

HOLLY J. MITCHELL  
CHAIR

SENATE MEMBERS  
PATRICIA C. BATES  
WILLIAM W. MONNING  
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ANTHONY J. PORTANTINO  
NANCY SKINNER  
JEFF STONE

# California Legislature

## JOINT LEGISLATIVE BUDGET COMMITTEE

GABRIEL PETEK  
LEGISLATIVE ANALYST

PHILIP Y. TING  
VICE CHAIR

ASSEMBLY MEMBERS  
JOAQUIN ARAMBULA  
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MELISSA A. MELENDEZ  
JAY OBERNOLTE  
LUZ RIVAS  
SHIRLEY N. WEBER

### Agenda

Monday, March 18, 2019

10:30 a.m. - State Capitol, Room 4203

JLBC Staff: Jennifer Troia

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### *Organizational Hearing & Oversight of the Legislative Analyst's Office*

- I. Adoption of Committee Rules
- II. Election of the Chair and Vice Chair
- III. Overview of the Joint Legislative Budget Committee
- IV. Oversight of the Legislative Analyst's Office  
*Gabriel Petek, Legislative Analyst*
- V. Public Comment

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### *Organizational Hearing & Oversight of the Legislative Analyst's Office (LAO) March 18, 2019 – 10:30 a.m. in Room 4203*

#### **PART 1: ORGANIZATIONAL HEARING**

##### **I. Background on the Joint Legislative Budget Committee (JLBC)**

The Legislature originally established the JLBC, along with the Legislative Analyst's Office<sup>1</sup> (LAO) through a Joint Rule in 1941. The JLBC is responsible to "ascertain facts and make recommendations" to the Legislature "concerning the state budget, the revenues and expenditures of the state, and the organization and functions of the state, its departments, subdivisions and agencies..."<sup>2</sup> The committee is a continuing body recognized in Government Code §§ 9140-9147 and Joint Rules 37 and 37.1 of the Senate and Assembly. The committee may meet, act and conduct its business at any time during the year. The committee consists of eight members of the Senate and eight members of the Assembly. Under the committee's existing rules, establishment of a quorum and any actions of the committee require no fewer than five members from the Senate and five from the Assembly.

***JLBC Role in Budget Control.*** Through existing statutes and the annual Budget Act, the Legislature gives the executive branch authority to take certain actions regarding the expenditure of funds after a budget is enacted. The Legislature, however, maintains some control over the Administration's actions by reviewing them, often *before* they would otherwise take effect. A notification letter from the Administration, often through the Department of Finance, to the JLBC, frequently triggers these review periods (which are commonly 20 or 30 days long, but can be shorter or longer). The JLBC receives an average of approximately 200 of these notifications per

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<sup>1</sup> The Legislature originally referred to the Legislative Analyst as the "Legislative Auditor."

<sup>2</sup> Joint Rule 37

year. Figure 1 below from the LAO<sup>3</sup> summarizes the most common types of notifications the JLBC receives from the Administration.

