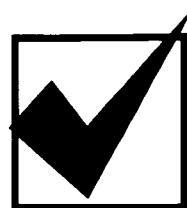


## Bureau of State Audits

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Created by SB 37 (Maddy) (Chapter 12, Statutes of 1993), the Bureau of State Audits (BSA) is an auditing and investigative agency which operates under the administrative oversight of the Milton Marks Commission on California State Government Organization and Economy (also known as the "Little Hoover Commission"). In Government Code section 8543 *et seq.*, SB 37 delegates to BSA most of the duties previously performed by the Auditor General's Office, such as examining and reporting annually upon the financial statements prepared by the executive branch of the state, performing other related assignments (such as performance audits) that are mandated by statute, and administering the California Whistleblower Protection Act, Government Code section 8547 *et seq.* BSA is also required to conduct audits of state and local government requested by the Joint Legislative Audit Committee (JLAC) to the extent that funding is available. BSA is headed by the State Auditor, appointed by the Governor to a four-year term from a list of three qualified individuals submitted by the JLAC.

### MAJOR PROJECTS

#### **PUC Failed to Manage Contract to Investigate 1998 PG&E Blackout**

In *Public Utilities Commission: Did Not Effectively Manage Its Contract for Investigating San Francisco's December 1998 Power Failure* (May 1999), BSA criticized the Public Utilities Commission (PUC) for failing to properly manage a contract to investigate a massive power outage on December 8, 1998 in the San Francisco Bay Area. The blackout, which was caused by a system disturbance at a Pacific Gas & Electric (PG&E) substation, left more than one million people in the Bay Area without electricity for a full day. The PUC

ordered both PG&E and its own staff to conduct an investigation; in addition, the California Independent System Operator (ISO) and the San Francisco City Attorney's Office also conducted investigations. Because it did not have adequate technical expertise to explore the causes of the outage and to recommend methods for preventing a recurrence, the PUC awarded a \$400,000 contract to an outside consulting firm (consultant) that would conduct the investigation. The contract required the consultant to draw expert conclusions and prepare a report suitable for litigation purposes related to the power failure.

Preliminarily, BSA noted that there was jurisdictional confusion among the various entities conducting investigations. The ISO was created in 1996 as part of the state's

restructuring of the electricity industry; the ISO now controls electricity transmission, and the PUC has retained jurisdiction over distribution. Statutes direct the ISO to review each major outage and determine the cause, evaluate the utility's response time and effectiveness, and assess whether the owner's or operator's practices enhanced or undermined the facility's ability to restore service efficiently. The December 1998 PG&E outage, which was the first major blackout since the legislature restructured the state's public utilities, was caused by problems within the transmission system that ultimately affected the distribution system, and BSA found that "the lines of jurisdiction between ISO and the Commission became unclear."

BSA concluded that the PUC had a reasonable basis for hiring the consultant to conduct its investigation. However, BSA found that the PUC provided inadequate oversight of the contract. The Commission is unable to demonstrate that it evaluated the qualifications of the consultant's subcontractors, or that it even gave the consultant written permission to hire subcontractors (as required by the contract). The Commission also did not make certain that the consultant's report contained sufficient detail and analysis to support all of the conclusions in the report, which will undoubtedly be used in litigation. For example, the report has invited criticism because it concludes that "PG&E has an error prone work culture that tends to bypass procedures and work practice requirements." However, the report does not specify the methodology or detailed analysis that the consultant used to arrive at this conclusion. The PUC has agreed to pay an additional amount so that the consultant, which should have submitted a complete analysis, can provide further support for the report's conclusions. Additionally, the PUC based the contract amount

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on broad estimates that it cannot substantiate, and did not require the consultant to submit invoices so that the Commission could ensure that expenditures for the investigation were appropriate and within the contract's budgeted amounts.

Ultimately, BSA recommended that the PUC and ISO develop formal investigation protocols to eliminate jurisdictional confusion, and that the Commission conduct another review of the investigative report before paying the consultant, to ensure the report complies with the contract's specifications. BSA noted that it will look further into the Commission's contract management program to assess whether the problems with this contract are unique or whether they reflect systemic weaknesses throughout the Commission (see agency report on PUC for related discussion).

