the document so incorporated shall be deemed to be a regulation subject to all provisions of the APA." The court also found relevant Government Code section 11344.6, which allows judicial notice to be taken of regulations either printed or "incorporated by appropriate reference." According to the court, "[t]here is no reason to judicially notice illegal regulations, therefore we assume the Legislature has agreed with OAL's determination that incorporation by reference can, in some cases, further the purposes of the APA."

The court noted that the California APA's counterpart federal statute expressly provides for incorporation by reference. Even though there is no parallel California provision, according to the court "the point is that the process...is not inherently inimical."

Bureau of State Audits

State Auditor: Kurt Sjoberg ♦ (916) 445-0255 ♦ Whistleblower's Hotline—(800) 555-5207 ♦ Website: www.bsa.ca.gov

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 Reporting of Improper Governmental Activities 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

State Agency Readiness for the Year 2000

In ***Year 2000 Computer Problem: The State's Agencies Are Progressing Toward Compliance but Key Steps Remain Incomplete*** (No. 98116; February 1999), BSA reported for the second time on state agencies' progress in resolving problems with their computer systems caused by the year 2000. In August 1998, BSA reported—among other things—that agencies were prematurely declaring their critical projects complete that have not been thoroughly tested. [16:1 CRLR 212] In its latest report, BSA found that although state agencies are making progress toward correcting critical computer systems to ensure the uninterrupted delivery of essential services to Californians, many of the fourteen agencies that provide the most critical services are still not finished. Further, eleven agencies have not completely tested their computer systems, and seven have not corrected or replaced the embedded chips that control certain of their systems' computerized activities.

BSA reported for the second time on state agencies' progress in resolving problems with their computer systems caused by the year 2000.

For example, the Employment Development Department estimates that it will not complete testing of the unemployment insurance system until September 1999. This critical system manages over $2.9 billion in annual payments to unemployed workers. The Department of Corrections does not expect to correct and test embedded technology in the electrified fences at 23 prisons until September 1999. According to BSA, such late completion dates may not give these agencies enough time to resolve unforeseen problems before January 1, 2000, which could cause financial hardship to or imperil the safety of Californians. Additionally, five agencies have not completely resolved critical issues with their data exchange partners.

According to BSA, fourteen of twenty computer systems at these vital agencies are mission-critical or essential to core business functions and, according to a governor's executive order, should have been fixed by December 31, 1998 but were not. Further, with less than eleven months until the new millennium begins, eleven agencies still have no business continuation plans if their computer systems are not corrected in time or fail to work. BSA reports that equally unprepared are almost two-thirds of all 462 state programs because agencies still have critical tasks to complete, such as executing and documenting full-system testing, correcting embedded technology, or remedying data exchange problems. Over half of all programs must also develop business continuation plans to cover the possibility that their remediation efforts might fail.

BSA further found that one of the state's two large data centers that support hundreds of state clients has a poor strategy to protect its clients from the potential ill effects caused by year 2000 problems. According to the report, the Teale Data Center (Teale) lacks a year 2000 plan that addresses critical client services, and has allocated few resources to year 2000 tasks in general. Although Teale has developed a time

machine environment for testing a system's ability to function after December 31, 1999, it does not monitor its clients' use of this environment. Further, Teale has not required clients to abandon noncompliant software that could corrupt data or destabilize its processing environment.

In contrast, BSA reports that the Health and Welfare Data Center (HWDC) has a comprehensive year 2000 plan that addresses critical client services, and has devoted significant resources to executing its plan. The HWDC also encouraged its clients to perform year 2000 testing in its time machine environment and is monitoring client use to ensure that its mainframe computers are ready for year 2000. In addition, the HWDC is precluding its clients from using software that is not year 2000 compliant.

BSA warns that, with time running out and no potential for an extension, it is troubling to find that so many computer systems supporting such a large number of state programs—many delivering vital services to Californians—are still in need of some remediation before state agencies can ensure that risk of failure is minimal. According to BSA, what is more disturbing is that many of the same agencies that have not fully remediated the computer systems supporting their programs also have not completed business continuation plans to deliver services if their efforts are further delayed or fail to work.