<p><b>Figure 1</b></p> <p><b>Examples of Common Review Provisions for Notification Letters</b></p>
<p><b>Annual Budget Act or Related:</b></p> <p><b>Budget Control Sections</b></p> <ul style="list-style-type: none"> <li>✓ <b>11.0—Information Technology.</b> These are requests to spend money when project costs increase by \$5 million, or 20 percent of budgeted amounts, whichever is less.</li> <li>✓ <b>26.0—Intraschedule Transfers.</b> These are requests for agencies to shift funds within a budgeted Item from one scheduled amount to another.</li> <li>✓ <b>28.0—New Unbudgeted Monies.</b> These are requests for agencies to spend monies that were not anticipated by the budget (such as additional federal funds).</li> </ul> <p><b>Items:</b></p> <ul style="list-style-type: none"> <li>✓ <b>9840—Unanticipated Expenses.</b> These are requests for departments to receive additional funds to cover unanticipated costs. These requests may be for a supplemental appropriation.</li> </ul> <p><b>Statutory Provisions:</b></p> <ul style="list-style-type: none"> <li>✓ <b>Government Code 3517.63—Memorandum of Understanding (MOU) Addenda.</b> These are addenda to existing MOUs between the state and labor. They are reviewed to determine if they have fiscal impacts which were not already approved by the Legislature.</li> </ul>
<p><b>Capital Outlay &amp; Other Statutory Provisions:</b></p> <ul style="list-style-type: none"> <li>✓ <b>Government Code 13332.10—Leases.</b> These are leases that meet specified criteria (e.g., the lease period is longer than eight years or requires an increase in a department’s budget).</li> <li>✓ <b>Government Code 13332.11—Capital Outlay Projects.</b> These are Administration requests to augment a project appropriation by a specified amount or to change the scope of a project.</li> <li>✓ <b>Public Resources Code 21178 et seq. —Streamlining Benefits under the California Environmental Quality Act (CEQA).</b> These are certifications by the Governor that development projects meet the criteria for streamlining benefits under CEQA.</li> </ul>

JLBC committee staff and the LAO review these notification letters, and collaborate with other Legislative staff, to ensure that the proposed actions are timely, reasonable and consistent with prior legislative actions. If the LAO provides a written analysis related to a notification, all JLBC members receive a copy. On behalf of the committee, the Chair may respond to the notifying entity. Committee staff also send copies of any such responses to all committee members. It is unusual for the Administration to proceed with a proposal if the JLBC Chair expresses concern.

<sup>3</sup> As updated by JLBC Committee staff.

In many cases, however, the notices are advisory in nature and/or the lack of a response from the Chair means that the proposed action will become effective.

**Reports.** The JLBC also receives around 200-300 reports from state departments or other entities. These reports typically provide information regarding the implementation of programs, status of projects or resolutions to specified problems, or other information required by Budget Act provisional language or statutes. JLBC committee staff share these reports with all committee members' offices and some other legislative staff.

**Appointment of the Legislative Analyst & Oversight of the LAO.** As discussed further in Part II of this document, Government Code § 9143 and Joint Rule 37 also give the JLBC authority to appoint the Legislative Analyst and employees of the LAO. Since 1941, there have been only six Legislative Analysts. After an extensive search process conducted by a bicameral and bipartisan Subcommittee on the Selection of the Legislative Analyst, the JLBC most recently appointed Gabriel Petek, the current Analyst, to the position in January of this year.

## II. Adoption of Committee Rules

Government Code § 9142 and Joint Rule 37 authorize the JLBC to make rules governing its own proceedings. The committee last adopted its rules, which are consistent with the proposed rules below, on March 2, 2017.

### PROPOSED COMMITTEE RULES FOR THE 2019-20 SESSION

- 1) The officers of this committee are a chair and a vice chair, and the committee shall appoint a Legislative Analyst who shall act as Secretary.
- 2) Ten members of the committee shall constitute a quorum, provided, however, that such number shall include no fewer than five members from the Senate and five members from the Assembly.
- 3) Any action of the committee shall require an affirmative vote of no fewer than five of the Senate members and five of the Assembly members of the committee.
- 4) The chair of the committee is authorized to appoint subcommittees, to specify their duties, and to designate the membership of the subcommittees.
- 5) The chair is authorized to fix the time and place of each meeting of the committee and shall give each member reasonable notice of each meeting.
- 6) The chair is authorized and empowered on behalf of the committee to employ such clerical, legal, and other assistants as may be necessary, other than the Legislative Analyst, to prescribe their duties and fix their salaries, and to remove any such clerical, legal, or other assistants for good cause or for lack of work or funds.

