner. This measure, which would remove LAO from the legislature's budget and thus relieve it of the budget cuts required by Proposition 140 (see *infra* LITIGATION), was enrolled on March 10 (Chapter 7, Resolutions of 1992) and will appear on the November 1992 ballot.

SCA 35 (Lockyer), as amended May 5, would enact the Balanced Budget Act of 1992 and would express legislative findings in that connection. This measure would provide that at the time the budget bill is enacted, the total of all expenditures that are authorized to be made and the total of all reserves that are authorized to be established by the state for any fiscal year shall not exceed the total of all revenues and other resources, including reserves for prior years, as projected by the Commission on State Finance or its successor, to be available to the state for that fiscal year. [A. ER&CA]

SB 1475 (Kopp), as amended May 13, would require that the state ballot pamphlet contain a section near the front of the pamphlet which provides a concise summary of the general meaning and effect of "yes" and "no" votes on each measure; the bill would require that the summary statement be prepared by LAO or, under specified circumstances, the Legislative Counsel. [A. Desk]

AB 2893 (Andal). The Department of Personnel Administration, pursuant to orders from the Governor, reduced the compensation and benefits of state employee managers by 5% effective July 1, 1992, and state employee supervisors by 5% effective October 1, 1992; those managers and supervisors who separated from state service after these dates received a lump-



sum payment for accrued vacation, annual leave, and overtime at the reduced rate. (See *infra* LITIGATION.) As introduced February 19, this bill would appropriate, from the general fund and each special fund and retirement fund from which these state employee managers and supervisors were paid, an amount equivalent to the difference between the lump-sum payment received upon separation and the amount these employees would have received upon separation had they separated from state service and DPA had not reduced by 5% the compensation and benefits of all state employee managers and supervisors pursuant to orders from the Governor. [A. W&M]

SB 458 (Killea), as amended March 11, would create, until February 1, 1995, the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. The measure would require the Commission to submit a report to the Governor and the legislature no later than July 1, 1993, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. [A. Floor]

ACA 53 (Mounjjoy). The California Constitution requires the Governor to submit a budget to the legislature within the first ten days of each calendar year. As introduced March 25, this measure would instead require the Governor to submit a budget to the legislature by March 1 of each calendar year. This measure would also require the Governor and members of the legislature to forfeit all salary, travel, and living expenses if the legislature fails to pass a budget bill by June 15 of each year; the Governor and members of the legislature would not be paid salary and expenses until a budget bill is enacted and would not be paid retroactively for forfeited salary and expenses. [A. Desk]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 36:

AB 2288 (Isenberg), formerly Preprint AB 5, 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. 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). [A. Rules]

AB 34 (Wyman), as amended May 7, would require LAO or the Legislative Counsel 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. [S. E&R]

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. [A. Rules]

SB 1179 (Alquist) would have amended existing law which authorizes the Joint Legislative Budget Committee to appoint a Legislative Analyst, and formally established the Office of the Legislative Analyst in state government. This bill died in committee.

AB 1258 (Polanco), as amended January 29, and **AB 1303 (Lempert)**, as amended January 27, are no longer relevant to LAO.

LITIGATION:

On March 9, the U.S. Supreme Court rejected the final legal challenge to Proposition 140, the term limits initiative approved by voters in November 1990. [12:1 CRLR 36] Without comment, the justices refused to hear the state legislators' challenge to the initiative, which will result in a complete turnover of the legislature within the next six years. Last October, the California Supreme Court voted 6-1 to uphold the term limits set by Proposition 140, opining that California's voters had made it clear that they wanted to throw out of office "an entrenched dynastic legislative bureaucracy." In addition to term limitations, Proposition 140 also mandated a 38% cut in the legislature's budget, which has severely affected funding and staffing for LAO.

In *Claypool v. Wilson*, 4 Cal. App. 4th 646 (Mar. 12, 1992), the Third District Court of Appeal rejected a petition for writ of mandate filed by members of the Public Employees' Retirement System (PERS) and their employee organizations challenging the constitutionality of two parts of AB 702 (Frizzelle) (Chapter 83, Statutes of 1991). One part repeals statutes creating three funded supplemental cost of living (COLA) programs, creates a sub-

stitute supplemental COLA program, and directs that the funds collected under the repealed statutes (approximately \$2 billion) be used to offset contributions otherwise due from PERS employers (including the state), thus lowering the amount the state would have to contribute during the current fiscal crisis. The other part transfers the responsibility for actuarial determinations from the PERS Board to an actuary acting under a contract with the Governor. Petitioners contended that repeal of the COLA programs, reallocation of the funds to offset employer contributions, and the transfer of actuarial functions violated the contracts clause of the California Constitution. [12:1 CRLR 37]

In a controversial decision, the court ruled that repeal of the supplemental accounts does not unconstitutionally impair vested contract rights of retirement plan beneficiaries, since "[t]he principal beneficiaries of the fund, if not reallocated, are former employees who ceased employment prior to the time when an implied statutory promise not to reallocate the fund could have arisen. They earned no vested contract rights under the repealed statutes and must rely, along with present employees, upon a new supplemental COLA program enacted by Chapter 83 as a replacement for the repealed programs. The employees who may have earned vested contract rights by rendering service under the repealed statutes are given comparable advantages under the new supplemental COLA program and for that reason their rights are not unconstitutionally impaired." As to the actuary provision, the court held that the legislation "contains safeguards which insulate the actuary from the control of the Governor and that the transfer of actuarial functions is not facially inconsistent with trust law."

