



Planning and Research to fulfill OPR's responsibilities under the Permit Streamlining Act of 1977, Government Code section 65920 *et seq.* Under the 1983 law, OPA was to develop guidelines and provide grants-in-aid to assist local governments in establishing and operating an expedited permit process; provide information to developers about the permit approval process at the state and local levels; and ensure state agency compliance with all statutory permit streamlining requirements.

However, AOR states that the overall performance of OPA has been "dismal." Guidelines to expedite local permitting processes have never been prepared; no grants to local governments have ever been provided; no master permit document has been developed; OPA does not track permit applications and has not identified alternative mechanisms that will provide the least costly approaches to permitting at either the state or local level; and, without the ability to track permit applications, OPA is unable to ensure state agency compliance with permit streamlining requirements. Although noting that the 1983 law creating OPA is not strong enough, AOR also criticizes OPA itself for failing to take advantage of its limited authority. In response to its findings, AOR recommends that the legislature transfer the responsibility, funding, and positions for permit assistance from OPA to the Department of Commerce (DOC), where staff in the Offices of Small Business and Business Development already perform such assistance functions. AOR also suggests that DOC's existing Small Business Development Centers be expanded to provide assistance in complying with environmental regulations and a "one-stop permit" shop for business.

Next, AOR notes that the state should make a number of permit reforms in order to maximize the potential effectiveness of the organizational reforms discussed above. As an illustration, AOR refers to permit reform programs instituted by the South Coast Air Quality Management District (SCAQMD), which include new standardized application forms and the computerized processing of applications. Among other things, AOR recommends that the state extend the permit reforms adopted by SCAQMD to every metropolitan air pollution control district in California.

AOR also notes that efforts to streamline the permitting process within a more efficient organizational structure should not be separated from subsequent inspection and enforcement functions of regulatory agencies. AOR refers to a set of

regulatory compliance reforms adopted by SCAQMD to ease the burden on businesses within its jurisdiction; those reforms involve a shift from rigid regulatory requirements to more flexible, market-based approaches and from inspection and penalties to compliance assessment and consultation. AOR notes that such reforms result in a new focus on business assistance, and help to diminish business perceptions that the regulatory community in California has an anti-business attitude.

Finally, AOR states that in order to comply with environmental regulations, many businesses require financial assistance. The California Pollution Control Financial Authority uses money from the sale of tax-exempt revenue bonds to finance the acquisition, construction, or installation of pollution control facilities, including equipment, required by environmental regulatory agencies. In addition, the Authority indicates that some type of grant program may be necessary to aid businesses that cannot secure financing elsewhere, based on traditional lending criteria. Among other things, AOR recommends that the Authority report to the legislature by January 1, 1993 on the options for leveraging funds under its control for small businesses and the need for a grant program for small businesses that are not "creditworthy" according to Department of Commerce lending standards.

*Two New Californias: An Equal Division, Historical and Financial Analysis* (April 1992) addresses issues relevant to the possible division of California into two states. The report discusses the process of dividing a state; other states that have been divided; past efforts to divide California; reasons for dividing the state; the geographic distribution of the state's income and expenditures; and the impact of alternative boundary lines on the budget of each new state.

The report explains that Article IV, section 3 of the U.S. Constitution allows a state to be divided into two or more states if consent is given by both the state legislature and Congress. AOR also notes that Congress has approved the creation of four new states which were previously part of a "mother" state: Vermont was split out of New York in 1791; Kentucky was split out of Virginia in 1776; Maine was split out of Massachusetts in 1820; and West Virginia was split out of Virginia in 1863.

The report also describes recurring attempts in the California legislature to divide the state. For example, in 1859, Assemblymember Andres Pico of Los An-

geles introduced AB 223, which proposed a division of the state. The bill, which was approved by a vote of 34-25 in the Assembly and 15-12 in the Senate, directed the Governor to call an election in southern California; if the split was approved by at least two-thirds of those voters, the bill specified that the legislature's consent to divide the state would be operative. After the southern California voters approved the split by a "yes" vote of 75%, a bill was introduced in the U.S. House of Representatives to divide the state. However, there was no further action on the bill due to the start of the Civil War. AOR notes that—technically—the Pico request of 1859 is still pending before Congress.