- 7) The chair shall preside at meetings when present. When the chair is absent, the vice chair shall preside. The vice chair of this committee shall act as chair in the case of a vacancy in the office of the chair, or whenever such authority is delegated by the chair.
- 8) The secretary shall keep a complete record of the meetings of the committee and of action taken by it.
- 9) The committee shall reorganize and elect officers upon the commencement of each regular session of the Legislature. The officers of the committee shall hold office until their successors are elected and have qualified.
- 10) The committee's legislative records are maintained by the committee consultant. Pursuant to Section 9080 of the Government Code, the committee consultant shall preserve the committee's current legislative records and may lodge the committee's older legislative records with the State Archives. The committee's legislative records that are in the possession of the committee consultant are open to inspection and copying by the public in the committee's office, 1020 N Street, Room 553, during normal office hours of 9:00 a.m. to 5:00 p.m., Monday through Friday. The committee's legislative records that are housed within the State Archives are open to inspection and copying by the public, subject to procedures established by the Secretary of State.

*Staff recommendation:* Adopt the proposed rules.

### **III. Election of the Chair and the Vice Chair**

Pursuant to Government Code Section 9141 and Joint Rule 37, the JLBC shall elect its own chairperson. The long-standing tradition of the JLBC is for the Chair of the Senate Committee on Budget and Fiscal Review to serve as the JLBC's Chair and the Chair of the Assembly Budget Committee to serve as the JLBC's Vice Chair.

## **PART 2: OVERSIGHT OF THE LAO**

### **I. Background on the LAO**

The Legislature established the LAO in 1941 to provide the legislative branch with non-partisan fiscal and policy analysis and advice. At the time, the state's population was around 7 million people and the total state budget for 1941-1943 was around \$553 million. This was also the year when the United States entered into World War II. Around this time, California had a surplus for the first time after a decade of deficits. There was a high degree of conflict between then-Governor Olson and the Legislature over the state's budget. According to a Senate Journal from 1943, "It became increasingly plain that the Legislature needed some instrumentality whereby it could secure its own information, free from the control and influence of the administration."

Today, the LAO continues to play a critical role in providing impartial oversight of our state's finances. The office also serves as the eyes and ears for the Legislature to ensure that the executive branch is implementing legislative policy as intended and in an efficient and effective manner. At present, the LAO has a staff of 54, including 43 analysts and approximately 11 support staff. This is approximately the same number of analysts the office had in 1966, when the enacted state budget totaled \$4.59 billion. By comparison, the enacted state budget for 2018-19 is \$201.37 billion, and the number and complexity of state programs requiring oversight have grown correspondingly.

The Legislative Analyst is the head of the LAO and the JLBC recently appointed Gabriel Petek as the sixth person to serve in this role. Currently, there are four Deputy Legislative Analysts, three Managing Principal Analysts, and an Administrative Officer who assist in supervising the remaining staff of the office. The LAO assigns its analytical staff to the following areas of budget and policy expertise:

- ✓ Criminal Justice
- ✓ State Finance
- ✓ Education (including K-12 and Higher Education)
- ✓ Health and Human Services
- ✓ Natural Resources and Environment
- ✓ General Government (including Local Government)
- ✓ Transportation, and
- ✓ Capital Outlay and Infrastructure.

### **II. The Work of the LAO**

Historically, one of the most important responsibilities of the LAO has been analysis of the annual budget. The office presents a series of analyses from the beginning to the end of the budget process on overarching fiscal issues and specific departmental budget proposals, and offers its recommendations for legislative action. The LAO publishes its budget comments and advice in the form of separate written reports, handouts for hearings, and web posts. These documents provide information and advice to inform the work of the Legislature's leaders and fiscal

committees in developing a state budget. Staff of the office work with these committees and provide public testimony on the office's recommendations.