# STATE OVERSIGHT AGENCIES

## **BSA Critiques California's Child Support Enforcement Program**

In *Child Support Enforcement Program: Without Stronger Leadership, California's Child Support Program Will Continue to Struggle* (August 1999), BSA evaluated the performance of the Department of Social Services (DSS) in supervising California's Child Support Enforcement Program (CSEP), and found that the program is "disjointed, complicated, and lacking in leadership." Although no single entity is wholly responsible for the program's failures, state, county, and federal CSEP administrators have all contributed to its often inadequate performance. As the designated statewide supervisor of California's CSEP, DSS is responsible for providing leadership, assistance, and direction to the county district attorneys who administer the program locally. Yet, according to BSA, "DSS has consistently failed in this role."

One of DSS' most critical failures has been in the area of automation. Under 1988 federal law, California was required to set up a fully operational automated statewide child support enforcement system by October 1, 1995; failure to comply with this provision would eventually result in the loss of federal funding for welfare and child support programs. In an effort to comply with this requirement, DSS undertook the development and implementation of the Statewide Automated Child Support System (SACSS) in the early 1990s. California spent nearly five years designing, developing, piloting, and implementing SACSS in 23 counties. However, after spending more than \$111 in taxpayer dollars, DSS declared SACSS a failure in November 1997. In 1998, DSS made another attempt to comply with the federal requirement by beginning to develop a "consortium" of selected systems from four counties; however, the federal government rejected the consortium plan in April 1999, and reiterated its requirement that California develop a single, statewide system. According to BSA, "[n]ot only does [CSEP] currently limp along under a failed statewide automated system, but many counties that are struggling to collect child support have not received needed technical assistance. Rather than monitoring and providing guidance to these counties, DSS has instead focused its attention on administrative processes, reviewing the counties only to ensure that they are complying with certain federal regulations. Moreover, in its role of statewide supervisor, DSS has seen itself simply as a conduit of federal data and a reporter of information that it does not analyze or validate. As a result of this laissez-faire attitude, the state's CSEP lacks any sense of overarching vision."

In addition, by not providing more leadership and guidance, DSS has allowed county district attorneys broad discretion in operating their child support programs. As a result, although some counties have implemented innovative pro-

cesses and have dedicated considerable resources to their programs, others have become backlogged and have failed to deliver even basic services to local families. Furthermore, in the absence of active supervision, different counties have developed different child support philosophies. Some district attorneys view noncustodial parents who do not pay child support as criminals, while others enlist a more social approach. Simply based on where they live in California, one noncustodial parent may be prosecuted, while another is educated about his/her responsibilities and assisted in fulfilling them. BSA noted that this disparate delivery of services is unfair to the families who rely on the CSEP.

To exacerbate these problems further, the federal government has contributed to the program's dysfunction by offering incentives that may motivate misguided efforts. For example, the current federal incentive structure does not consider certain demographic factors that can affect a state's CSEP performance. Therefore, states like California may be penalized because of factors like high unemployment. Additionally, even though the focus of the national program has changed in recent years, the incentive structure only partially reflects these changes and may send the wrong message to the states.

Because critics of California's CSEP often fail to take into account demographics that influence its performance, BSA considered such factors in its analysis of the state's performance. According to BSA, however, "even when one accounts for California's demographic disadvantage in comparison to many other states, it is still clear that the state's CSEP is not only ineffective but, in fact, is floundering. With recent welfare reform causing more and more families to rely on child support, California's failure to improve its CSEP is directly affecting the lives of children in the state."

With a number of proposals to remove the CSEP from DSS then pending in the legislature, BSA made a number of recommendations, including the following: (1) wherever the Governor and legislature ultimately place the responsibility for California's CSEP, they should appoint to leadership positions only qualified individuals capable of providing the authority, motivation, direction, and effective oversight needed to significantly improve the program; (2) to im-

prove the effectiveness of the CSEP, DSS needs to show stronger leadership by developing a strategic plan that has meaningful goals and performance measures, fully implementing its new programs and initiative, reviewing county operations to provide technical assistance to poor performers, ensuring that it collects and reports accurate data, and communicating program policy to counties in a clear and timely fashion; (3) to ensure that California residents participating in the CSEP are treated equally and receive the same level of service from county to county, DSS should exercise its authority over

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## STATE OVERSIGHT AGENCIES

county-run programs to achieve uniform delivery of child support services at the local level; (4) in addition, DSS should study the best practices of county-run child support programs, and then consider the merit of implementing these practices statewide; (5) finally, the California legislature should monitor the federal government's efforts to improve its incentive structure to ensure that such modifications match the current direction of the federal child support enforcement program, take into account demographic factors in determining a state's performance, and memorialize Congress if changes are needed.