Finally, BSA expressed concern that no single entity is charged with overseeing the year 2000 readiness of electric and telecommunication utilities essential to the delivery of state and other public services. Instead, a variety of entities—including commissions, elected boards, and nonprofit organizations—regulate and monitor portions of the systems. For example, the California Public Utilities Commission is monitoring portions of the electrical industry and all of the telecommunication providers in California, but it just began these efforts and may not present results until at least April 1999. [16:1 CRLR 166–67] Further, although the North American Electrical Reliability Council is monitoring efforts on a national level, its results are preliminary and based on self-reported information.

To ensure that state agencies' systems are year 2000 ready and that California's vital services are not interrupted at the beginning of the new millennium, BSA recommended that the Governor or legislature take the following actions:

- Appoint an independent quality assurance agent or independent verification and validation group to review critical systems supporting the seventeen programs BSA believes are vital to California, to validate that state agencies have found and corrected all date references in their systems. Until this appointed authority certifies that an agency has completed all testing, remediated embedded technology, and fully addressed all data exchange issues within its control, the Governor or the legislature should direct the Department of Information Technology or other governing body to deny the agency approval for any new information technology projects.
- Closely monitor the progress of the systems supporting state programs that have not completed efforts to resolve year 2000 problems. If progress appears to be falling behind completion milestones, the Governor or the legislature should consider what tasks remain, whether adequate resources are available to complete them, and take appropriate action to ensure successful completion. Such action could include assisting agencies in obtaining outside resources, such as consultants, or reallocating knowledgeable staff from other agencies.
- Monitor all agencies' efforts to ensure the completion of business continuation plans by June 30, 1999.
- Designate one authority to assess, oversee, and report on the year 2000 preparations of critical public utilities serving California, such as electricity and telecommunication services.

BSA further recommended that Teale monitor its clients' use of its time machine environment, and consider further testing for those portions of the systems not tested by clients. Further, to ensure that its clients are given the opportunity to investigate whether they could be at risk of system interruptions, Teale should notify the six clients that used an earlier software version in its time machine environment. Finally, to avoid the potential for data corruption and instability in its operating system, Teale should remove any noncompliant software products from its computers before January 1, 2000.

Delayed Payments to Physicians Under Managed Care

In ***Health Care Payment Surveys: Providers and Payers Have Differing Views Over a Complex, Sometimes Unregulated, Health Care System*** (No. 98104; March 1999), BSA explained that the California health care industry has evolved over the last twenty years from a traditional indemnity insurance environment to managed care. Through its efforts to curb costs, managed care has generated criticism concerning its impact on the quality of medical care, the effectiveness of government regulation of managed care, and financial soundness of the health care industry. Furthermore, recent bankruptcies within the health care industry have heightened these concerns. BSA's report focuses on one aspect of these concerns—the extent of delayed payments to physicians and its effect on their practices. [16:1 CRLR 29]

According to BSA, the flow of payments to physicians—though once a simple and direct payment from the patient or the insurance company—can be complicated under managed care.

According to BSA, the flow of payments to physicians—though once a simple and direct payment from the patient or the insurance company—can be complicated under managed

care. What most consumers do not know is that most payments originating with a health plan pass through one or more intermediaries before reaching the physician. To develop a full picture of this flow of payment and to ascertain whether physicians and medical groups are experiencing difficulties in receiving payments under a managed care environment, BSA surveyed representatives of service providers (including physicians and the medical groups to which they belong) and the payers for services (the health plans and intermediaries responsible for performing administrative functions for providers with whom they contract). Medical groups have a dual role, functioning as intermediaries and providers, and their survey questions and responses reflect both of these roles. In all, BSA surveyed 1,300 physicians, 1,025 medical groups, and a cross-section of health care payers, from health maintenance organizations (HMOs) and preferred provider organizations (PPOs) to a variety of intermediaries performing administrative functions, such as independent practice associations (IPAs) and management services organizations (MSOs).

One-half of the physicians cited some delays in payments from one or more of the health care payers with whom they have experience. Overall, about 51% of physicians responded that HMOs, IPAs, or medical groups pay their capitation or fee-for-service claims late. Fee-for-service claims paid by IPAs were a frequently cited type of delayed payment, but late HMO capitation payments and tardy medical group reimbursements were also mentioned. Similarly, 74% of medical groups reported experiencing some type of delayed payment from HMOs or IPAs for either capitation or fee-for-service payments. In addition, some medical groups expressed frustration with errors in enrollment lists supporting capitation payments.