According to the report, the strongest argument in 1992 for dividing the state is that California has become too large and too complex to be managed efficiently as a single unit. The report notes that advantages of dividing the state are that California's representation in the U.S. Senate would be doubled and state legislators would represent fewer people and have a more reasonable working relationship with their constituents.

Next, the report discusses whether the income of each new state would be sufficient to support the services required by the people living in that state. Specifically, AOR evaluated whether one state would be better off economically than the other. The report concludes that there are ways to divide the state which would result in both states having adequate general fund revenues to pay current general fund expenses; in other words, there are dividing lines which would not create one poor state and one rich state. For example, the report suggested that a state consisting of California's current eight southern counties (which have 59% of the population) would have substantially similar per capita characteristics as a state consisting of the fifty northern counties (which have 41% of the population).

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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.

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## MAJOR PROJECTS:

*The Challenge of Diversity: Shaping Human Relations in California* (January 1992) focuses on ways to end hate crimes, housing discrimination, and workplace disparities while improving racial and ethnic accord in California.

The report begins with a discussion of hate crimes, defined as acts of intimidation, harassment, physical force, or threat of physical force directed against any person or property, motivated either in whole or in part by hostility toward race, ethnic background, national origin, gender, religion, sexual orientation, disability, or age, with the intent to cause fear or intimidation or to interfere with the free exercise or enjoyment of any rights or privileges secured by the Constitution or the laws of the United States or the State of California, whether or not performed under color of law. The report provides extensive statistics revealing the growing diversity in California's population and an increasing number of hate crimes, and notes that no system for accurately monitoring such crimes has been developed.

Recognizing the need to combat the increase in hate crimes, the report recommends that the state implement a number of measures, including the following:

- develop and fund a statewide data collection system to assess the nature, extent, and frequency of hate crime activity;
- develop ways of educating California's youth through the media, law enforcement, and schools on the importance of tolerance and appreciation of the state's diversity;
- develop legislative and administrative initiatives for state and local action to respond to the rise in hate crimes;
- encourage the media and entertainment industry, perhaps through an awards program, to promote an examination of prejudice and inter-group relations;
- establish a clearinghouse of resources for use by hate crime victims and civic groups, including legal information, news clippings, educational training materials, and public service referral numbers;
- assist community organizations in averting hate crime violence through the development of community-based prevention and education activities;
- encourage law enforcement agencies to monitor and coordinate hate crime violence; and
- develop the public's awareness of the California laws designed to protect citizens and victims from hate crimes,

such as the Ralph Civil Rights Act, Civil Code section 51.7, and the Bane Civil Rights Act, Civil Code section 52.1 and Penal Code sections 422.6-422.9.

Next, the report discusses issues related to discrimination in the housing market, noting that such discrimination is as prevalent now as it was twenty years ago. The report describes racial discrimination in areas such as home buying and rental housing, reverse racial discrimination, and discrimination based on gender, age, and sexual orientation. For example, the report cites an October 1991 study by the Federal Reserve Board on the incidence of racial discrimination in home mortgage lending practices. The researchers provided lenders with several mortgage applications with identical income information, but stating a different race or ethnic group for each applicant. The study revealed that race does indeed make a difference in the approval of mortgage applications: The rejection rate varied from 17.2% for Asian-Americans and 23.1% for whites to 31.1% for Hispanics and 40.1% for African-Americans. Citing an August 1991 Urban Institute study, SOR also noted that 56% of blacks and 50% of Hispanics were discriminated against in some way when answering ads for rental housing.