Subsequent to the issuance of BSA's report, the legislature enacted and the Governor signed a package of bills which will completely restructure California's CSEP. AB 196 (Kuehl) (Chapter 478, Statutes of 1999) removes the CSEP from DSS and creates a new Department of Child Support Services to oversee a centralized statewide system of child support enforcement and collection, with uniform forms and procedures at local county child support offices; the system is no longer under local district attorney jurisdiction. Additionally, AB 472 (Aroner) (Chapter 803, Statutes of 1999) creates a Child Support Consumer Complaint Fair Hearings Process for both custodial and noncustodial parents, that will exist outside the more cumbersome and time-consuming court process; and AB 150 (Aroner) (Chapter 479, Statutes of 1999) requires the Franchise Tax Board to take over the creation and implementation of a single automated computer system for the new CSEP.

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### **CalTrans' Failures Caused Waste of Millions of Dollars on Century Freeway**

In *Department of Transportation: Disregarding Early Warnings Has Caused Millions of Dollars to Be Spent Correcting Century Freeway Design Flaws* (August 1999), BSA faulted the California Department of Transportation (CalTrans) for ignoring early warning signs regarding its design of the Century Freeway in Los Angeles County and causing the subsequent waste of millions of taxpayer dollars.

After nearly thirty years of controversy, court injunctions, and delays, CalTrans opened the Century Freeway in October 1993. In March 1995, problems again arose for the freeway when, less than two years after the opening, CalTrans discovered cracking and sunken sections in the shoulder areas of the freeway that it had constructed below ground level. Although it originally thought the problems involved maintenance issues, by January 1996 CalTrans became aware that matters were far worse: It had not designed the lowered section of the freeway to compensate sufficiently for the effects of rising groundwater beneath the pavement.

BSA found that, during the planning, design, and construction phases for the Century Freeway, CalTrans disregarded warning signs that could have prevented the design flaws in the freeway's 3.5-mile lowered section. Most sig-

nificantly, CalTrans disregarded the 1968 recommendation of its staff to test extensively the soils and the groundwater levels in the area planned for the lowered section, even when it designed the modified storm-drain system for the freeway in 1973. Further, in late 1981, CalTrans agreed to extend the length of the lowered section of the freeway west toward the Los Angeles River, and the Department apparently designed this extension without adequate research and consideration, such as additional testing of the soil and groundwater conditions in the area. If CalTrans had performed these tests, it could have realized the rising groundwater would threaten the freeway as designed, and it could have taken appropriate steps early in the project.

CalTrans has documents from 1987 showing that groundwater levels had risen substantially between 1985 and 1987 in the area planned for the below-ground-level section of the freeway. However, because this analysis was for determining bridge

foundations, it was not sent to the district unit designing the lowered section. During construction of the drain system for the lowered section in July 1990, CalTrans installed four dewatering wells because it was encountering a lot of

water. The ground was so wet that CalTrans halted construction for more than six weeks. Another six years passed before CalTrans realized it had a serious groundwater problem.

While CalTrans was struggling to move forward with the Century Freeway project, another agency was taking action that was to have important consequences for the freeway. The freeway crosses over two groundwater basins. By the 1950s, the groundwater of these basins had been overpumped, reducing available groundwater supplies while demand for groundwater was increasing. As part of the effort to restore the health of the groundwater basins, a water replenishment district was established in 1959 to return water to the basins. By early 1997, the groundwater levels had increased over 30 feet. Although the groundwater replenishment involves all the geological layers, those layers closest to the surface, which are about 25 feet below grade, are the ones affecting the lowered section of the Century Freeway.

CalTrans may have pushed ahead without further analyzing groundwater conditions because it was under some pressure to begin construction of the freeway after the 1981 lifting of a court injunction that had halted progress for many years. To qualify for federal highway funding for this project, CalTrans had to meet certain construction deadlines.

In January 1996, once CalTrans acknowledged that the cracking and sinking were more than ongoing maintenance problems, it spent \$22 million in emergency repairs and planned to use another \$45 million for permanent repairs to the drainage system. CalTrans engaged both in-house engineers and outside consultants from academia and private practice to evaluate the underlying causes of the problems and develop options to resolve them.