In response to BSA's query about the impact of delayed payments on their practices, 28% of the physicians and 38% of the medical groups surveyed claimed that delayed payments negatively affect the fiscal aspects of their practices. However, few indicated that delays affect patient care.

Interestingly, very few health care payers reported delays, and most believe they receive and make payments within reasonable time frames. Specifically, health care payers state that capitation and fee-for-service payments are timely. However, 25% of both the MSOs and IPAs surveyed cited some experience with inaccurate enrollment data. In addition, the majority of medical care payers indicated that they pay uncontested claims within 45 days. Despite advances in electronic commerce, very few of the intermediaries responded that they pay claims electronically.

Different entities reported varying experiences related to risk pool distributions. A risk pool is an arrangement between a health plan and an IPA or medical group in which both share the risk of the cost of designated services. MSOs and IPAs were generally satisfied with the timing of the distribution. However, nearly half of the intermediaries, including some medical groups, reported contesting at least part of their risk pool distributions from HMOs and point of service plans.

Furthermore, three-quarters of medical groups claimed they rarely or never receive interest on delayed payments from health plans. This is similar to the experience of MSOs. In addition, some medical groups indicated that IPAs sometimes pay less than the contracted rate on fee-for-service claims.

According to BSA, the results from its surveys have implications for California's regulatory structure over its health care industry. In some areas, the industry is heavily regulated, while in others there is little or no regulation. For example, while the state does not regulate intermediary entities, respondents to BSA's surveys expressed concerns about delayed payments from IPAs. Also, many PPOs—the second most common type of health plan in California—are not subject to direct state regulation.

Moreover, some of the current statutory and regulatory controls are weakened because of the impact of intermediaries on the industry. For instance, regulations requiring prompt reimbursement of providers' claims are difficult to enforce when the payments pass through several hands before reaching the providers.

Finally, the surveys indicated that the differing perspectives communicated in the responses from providers and payers are affected by the complexity in the administration of the health care industry and that clearer communication of vital information is needed.

In order to address these problems, BSA recommends that the legislature consider doing the following:

- Establish direct state regulation over the activities of health plans not currently regulated or monitored, and replace the current, redundant oversight by health plans over health care intermediaries with centralized state regulation. As part of this regulation, the legislature should consider requiring all involved entities to provide at least semiannual financial statements as well as annual audited financial statements to a designated state regulatory department.
- Require health plans to submit to providers and intermediaries enrollment lists that are the basis for capitation payments. Thus, the data for the payment should be identical to the information on the enrollment lists.
- Reexamine the provisions of the Knox-Keene Health Care Service Plan Act of 1975 related to the limitation on health plans' administrative fees when intermediaries take on some of several administrative functions of health plans. Also, the legislature should consider establishing limits on administrative fees charged by intermediaries and a system for centrally monitoring the compliance of all applicable health care entities with these limits.

DHS Has Failed to Comply with Legislative Mandates Regarding Lead Poisoning

In ***Department of Health Services Has Made Little Progress in Protecting California's Children From Lead Poisoning*** (No. 98117; April 1999), BSA reports that the Department of Health Services (DHS) has failed to meet

legislatively mandated goals for protecting children from lead poisoning. In 1986, the legislature charged DHS with determining the extent of lead poisoning among children in the state. In 1991, the legislature set specific goals for protecting children from lead poisoning, requiring DHS to evaluate all children for their risk of poisoning; test those children who are at risk; and provide case management for children who are found to suffer from lead poisoning. According to BSA, DHS has failed to meet these goals by not ensuring that all at-risk children have been tested and not tracking the results of testing to determine the extent of the problem lead poisoning presents throughout the state.

As a result, BSA reports that thousands of lead-poisoned children have been allowed to suffer needlessly. DHS itself estimates that more than 130,000 children between the ages of one and five have elevated blood-lead levels, with 40,000 having levels that would warrant case management. Yet, as of January 1999, DHS reported that it was providing case management to only 3,500 children. Thus, BSA found that DHS is clearly not fulfilling its responsibilities as mandated by the legislature.