The report notes that the federal Fair Housing Amendments Act of 1988 (FHAA), amending Title VIII of the federal Civil Rights Act of 1968, is the primary federal prohibition against housing discrimination. The California counterparts to the federal law are the Fair Employment and Housing Act (FEHA) and the Unruh Civil Rights Act. Under FHAA, California must meet a 1992 deadline requiring state law to achieve "substantial equivalence" with FHAA, or risk losing federal funds up to \$300,000 annually. The major differences noted between state and federal law are that state law permits age discrimination in mobile home parks; state law fails to include alcoholism and drug addiction in its definition of disability; federal law expands the statute of limitations for filing a claim, and reduces the time enforcement agencies have to process complaints; and FEHA limits punitive damages obtained through administrative processes to \$1,000, whereas there is no limit in the federal law.

In order to alleviate housing discrimination, SOR recommends that:

- the state Department of Fair Employment and Housing (DFEH) should compile a report on trends in housing discrimination, case processing efficiency, and enforcement results;
- DFEH should increase the visibility

of gender discrimination and discrimination against children in the development of its annual action goals;

-DFEH should increase its education efforts aimed at preventing housing discrimination by alerting all housing users about discrimination laws and increasing funding directed toward these efforts;

-FEHC should publish its mandated annual report documenting its activities and accomplishments; and

-the legislature should enact legislation conforming state law to federal law.

Finally, the SOR report discusses workplace disparity, noting that African-Americans and Hispanics tend to be concentrated in lower-paying jobs while Asians are the only group that were measured above parity in every salary category in California's civil service system. The report cites U.S. Census Bureau data reflecting the national median household income at \$29,943; however, the median household income is \$38,450 for Asians, \$31,231 for whites, \$22,330 for Hispanics, and \$18,676 for African-Americans.

The report notes that the Office of Compliance Programs (OCP) within DFEH is responsible for overseeing the minority hiring practices and nondiscrimination programs of approximately 9,500 employers who contract with the state. SOR is critical of OCP's ability to have a significant impact because, as a practical matter, OCP is able to review only about 100 employers annually.

In response to its findings regarding workplace disparity, SOR makes a number of suggestions such as making the hiring data compiled by OCP available to the public in understandable terms and subjecting fraudulent reporting to fines.

**Money and Power: A Look at Proposed Budgeting Changes in the Taxpayer Protection Act of 1992** (March 1992) analyzes Governor Wilson's proposed ballot initiative known as the "Governmental Accountability and Taxpayer Protection Act of 1992." In addition to reducing benefits for welfare recipients, the Act would also make a number of changes to the state budget process, most of which increase the Governor's ability to take unilateral actions during budget crises. SOR's report focuses on the Act's proposed state budgeting changes, and seeks to encourage informed public debate regarding these serious separation-of-powers issues.

Specifically, the Act would make the following budget process reforms:

- require the Governor to submit his/her budget to the legislature by March 1—instead of January 10—each year;



- suspend the salaries, travel, and living expenses of legislators and the Governor if the legislature fails to return a budget bill to the Governor by the constitutional deadline of June 15;

- allow the Governor to declare a fiscal emergency and reinstate the prior year's budget with some increases, when a new budget has not been signed by the start of the fiscal year on July 1. Further, the Governor could make budget-balancing cuts that take effect in thirty days, unless a new budget is signed;

- allow the Governor to declare a fiscal emergency if revenues, costs, or both are off by at least 3% after the beginning of the new fiscal year. The Governor could make budget-balancing cuts, effective in thirty days, unless the legislature passes an alternate plan by two-thirds vote which is signed by the Governor; and

- allow the Governor, in a fiscal emergency, to issue an executive order to furlough or cut the salaries of state employees who are not covered by union-negotiated contracts up to 5% of their pay.

According to SOR, Governor Wilson claims that "these budget reforms will help ensure enactment of a timely and balanced budget, and will provide substantial taxpayer protection against 'autopilot' spending increases."