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Although it is working to remedy the situation, CalTrans must still determine what it will do with the groundwater it pumps from beneath the freeway. As of May 1999, CalTrans had paid, under protest, more than \$370,000 in taxes to pump out the groundwater. The Department is currently diverting the water into the Los Angeles and San Gabriel rivers; thus, the water is not available for other uses. CalTrans is, on the other hand, reviewing proposals with two local cities to find beneficial uses for the extracted water so that it does not waste the water or undermine the efforts of the local water replenishment district. Because CalTrans has not determined the best resolution to the groundwater disposal problem, it has no firm estimates of the costs related to the reuse of the extracted water. However, preliminary estimates suggest that the additional costs could be more than \$50 million for initial costs and from \$370,000 to \$5 million in annual costs.

In responding to concerns that CalTrans withheld information about the problems it was experiencing on the Century Freeway, CalTrans acknowledged it could have done more to inform the legislature. However, CalTrans did include some information related to the Century Freeway problems in its normal communications with local legislators, the public, and the California Transportation Commission.

Since the groundwater problems became apparent, CalTrans has reassessed some of its policies and procedures and convened an in-house review of the circumstances leading to the problems at the lowered section of the Century Freeway. The review panel made numerous recommendations for new or revised procedures and most units have responded appropriately. However, CalTrans has not monitored some units, which were slow to implement changes.

BSA made a number of recommendations, including the following: (1) CalTrans should inform the legislature, through its Senate and Assembly Transportation committees, as well as the California Transportation Commission about its progress in determining an environmentally sound and cost-effective method for reusing the groundwater pumped from under the Century Freeway; (2) CalTrans should continue working with the Water Replenishment District of Southern California to coordinate actions so that neither agency jeopardizes the other's efforts to fulfill its organizational mission; and (3) to ensure that it properly puts into practice the recommendations from special in-house staff reports, CalTrans should ensure that the unit designated to implement these recommendations periodically reports its progress to Department management.

### Other Reports

BSA also issued the following reports between May 1 and October 31, 1999: *The State's Use of Funds to Administer Other Programs Reduced Its Ability to Provide Effective Administration and Leadership* (Report No. 98124; May 1999); *State of California: Treasurer's Cash Count as of December 31, 1998* (Report No. 99005; June 1999); *State of California: Statement of Securities Accountability of the State Treasurer's Office December 31, 1998* (Report No.

99008; June 1999); *State of California: Internal Control and State and Federal Compliance Audit Report for the Fiscal Year Ended June 30, 1998* (Report No. 98002; June 1999); *State Board of Equalization: Its Tax Settlement Program Continues to Have Merit* (Report No. 98017.1; July 1999); *Franchise Tax Board: Its Tax Settlement Program Remains an Important Alternative for Dispute Resolution* (Report No. 98017.2; July 1999); *Department of Toxic Substances Control: The Generator Fee Structure Is Unfair, Recycling Efforts Require Improvement, and State and Local Agencies Need to Fully Implement the Unified Program* (Report No. 98027; July 1999); *Overtime for State Employees: Some Departments Have Paid Too Much in Overtime Costs* (Report No. 99001.1; July 1999); *Department of Health Services: Despite Shortcomings in the Department's Monitoring Efforts, Limited Data Suggest Its Two-Plan Model Does Not Adversely Affect Quality of and Access to Health Care* (Report No. 99102; July 1999); *Lax Monitoring Led to Payment of Unsubstantiated Adult Education Claims and Changes in the Program May Seriously Impact Its Effectiveness* (Report No. 98113; July 1999); *Department of Health Services: The Forensic Alcohol Program Needs to Reevaluate Its Regulatory Efforts* (Report No. 97025.1; August 1999); *School Safety: Comprehensive Resolution Programs Help Prepare Schools for Conflict* (Report No. 99107; August 1999); *Investigations of Improper Activities by State Employees: February through June 1999* (Report No. 199-2; August 1999); *California Science Center: It Does Not Ensure Fair and Equitable Treatment of Employees, Thus Exposing the State to Risk* (Report No. 98115.1; August 1999); *Department of General Services: The California Multiple Award Schedules Program Has Merit but Does Not Ensure That the State Gets the Best Value for Its Purchases* (Report No. 99500; August 1999); *UCSF Stanford Health Care: The New Entity Has Not Yet Produced Anticipated Benefits and Faces Significant Challenges* (Report No. 99128; August 1999); *In-Home Supportive Services: Since Recent Legislation Changes the Way Counties Will Administer the Program, The Department of Social Services Needs to Monitor Service Delivery* (Report No. 96036; September 1999); *Department of Transportation: Seismic Retrofit Expenditures Are Generally in Compliance With the Bond Act* (Report No. 99022; October 1999); *Wasco State Prison: Its Failure to Proactively Address Problems in Critical Equipment, Emergency Procedures, and Staff Vigilance Raises Concerns About Institutional Safety and Security* (Report No. 99118; October 1999); *Department of Developmental Services: Without Sufficient State Funding, It Cannot Furnish Optimal Services to Developmentally Disabled Adults* (Report No. 99112; October 1999); *Department of Health Services: Although It Has Not Withheld Information Inappropriately, the Department Should Make Research Findings More Widely Available* (Report No. 99106; October 1999); and *The Los Angeles Unified School District: It Made Reasonable Decisions in Moving Its Business Ser-*