Specifically, despite a legislative directive, DHS has failed to adopt regulations establishing a standard of care that requires health care providers to evaluate all children to determine their risk of lead poisoning during periodic health assessments. In addition, DHS did not follow initial federal guidance on the appropriate approach to blood-lead testing. Moreover, it has not ensured that health care providers who participate in its Medi-Cal and Child Health and Disability Prevention (CHDP) programs and provide services to about 70% of the state's one- and two-year-old children order blood-lead tests, in accordance with program requirements. Thus far, DHS' records indicate that less than 25% of the children in this age group who received medical care via these programs have received blood-lead tests.

Further, DHS has yet to develop a reporting system that tracks the results of all blood-lead tests, despite a 1991 legal settlement requiring it to do so. As a result, DHS is unable to report accurately on where and to what extent lead poisoning exists in the state. This lack of adequate tracking has hampered DHS' ability to ensure that children suffering from lead poisoning receive appropriate care. Because DHS requires labs to report only those blood-lead test results that exceed 25 micrograms of lead per deciliter (ug/dL) of human blood, it cannot ensure that it receives blood-lead results at the lower level of 15 ug/dL. Yet children who have blood-lead levels as low as 15 ug/dL require case management.

In addition, DHS has not appropriately monitored the case management of those lead-poisoned children whom it has identified. This case management, primarily handled by city and county lead poisoning prevention programs (local programs), consists of follow-up medical care for the children and investigation of the sources of the lead poisoning. Although DHS requires the local programs to report all their case management activities, it does not enforce this requirement. Consequently, many case management reports are never submitted. Moreover, when DHS receives these reports, it does not review the information contained within them to determine if the care given to a child was appropriate and if the source of the poisoning has been eliminated or reduced. Fortunately, BSA found in its review of selected cases that local programs have provided adequate care. However, in a number of instances, the local programs were unable to ensure that the source of the poisoning was eliminated or reduced because they require assistance in their efforts to compel property owners to do so.

According to BSA, DHS has made some progress towards protecting children from lead hazards. For instance, it has established a program aimed at reducing lead exposure caused by unsafe renovations or removal of lead-based paint, and it has also conducted a study of school and day care facilities throughout the state to determine the prevalence of lead hazards within them. Yet, in both of these examples, DHS must take immediate further action to achieve the best possible results. Although the program aimed at reducing lead exposure has qualified the state and local agencies for federal funding, these funds are currently threatened because DHS has not demonstrated that it has dedicated adequate funding and staff to enforce the program. Similarly, until DHS completes a curriculum to educate school and day care facility staff on appropriate steps to eliminate or reduce lead hazards, the children at these facilities remain at risk for lead poisoning.

BSA concluded that DHS has many tasks ahead of it to identify and protect children with lead poisoning. For this reason, it must organize its efforts and move into a higher gear to fulfill its responsibilities to the legislature and the state's children. If it does not, thousands of children remain vulnerable to the serious effects of lead poisoning. To ensure that DHS properly focuses its efforts and resources to identify and protect children with lead poisoning, BSA recommended that the legislature require DHS to report on its progress annually, amend existing state law to require labs to report the results of all blood-lead tests, and grant California's cities and counties the authority to compel property owners to eliminate or reduce lead hazards.

To obtain adequate data on where and to what extent lead poisoning is a problem in the state and to ensure that it identifies and protects lead-poisoned children, BSA recommended that DHS take the following actions:

- Adopt regulations requiring labs to report all blood-lead test results.
- Adopt standard-of-care regulations as previously directed by the legislature.
- Take immediate action to identify and educate those providers participating in its Medi-Cal and CHDP programs who are not ordering blood-lead tests as required.
- Ensure that local programs submit to it all case management information outlining the services provided to lead-poisoned children.

- Monitor local programs' activities to ensure that lead-poisoned children receive appropriate care. This should entail a high-level review of all follow-up reports to ensure their completeness, and a more detailed assessment of the care given in a representative sample of cases.
- Ensure that homeowners and property owners properly eliminate or reduce lead hazards identified as a source of a child's lead poisoning by assisting the local programs with issuing orders to control these hazards if the legislature does not grant this specific authority to them.
- Seek legislation granting it enforcement authority that will allow it to impose administrative, civil, and criminal sanctions against those who violate state requirements governing activities to eliminate or reduce lead hazards.
- Complete the training curriculum for eliminating or reducing lead hazards in California's school and day care facilities so that children do not remain at risk for lead poisoning.

