



## COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY (LITTLE HOOVER COMMISSION)

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The Little Hoover Commission (LHC) was created by the legislature in 1961 and became operational in the spring of 1962. (Government Code sections 8501 *et seq.*) Although considered to be within the executive branch of state government for budgetary purposes, the law states 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.)

Statute provides that no more than seven of the thirteen members of the Commission 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 the Commission 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 purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...."

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 ab-

olition of unnecessary services, programs and functions, the definition or redefinition of public officials' duties and responsibilities, and the reorganization and/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.

### MAJOR PROJECTS

**Too Many Agencies, Too Many Rules: Reforming California's Civil Service** (April 1995) is LHC's long-awaited report detailing eight findings and recommendations that it believes will help state lawmakers eliminate redundancies, clarify authorities, and deregulate the civil service system.

In its first finding, the Commission concluded that there is overlap and conflict between the state Personnel Board, steward of the traditional civil service system, and the Department of Personnel Administration (DPA), which is the union contract negotiator for the Executive Branch. Repeating a recommendation it first made 16 years ago after a similar study requested by then-Governor Jerry Brown, the Commission again stated that the Personnel Board should be eliminated, and that oversight of personnel management and central leadership should be assigned to DPA. LHC further suggested that the state create a new forum, either arbitration or a combination of arbitration and an appeal board, to serve as the sole and final venue for resolving worker appeals of management actions.

LHC also found that state departments are hamstrung by the requirement that internal personnel management rules and negotiated agreements be submitted to the Office of Administrative Law (OAL), whose review causes significant delays in personnel changes. The Commission recommended that legislation be enacted to eliminate OAL review of rules, regulations, and negotiated agreements relating to the internal personnel administration of the state.

The Commission next concluded that the concept that all state employees belong to one civil service is a fiction. LHC found that different departments have different missions, clientele, and needs, and that the centralized system hinders cost-effective management, complicates procedures, discourages experimentation, and masks accountability. LHC recommended that legislation be enacted to allow DPA to delegate to individual departments more authority over classification, selection, discipline, compensation, and layoff procedures. The Commission also suggested

that the legislation encourage more demonstration projects to foster reforms.

LHC also found that many state managers lack the authority, leadership skills, and incentives needed to create a positive work environment and deal effectively with employees. The Commission recommended that legislation be enacted to expand the Career Executive Assignment program to include all managers and supervisors. The Commission also suggested that the legislature enact reforms which allow for the recruitment of managers and supervisors from outside state service (rather than relying primarily on internal promotions), and broaden pay-for-performance programs. According to the Commission, training should be given the highest priority and embraced as a bipartisan concept, and departments should fund training with minimum line items in their budgets and should report to the legislature annually on the scope and nature of their training efforts.

Fifth, the Commission concluded that a complicated disciplinary process discourages proactive management and employee performance, and that the Personnel Board's system of handling disciplinary appeals is unnecessarily costly and burdensome. The Commission recommended that DPA and employee unions negotiate alternative procedures, such as arbitration and mediation, for resolving disputed discipline actions; the Commission also suggested that legislation be enacted to implement the negotiated solution as the sole venue for resolving major disputes.

In its sixth finding, the Commission concluded that tenure (the guarantee of permanent employment) and automatic pay raises have outlived their usefulness and are counterproductive to achieving effective and efficient government service. LHC recommended that Article VII of the California Constitution and other applicable statutes be amended to eliminate the presumption of permanent tenure, and suggested that DPA work through negotiations to eliminate automatic pay raises and to link salary adjustments to performance.

The Commission's seventh finding observed that state managers are constrained from contracting out; as a result, the public interest in government efficiency is usurped. LHC recommended that Article VII of the California Constitution be amended to remove the presumption that the state's work must be performed by civil servants and to specifically allow contracting with private firms to do public work.

Finally, LHC found that, as in the private sector, the success of public sector



enterprise requires management/labor cooperation, communication, trust, and willingness to work together to resolve mutual problems. LHC recommended that the Governor issue an executive order to foster cooperation between management and labor by establishing management/labor advisory committees. The Commission also suggested that legislation be enacted to repeal laws that dictate employment provisions typically covered by labor contracts.

**State Fiscal Condition Report** (March 1995) details California's fiscal condition in light of the current two-year budget agreement which relies on \$10 billion in external borrowing and a trigger mechanism to make automatic cuts if resources do not materialize to repay loans. [14:4 CRLR 23] LHC's report concluded that deteriorating credit ratings, the size of short-term borrowings, and reliance upon bank guarantees places serious external restraints on the state's financial condition.