*vices Center, but Must Act Soon to Successfully Relocate to a Permanent Site* (Report No. 99114; October 1999).

## LEGISLATION

**SB 951 (Hayden).** The Reporting of Improper Governmental Activities Act provides protections to state employees who report improper governmental activities. Under the Act, the State Auditor is authorized to conduct an investigative audit upon receiving confirmation that an employee or state agency has engaged in an improper governmental activity. A state employee, including a University of California employee, is prohibited from using his/her official authority or influence to intimidate, threaten, coerce, or command a person in order to interfere with the right of that person to make a disclosure under the Act.

As amended August 30, this bill renames the Act as the "California Whistleblower Protection Act," and more closely aligns California's "whistleblower" statutes with existing federal law. The bill expands the protection afforded to persons who either make a protected disclosure (defined as a disclosure to anyone of information that may evidence an improper governmental activity or evidence any condition that may significantly threaten the health or safety of employees or the public if the disclosure is made for the purpose of remedying the condition) or refuse to obey an illegal order (defined as

any directive to violate or assist in violating a federal, state, or local law, rule, regulation, or order to work (or cause others to work) in unhealthy or unsafe conditions). The bill also provides that nothing in the bill is intended to supersede or limit the right to make a privileged publication in an official proceeding with regard to information provided under the Act. Governor Davis signed SB 951 on October 6 (Chapter 673, Statutes of 1999).

**SB 144 (Schiff and Hertzberg),** as amended July 13, authorizes the State Bar of California to require its members to pay annual licensing fees during 2000. To remedy a number of recent problems at the Bar, the bill prohibits the Bar from engaging in certain activities; requires the Bar to contract with an independent firm to audit its financial statements for each fiscal year beginning after December 31, 1998; and requires the Bar to contract with BSA for a performance audit of its operations from July 1, 2000, to December 31, 2000, inclusive. Commencing with January 1, 2002, through December 31, 2002, the Bar must contract with BSA to conduct a performance audit of its operations for the respective fiscal year every two years thereafter (see agency report on STATE BAR for related discussion). SB 144 was signed by the Governor on September 7 (Chapter 342, Statutes of 1999).

**AB 644 (Wildman),** as amended in August 1999, is no longer relevant to BSA.

## Little Hoover Commission

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The Little Hoover Commission (LHC), more formally known as the Milton Marks Commission on California State Government Organization and Economy, was created by the legislature in 1961 and became operational in the spring of 1962 (Government Code section 8501 *et seq.*). Although considered to be within the executive branch of state government for budgetary purposes, state law provides that the Commission "shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature" (Government Code section 8502).

The Commission's enabling act provides that no more than seven of its thirteen members may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers. This unique formulation enables LHC to be California's only truly independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The Commission's purposes are to promote economy, efficiency, and improved service in the transaction of public

business in the various departments, agencies, and instrumentalities of the executive branch of the state government; and to make the operation of state departments, agencies, and instrumentalities and all expenditures of public funds more directly responsive to the wishes of the people.

The Commission seeks to achieve these ends by conducting studies and making recommendations as to the adoption of methods and procedures to reduce government expenditures, the elimination of functional and service duplication, the abolition of unnecessary services and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization or restructuring of state entities and programs. The Commission holds hearings about once a month on topics that come to its attention from citizens, legislators, and other sources.

In 1993, LHC was renamed in honor of former Senator Milton Marks, who authored the legislation originally creating the Commission.

At this writing, LHC's commissioners are Chair Richard R. Terzian, Vice-Chair Michael E. Alpert, Assemblymember Bill Campbell, Carl D. Covitz, Daniel W. Hancock, Assemblymember Sally Havice, Gary H. Hunt, Gwen Moore, Angie