SOR notes that California's budgeting system is a chronic problem, hampered by competing interests and a state constitutional requirement that two-thirds of the members of each legislative house approve the budget bill that goes to the Governor; California is one of only three states that requires substantially more than a simple majority to pass a budget. Consequently, a minority of the legislature may hold up passage of a budget. According to SOR, only five of the last twenty budgets enacted in California have met the June 15 deadline. In response to this problem, Senator Bill Lockyer is sponsoring SCA 6, which would permit a simple majority of the legislature to pass a budget bill; SCA 6 has passed the Senate and is pending in the Assembly. SOR notes that—although a simple-majority vote would likely expedite passage of the budget—Governor Wilson's initiative proposes no such change.

The report next analyzes the proposed Act in light of the "single subject rule" in Article II, section 8d of the California Constitution. SOR states that the Act may violate the single subject rule and make it vulnerable to legal attack, since the Act seeks to significantly revise the budgeting process and make statutory revisions to the Welfare and Institutions Code to reduce welfare benefits. According to

SOR, the dissimilarity between the two themes may violate the single subject rule. A single subject challenge is pending in the Third District Court of Appeal at this writing (*see supra* report on CALIFORNIA COMMON CAUSE).

Regarding the Act's proposal to revise the date by which the Governor must submit a budget to the legislature, SOR notes that such a change would reduce the time, from 21 to 15 weeks, for the legislature to consider the proposed budget; such a limited review time may result in the passage of many aspects of the budget without adequate review. Additionally, the time for public hearings held by both houses' fiscal subcommittees would be cut in half, from twelve weeks to six weeks.

Next, the report focuses on a provision in the initiative which states that if the Governor's spending proposals exceed revenues, the Governor must recommend "sources from which the additional revenues shall be provided"; existing language, however, requires the Governor to recommend "sources from which the additional revenues should be provided." According to Jeffrey Chapman, director of the Sacramento Center at the University of Southern California's School of Public Administration, such a change gives the Governor the power to decide where additional revenue sources come from, rather than allowing the legislature to substitute an alternative revenue source, if appropriate. Despite the obvious ramifications of the revision, George Gorton, the Act's campaign strategist, stated that the change was made only for stylistic purposes and would have no impact on the budget process.

SOR next analyzes the Act's provision stating that if a budget is not signed by July 1, the Governor could declare a state of fiscal emergency and return to the prior year's budget, with specified adjustments. Once the prior year's budget is in effect, the Governor could continue spending on favored projects while cutting in non-constitutionally protected budget areas to balance the budget. This virtually unbridled gubernatorial power would be out of the reach of the legislature until a new budget bill is passed and signed. Further, the Governor could veto subsequent budget bills passed by the legislature and perpetuate the prior year's budget.

Regarding the initiative's budget reform provisions, SOR notes that all sides agree that the Act would substantially shift power over the budgeting process from the legislature to the Governor; one commenter characterized Wilson's initiative as a "real power grab." According to

SOR, most experts contacted expressed reservations about the wisdom of shifting such budgeting power to the Governor. Of concern to many of the experts is the initiative's provision which allows the Governor to declare a fiscal emergency after the budget is enacted if any of the following conditions occur at the end of the first, second, or third quarters of the fiscal year:

- general fund revenues fall at least 3% below revenues estimated by the Governor's Department of Finance (DOF) when the budget was enacted;

- general fund spending exceeds budgeted amounts by at least 3%; or

- revenues fall at least 1.5% below estimates and spending exceeds budgeted amounts by at least 1.5%.

The Commission on State Finance calculates that actual revenue collections fell short of DOF forecasts by more than 3% in both 1990-91 and 1989-90; according to SOR, 1991-92 receipts may fall 7.4% short of DOF's forecast. These shortfalls suggest that the fiscal emergency conditions as stated in the Act would have been met within the first two quarters of both the 1990-91 and 1991-92 fiscal years.

SOR concludes that the Act would allow the Governor to unilaterally implement his/her own budget agenda and use his/her veto power to avert all legislative attempts to take back control of the state budget.