Department of Corporations' Lack of Leadership Hampers Consumer Protection

In ***Department of Corporations' Regulation of Health Care Plans: Despite Recent Budget Increases, Improvements in Consumer Protection Are Limited*** (No. 97118.2; April 1999), BSA reports that despite receiving a $6.5 million budget increase in August 1997 to enhance its regulation of health care service plans (health plans), the Department of Corporations (DOC) has shown only limited improvements in its efforts to protect health plan enrollees from inadequate medical care.

DOC's Health Plan Division (HPD) is largely responsible for ensuring that health plans comply with the Knox-Keene Health Care Service Plan Act of 1975, which is designed to ensure the provision of adequate health care by financially sound health plans. Among other things, HPD is required to conduct onsite evaluations, or "medical surveys," of all health plans no less frequently than once every three years. The culmination of a medical survey is HPD's release of a final, public report describing the survey's results. If HPD identifies weaknesses during a routine medical survey, its public report will discuss those deficiencies and any actions the health plan has taken or plans to correct the problems. Further, HPD is required to review every health plan's financial status no less frequently than once every five years. These reviews, called "financial examinations," culminate in HPD's issuance of a final, public report describing the results found.

During fiscal year 1997–98 and the first half of 1998–99, BSA found that HPD's medical survey and financial examination functions continued to have backlogs. BSA identified several weaknesses, including the Division's failure to complete by the mandated deadline nearly half of all required medical surveys. Also, at the time BSA conducted the audit, the Division had a modest backlog of six follow-up financial examinations it had not yet conducted. Further, as of March 5, 1999, more than 200 complaints from enrollees were still open even though DOC had exceeded the statutory 60-day deadline for resolving those complaints.

According to BSA, various conditions at DOC illustrate that a shortage of adequate leadership is at the core of the Division's shortcomings. These conditions include the lack of a position to manage one major function, a vacant managerial position for another function, the Division's inconsistent reviews of existing policies and procedures for all major functions to evaluate whether changes would improve effectiveness, high vacancy rates for some positions, poor workload estimates, and weak administrative controls. Without the necessary focus, direction, and vision provided by qualified leadership, DOC cannot ensure that health plan enrollees receive the level of protection expected by law.

Not only is DOC failing to fully protect health plan enrollees, but health plans have paid more for the cost of their regulation than DOC actually spent. Specifically, BSA observed that the Division (and positions in other DOC divisions whose work relates directly to health plans) had not spent large portions of its budget by the end of fiscal years 1996–97 and 1997–98, and this fact had repercussions for health plans. For these two fiscal years, the program's ending balances exceeded desired levels by $2.6 million and $5.9 million, respectively. Because DOC's primary source of revenue for health plan regulation is the fees it charges health plans, year-end balances higher than desired indicate that health plans have paid more than necessary for the costs of the program's operations. According to DOC, its year-end balances were too high for several reasons, including an underestimation of revenues and an overestimation of expenditures for the program.

During BSA's audit of DOC's performance since it received its budget increase, BSA encountered issues leading it to conclusions similar to those it reported in a 1998 audit during which BSA compared DOC's responsibilities with those of other state entities to determine whether one or more of the other entities could better administer and enforce the Knox-Keene Act. [16:1 CRLR 22–26, 214] Therefore, BSA repeated its 1998 recommendation that the legislature move the Division's responsibilities for regulating health plans from the Business, Transportation and Housing Agency and the Department of Corporations. If the legislature determines that no appropriate agency or department currently exists within the state's organizational structure, BSA recommended that the legislature create a new agency or department in which to place these responsibilities (see agency report on DOC for related discussion).

BSA also recommended that Governor Davis help correct the concerns identified in the report. Specifically, BSA suggested that the administration promptly appoint to leadership positions within DOC qualified individuals who will provide the necessary direction, focus, and vision to the staff responsible for regulating health plans. BSA also recommend that the team of experts assembled at the direction of the Governor consider the Auditor's findings and

recommendations when preparing its options "for more effective regulation of the managed care industry."