According to the Commission, the key problem with the two-year budget agreement is that while the state's budgets appear to be in balance each year when they are adopted, the state has incurred a large structural deficit which has led to difficulty in financing its annual cash needs. The Commission observed that the state has gone from an entity which borrowed because it could make money on investing the proceeds to one that is caught in a vicious circle of short-term borrowing to pay off loans related to a structural deficit. The Commission pointed out that the state's spending and borrowing practices affect the state's credit rating; according to the Commission, the state has gone from having top ratings to having the country's third worst rating. This low rating causes the state to pay millions of dollars in higher interest charges and may discourage businesses from coming to the state out of fear of high taxes due to a state financial crisis.

As a solution to this budgetary problem, the Commission recommended that state policymakers concentrate on steps that will bring both the spending and cash flow budgets into balance and pursue a course that will restore California's tarnished credit rating. The steps proposed by the Commission include crafting a budget that is based on reasonable and sustainable estimates of revenues, federal reimbursements, and debt obligation; focusing on a realistic cash flow plan to complement the budget plan; cutting programs as deeply as necessary to end the 1995-96 fiscal year in a balanced position; and adopting long-term plans, budgets, and

policies which ensure that California's budgets will be balanced in reality, not because of financial maneuvers. The Commission noted that it is poor public policy to rely on automatic triggers, divert funds clearly earmarked for special purposes, and allow either the financial markets or the need for bank guarantees to dictate the state's future.

**Governor's Reorganization Plan No. 1 of 1995.** On March 27, the Commission issued its review of Governor Wilson's Reorganization Plan No. 1 of 1995, which proposes to abolish several independent, multimember entities which oversee state energy policy and merge their duties into both new and existing executive branch departments.

The plan would eliminate the California Energy Commission (CEC) and place most of its functions in a newly created Department of Energy and Conservation; create an Energy Facilities Siting Board to perform the power plant siting responsibilities now handled by CEC; transfer the existing divisions and functions of the Department of Conservation, except for the Division of Recycling, to the new Department of Energy and Conservation; transfer the State Lands Commission's current responsibility for oil and gas drilling oversight to the existing Division of Oil, Gas and Geothermal Resources within the Department of Conservation, which will be moved to the new Department of Energy and Conservation; transfer the marine facility oil inspection function from the State Lands Commission to the Office of Oil Spill Prevention and Response within the Department of Fish and Game; and transfer the Division of Recycling from the Department of Conservation to a newly reconstituted California Integrated Waste Management and Recycling Board that would have a full-time chair and part-time members.

After reviewing the plan, a majority of the Commission recommended that the proposal be implemented with two modifications. First, the majority suggested that the plan be amended to require the state, every two years, to adopt an explicit energy policy that is the product of involvement by the new Department of Energy and Conservation, the Governor, and the legislature; such a policy should guide and direct the actions of all state entities involved in energy matters. Second, the Commission recommended that the plan require public member representation on the new Energy Facilities Siting Board.

Several Commissioners were highly critical of the reorganization plan. Four Commissioners—Senator Alfred Alquist, Assemblymember Jackie Speier, Michael

Alpert, and Stanley Zax—submitted a dissent to the Commission's report on Reorganization Plan No. 1; these Commissioners contended that "[i]n the face of the rejection of specific legislation of most of the elements of this plan by the legislature in 1994, the Administration has returned with an almost identical proposal, this time couched in terms of a questionable legal shortcut method known as Reorganization Plan No. 1. However, the thrust of the proposal is the same—the assumption by the Administration of much greater authority over energy policy in California without the safeguards of the existing system." Additionally, the dissenting Commissioners contended that the plan suffers from serious flaws which were not adequately reviewed or addressed by the majority; for example, the dissent claimed that LHC failed to adequately examine or evaluate how the plan would result in a comprehensive energy policy for California; the legality of the Administration's absorption of the functions of currently independent regulatory commissions; the pros and cons of the commission/board form of government versus the departmental form of the government for this area of public policy; and the appropriate role of the Public Utilities Commission in the state's regulation of energy. In a separate letter to the Governor and members of the legislature, Commissioner Zax opined that the proposal "is beyond the authority of the Commission and is unconstitutional on its face." Zax contended that "the Commission has acted improperly in not requesting a legal opinion of the Attorney General or its own legal counsel," and recommended "that the legislature reject this proposal of the Governor unless the Attorney General renders an unqualified legal opinion."

Under Government Code section 8523, reorganization plans are developed by the Administration and presented to the Little Hoover Commission, which may recommend acceptance, changes, or rejection. If the Commission approves a proposed reorganization plan, the Governor then submits it to the legislature, which has sixty days to act on the proposal. If neither the Senate nor the Assembly adopts, by majority vote, a resolution rejecting the plan, the plan automatically goes into force on the 61st day; however, if either house votes to reject the proposal, the plan is dead. At this writing, the Governor's Reorganization Plan No. 1 awaits review by the legislature.