On April 6 in *Department of Personnel Administration v. Superior Court, Cecil Green, et al., Real Parties in Interest*, No. C012461, the Third District Court of Appeal upheld a trial court determination that the California Department of Personnel Administration (DPA) did not have the authority to impose its last, best offer on wages after bargaining to impasse. [12:1 CRLR 37] In November 1991, when negotiations between DPA and unions representing various state employees reached a bargaining impasse, DPA notified two of the unions of its intent to reduce salaries by 5% and reduce the state's contribution to employee health benefits. The appellate court held that Government Code section 19826(b) bars DPA from establishing, adjusting, or recommending "a salary range



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for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative." However, the court held that DPA did have the authority under Government Code section 22825.15 to unilaterally impose, at impasse in negotiations, the rates of state contributions to health care premiums to its last, best offer.

Both *Tirapelle v. Davis*, No. 368222, and *Tirapelle v. Davis*, No. 367558, are pending in the Third District Court of Appeal. In No. 368222, the Sacramento County Superior Court upheld a 5% wage cut ordered by Governor Wilson for 28,500 state officials, legislators, managers, and supervisors. In No. 367558, the superior court upheld state Controller Gray Davis' refusal to comply with Governor Wilson's order to withhold larger amounts of state employees' salaries for health coverage. [12:1 CRLR 37; 11:4 CRLR 54]

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.

On February 1, Sam Yockey took office as new AOR Director. Prior to his appointment, Yockey served as San Francisco City and County controller for three years. In addition, he served for five years as chief consultant to the Assembly Ways and Means Committee. Yockey, who has a bachelor's degree in accounting from CSU Sacramento, replaces Steve Thompson, who left AOR to work for the California Medical Association.

MAJOR PROJECTS:

Survey of Business Closures and Layoffs in California, 1990 (January 1992) examines the results of AOR's sur-

vey of factors affecting business closures and layoffs in California, in light of the "business-flight-from-California" hypothesis. Under this oft-cited theory, California is losing an increasing number of private companies and jobs, especially in manufacturing, purportedly because of the state's hostile business climate. The study, initiated in response to interest by Senate President pro Tempore David Roberti and Assembly Speaker Willie Brown, is based on a survey of companies that filed a Worker Adjustment and Retraining Notification (WARN) during calendar year 1990. In general, employers are required to file a WARN 60 days before closures or mass layoffs if (1) they have 100 or more employees, excluding employees who have worked less than six months in the last twelve months and excluding employees who work an average of less than twenty hours per week; and (2) they schedule a closure of a site (or facilities or operating units) causing employment loss for 50 or more employees, or a mass layoff of 500 or more employees or 33% of the active work force.

According to the report, 362 business establishments in California filed a WARN with the Employment Development Department during calendar year 1990. Of the 281 companies contacted by AOR, 99 companies responded to the survey. The AOR survey sent to these businesses listed 27 possible factors that might have affected the business decision to close or lay off; AOR asked the companies to rank each item's importance as it related to their situations. The study categorizes these factors into six major groups: national and regional economy, available infrastructure, labor quality, market and supply access, cost of doing business in California, and government regulation. The study revealed that, of the six factor groups, high business costs, the slow economy, and government regulation were the three most frequently reported reasons for business closures or layoffs. Labor quality, access to markets and/or supplies, and available infrastructure were found to be relatively unimportant to the businesses surveyed.

The study also noted that, with some factor groups, a significant difference existed between the responses of manufacturers and non-manufacturers. For example, manufacturers placed considerably more importance on high business costs, the slow economy, and government regulation than the other factor groups; manufacturers' concerns over high business costs exceeded all other factor groups with 40% more relative importance. In

contrast, for non-manufacturers, the differences in the relative importance among the factor groups were much smaller, although they ranked high business costs as being 20% more important than the other factor groups. Overall, the report stated that about two-thirds of the 99 responding companies (68.7%) claimed that the high cost of doing business in California is an important or very important factor in decisions to curtail operations. Significantly more manufacturers (79.3%) than non-manufacturers (53.7%) indicated that high costs were a problem. According to the survey, manufacturers were concerned about costs across the board (energy costs, taxes, land and housing prices, and labor costs), while non-manufacturers were primarily concerned about land and housing prices. Of the companies which ranked high business costs as being an important factor, 19.1% claimed that workers' compensation rates in California are too high.

Also, the report noted that half of the responding companies (49.5%) considered government regulation to be an important or very important factor influencing business cutbacks; according to those companies, regulatory requirements are too complex, too costly to meet, or inconsistent and conflicting. A fairly high percentage (40.8%) of the companies which found regulation to be excessive were critical of agencies responsible for environmental regulation, such as air quality management districts.

Finally, the report compared AOR's survey results with several other studies addressing the business-flight-from-California hypothesis and concluded that the survey by itself does not directly prove or disprove the hypothesis. However, the report noted that, despite the image of a negative business climate and some exodus, California has been successful in attracting new businesses and achieving a net gain over recent years.

Streamlining the Permitting Process for Business Development and Regulatory Compliance (February 1992). In the AOR survey described above, one of the most frequently-cited reasons for business closures and layoffs in California is complicated and costly environmental permitting processes and compliance requirements. This report focuses on improving permitting and regulatory compliance processes rather than changing environmental quality standards.

According to the report, the legislature has made repeated attempts to streamline the permitting process. For example, in 1983 the legislature created the Office of Permit Assistance (OPA) in the Office of