Further, BSA recommended that DOC take the following steps to ensure that health plan enrollees receive adequate care:

- Fill the vacant leadership position within the medical survey function as soon as DOC can find a qualified individual. DOC should also promptly create and fill a leadership position for the financial examination function.
- Examine in depth and revise as necessary the policies and procedures used by staff of the medical survey and financial examination functions.
- Reassess and revise as necessary DOC's workload estimates for the medical survey, financial examination, and complaint resolution functions, and adjust its budget accordingly. Also, DOC should promptly fill those positions necessary for providing consumer protection.
- Establish sound administrative controls, including the development and implementation of adequate workload tracking systems, to ensure DOC's compliance with applicable laws concerning the issuing of reports for routine medical surveys.
- To ensure that health plans do not pay more than necessary for DOC's costs to regulate the plans, DOC should develop and use more accurate estimates of its resources and expenditures.

Other Reports

BSA also issued the following reports between January 1 and April 30, 1999: ***County Emergency Medical Services Funds: Although Counties Properly Allocate Money to Their EMS Funds, County Policies and Legislative Requirements Unnecessarily Limit Reimbursements to Emergency Medical Care Providers*** (No. 98109; January 1999); ***Department of Rehabilitation: The Business Enterprise Program for the Blind Is Financially Sound, but Opportunities for Improvement Exist*** (Report No. 98020; January 1999); ***Department of Justice: Has Taken Appropriate Steps To Implement the California Witness Protection Program, But Additional Controls Are Needed*** (Report No. 98024; February 1999); ***Los Angeles County Metropolitan Transportation Authority: Converting Its Poorly Performing Alcohol-Fueled Buses to Diesel Is the Most Cost-Effective Option Available*** (Report No. 98120; February 1999); ***State Board of Equalization: Budget Increases for Additional Auditors Have Not Increased Audit Revenues as Much as Expected*** (Report No. 98118.1; March 1999); ***Franchise Tax Board: Its Revenue From Audits Has Increased, but the Increase Did Not Result From Additional Time Spent Performing Audits*** (Report No. 98118.2; March 1999); ***State Personnel Board: Its Management of Disciplinary Hearings Has Improved, but Further Changes Are Necessary*** (Report No. 98114; March 1999); ***Department of Health Services: Use of Its Port of Entry Fraud Detection Programs Is No Longer Justified*** (Report No. 98026; April 1999); ***and California Science Center: The State Has Relinquished Control to the Foundation and Poorly Protected Its Interests*** (Report No. 98115; April 1999).

LEGISLATION

AB 644 (Wildman), as amended April 19, would require BSA to compile and submit annually to the Joint Legislative Audit Committee a report that proposes statutory changes that the State Auditor has determined should be made in order to implement audit recommendations made by the State Auditor during the prior year. *[A. CPGE&ED]*

SB 951 (Hayden). Under the Reporting of Improper Governmental Activities 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 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 introduced February 25, this bill would rename the Act as the "California Whistleblower Protection Act," and more closely align California's "whistleblower" statutes with existing federal law. The bill would define the terms "protected disclosure" (a communication relating to the disclosure or intended disclosure of improper activities), and "illegal order" (any directive to violate, or assist in violating a state, federal, or local law, rule or regulation; or an order to work, or cause others to work, in unhealthy or unsafe conditions); provide that state employees are prohibited from using their official authority to interfere with the right of any person to make a protected disclosure to anyone or refuse to obey an illegal order; provide that any violation shall constitute a complete, affirmative defense to any adverse action against an employee in any administrative review, challenge, or adjudication of that action; and provide that, in any civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this article was a contributing factor in the alleged retaliation against a former, current, or prospective employee, the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. *[A. Desk]*

LITIGATION

On March 9, the California Supreme Court denied appellant Odelia Braun's petition for review of the First District Court of Appeal's decision in ***Braun v. Bureau of State Audits***, 67 Cal. App. 4th 1382 (Nov. 23, 1998). In that matter of first impression, the First District held that statements made by BSA in an investigative audit are absolutely privileged under Civil Code section 47(b), such that appellant's tort claims against the Bureau were properly dismissed by the trial court. *[16:1 CRLR 215]*