The LAO also performs the following functions:

- ✓ **Member Requests.** The LAO is a staff resource to all legislators and frequently responds to confidential requests for information from their offices. Joint Rule 37 of the Senate and Assembly requires the Analyst to “immediately undertake to provide” information that falls within the scope of his or her responsibilities and is requested by any committee or Member of the Legislature.
- ✓ **Budget "Control."** As described in the first part of this background document, the LAO reviews requests by the Administration to make changes to the budget *after* the Legislature and Governor enact it. Primarily the chair and members of the JLBC and the fiscal committees utilize these reviews.
- ✓ **Initiatives and Ballot Measures.** Since the enactment of the Political Reform Act by the voters in 1974 (Proposition 9), the LAO has been responsible for publicly providing impartial analyses of all statewide propositions.
- ✓ **Forecasting & Economic Analysis.** The LAO forecasts the state’s revenues and expenditures. The office also maintains an “Economy and Taxes” blog page, where it publishes data and commentary about economic indicators and the state’s revenues.
- ✓ **Statutorily Required Reports.** Through statute, the Legislature requires the office to prepare reports on a variety of specified topics, such as program reviews or recommendations on the structure of a new program.
- ✓ **Special Reports.** Throughout the year, the office prepares special reports on the state budget and other topics of interest to the Legislature. According to the LAO, individual analysts in the office identify potential projects based on questions they receive from Members and their offices or through conversations with other policy experts. The LAO indicates that these topics are then vetted by the management teams and the Legislative Analyst to ensure they are of high priority to the Legislature and would assist in their deliberations.

Prior to the enactment of Proposition 140 in 1990 (described further below), the LAO also analyzed all legislation that contained an appropriation.

### **III. The Budget for the LAO**

In 1990, the voters enacted Proposition 140, which implemented term limits and retirement benefit changes for Members of the Legislature and reduced the Legislature’s budget by 38 percent. Proposition 140 also established a cap that limits the Legislature’s expenditures on staff salaries and operating expenses on an ongoing basis. Because of Proposition 140’s enactment, the LAO’s budget was reduced significantly and the number of LAO staff dropped from 105 to about 45. In 1992, the Legislature attempted to restore the LAO by exempting it from the Legislature’s

spending cap through Proposition 158 (placed on the ballot by Senate Constitutional Amendment 33 (Statutes of 1992, Resolution Chapter 7)). However, the voters did not pass the proposition at that time.

The 2018-19 budget for the LAO is around \$9.5 million. Assembly Members Obernolte and Ting, along with several co-authors, including the current Chair of the JLBC, Senator Mitchell, recently introduced ACA 11. If enacted, this measure would exempt the LAO from the legislative spending cap established by Proposition 140.

#### **IV. The Role of the JLBC in Overseeing the LAO**

The JLBC is responsible for overseeing the LAO and appointing the Legislative Analyst who serves as its leader. While the JLBC is authorized to prescribe the duties of the Legislative Analyst (and office), the following responsibilities are already specified in Joint Rule 37 of the Senate and Assembly:

*(1) To ascertain the facts and make recommendations to the Joint Legislative Budget Committee and, under its direction, to the committees of the Legislature concerning:*

*(a) The State Budget.*

*(b) The revenues and expenditures of the state.*

*(c) The organization and functions of the state and its departments, subdivisions, and agencies.*

*(2) To assist the Senate Committee on Appropriations, the Senate Budget and Fiscal Review Committee, and the Assembly Committees on Appropriations and Budget in consideration of the Budget, all bills carrying express or implied appropriations, and all legislation affecting state departments and their efficiency; to appear before any other legislative committee; and to assist any other legislative committee upon instruction by the Joint Legislative Budget Committee.<sup>4</sup>*

*(3) To provide all legislative committees and Members of the Legislature with information obtained under the direction of the Joint Legislative Budget Committee.*

*(4) To maintain a record of all work performed by the Legislative Analyst under the direction of the Joint Legislative Budget Committee, and to keep and make available all documents, data, and reports submitted to him or her by any Senate, Assembly, or joint committee.*

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<sup>4</sup> As described above, the references in the Rule to the LAO's work with respect to bills are outdated.