**Governor's Reorganization Plan No. 2 of 1995.** On March 16, the Little Hoover Commission recommended implementation of Governor Wilson's Reorganization



# INTERNAL GOVERNMENT REVIEW AGENCIES

Plan No. 2, which would merge the State Police with the California Highway Patrol. According to the Commission, the plan takes a small statewide law enforcement agency and consolidates it with a larger statewide law enforcement agency; the Commission believes this will result in both enhanced security services and budgetary savings of as much as \$835,000 in the first full year alone. In May, the proposal was presented to the legislature, which is not expected to reject it; at this writing, the State Police is expected to become part of the Highway Patrol on July 1.

## DEPARTMENT OF CONSUMER AFFAIRS

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The Department of Consumer Affairs (DCA) oversees the activities of 37 administrative agencies which regulate 180 diverse professions, occupations, and industries. The primary function of DCA and its constituent agencies is to protect consumers from incompetent, dishonest, or impaired practitioners.

Most of the multi-member boards under DCA's jurisdiction are relatively autonomous of DCA control. However, the DCA Director is authorized to review and reject regulatory changes proposed by all DCA agencies; only a unanimous vote of the agency's board will override the Director's rejection. Additionally, the Department may intervene in matters regarding its boards if probable cause exists to believe that the conduct or activity of a board, its members, or its employees constitutes a violation of criminal law.

DCA maintains several divisions and units which provide support services to its constituent agencies, including a Legal Unit whose attorneys advise DCA boards at meetings and regulatory hearings; a Division of Investigation whose investigators gather evidence in complaint cases filed against the licensees of some DCA agencies; a Legislative Unit which assists agencies in drafting language for legislation and regulations affecting DCA agencies and their licensees; an Office of Examination Resources (formerly the Central Testing Unit) whose psychometricians analyze and assist in validating licensure examinations used by DCA agencies; and a Budget Office whose technicians assist

DCA agencies in assessing their fiscal status and preparing budget change proposals for legislative review.

In addition to its functions relating to its various boards, bureaus, and examining committees, DCA is also charged with administering the Consumer Affairs Act of 1970. In this regard, the Department educates consumers, assists them in complaint mediation, and advocates their interests before the legislature, the courts, and its own constituent agencies.

The DCA Director also maintains direct oversight and control over the activities of several DCA bureaus and programs, including the following:

• **Bureau of Automotive Repair**—*Chief: K. Martin Keller; (916) 255-4300; Toll-Free Complaint Number: (800) 952-5210.* Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), DCA's Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. BAR's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). BAR's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program, Health and Safety Code section 44000 *et seq.*, which provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

• **Bureau of Security and Investigative Services**—*Chief: James C. Diaz; (916) 445-7366.* The Bureau of Security and Investigative Services (BSIS) regulates six industries: private security services (private patrol operators and armored contract carriers) (Business and Professions Code section 7580 *et seq.*), repossessors (Business and Professions Code section 7500 *et seq.*), private investigators (Business and Professions Code section 7512 *et seq.*), alarm company operators (Business and Professions Code section 7590 *et seq.*), firearms and baton training facilities (Business and Professions Code section 7585 *et seq.*), and locksmiths (Business and Professions Code section 6980 *et seq.*). BSIS' purpose is to protect the health, welfare, and safety of

those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, BSIS reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications.

• **Bureau of Electronic and Appliance Repair**—*Chief: Curt Augustine; (916) 445-4751.* Created in 1963, the Bureau of Electronic and Appliance Repair (BEAR) registers service dealers who repair major home appliances, electronic equipment, cellular telephones, photocopiers, facsimile machines, and equipment used or sold for home office and private motor vehicle use. Under SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993), BEAR also registers and regulates sellers and administrators of service contracts for the repair and maintenance of this equipment. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; its regulations are located in Division 27, Title 16 of the CCR. The Electronic and Appliance Repair Dealer Registration Law requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

• **Bureau of Home Furnishings and Thermal Insulation**—*Chief: Karen Hatchel; (916) 324-1448.* The Bureau of Home Furnishings and Thermal Insulation (BHFTI) regulates the home furnishings and insulation industries in California. The Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, BHFTI is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings and insulation industries; BHFTI is also responsible for toy safety testing for the state of California. The Bureau is established in Business and Professions Code section 19000 *et seq.*

BHFTI establishes rules regarding furniture and bedding labeling and sanitation. The Bureau enforces the law by conducting extensive laboratory testing of products randomly obtained by BHFTI inspectors from retail and wholesale establishments throughout the state. To enforce its regulations, which are codified in Division 3, Title 4 of the CCR, BHFTI has access to premises, equipment, materials, and articles of furniture. The Bureau may