



law; and in May 1993, it took DHS an average of 16 days to process mailed-in drug TARs.

BSA also sampled drug TARs received by fax and DHS' audio response telephone system to determine if DHS was processing these TARs within 24 hours of receipt, as required by federal law. Based on a sample of drug TARs received during May 1993, BSA found DHS to be in compliance with the 24-hour requirement.

**BSA Releases California's 1991-92 Financial Report.** On December 28, BSA released the state's 1991-92 financial report, including a financial section with the state's general purpose financial statements presented on a basis in conformity with generally accepted accounting principles and a statistical section with labor, income, and population statistics. BSA's financial statements indicate that the state's general fund spent approximately \$3.3 billion more than it generated in revenues for fiscal year 1991-92, and ended the fiscal year with a fund deficit of \$3.8 billion.

**BSA Releases Statement of Securities Accountability.** On October 7, BSA released its financial audit report of the state Treasurer's Office Statement of Securities Accountability as of June 30, 1992; the Statement presents the securities owned by or pledged to the state directly or under investment agreements and securities held for safekeeping. The state Treasurer's Office is responsible for the safekeeping of all securities owned by or pledged to the University of California, and for securities in other depositories owned by or pledged to the Public Employees' Retirement System, the State Teachers' Retirement System, the Legislators' Retirement System, and the Judges' Retirement System. For the Statement of Securities Accountability, BSA explained that the Treasurer's Office assigns dollar amounts to each security for ease of accountability rather than for purposes of valuing securities to cost or market; the dollar amounts assigned represent the par or face value, the original face value, the original principal value, the current outstanding principal balance, or a nominal value of \$1 per certificate or note. Therefore, BSA noted that the dollar amounts presented in the Statement should not be used to determine the value of investments of, or pledged to, to the state. BSA concluded that the statement presents fairly the securities accountability of the Treasurer's Office as of June 30, 1992.

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

*Executive Director:*

*Jeannine L. English*

*Chairperson: Nathan Shapell  
(916) 445-2125*

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.

On October 20, Governor Wilson appointed Carl Covitz, former Secretary of the California Business, Transportation and Housing Agency, to the Little Hoover Commission. Covitz, of Los Angeles, returns to state government after resigning his post in December 1992 while under investigation for the alleged misuse of his office.

In December, the Governor reappointed Angie Papadakis of Rancho Palos Verdes to the Commission. Papadakis owns an advertising business and has been a member of the LHC since 1990.

### MAJOR PROJECTS

The Little Hoover Commission released no reports between September 24-December 31, 1993.

## DEPARTMENT OF CONSUMER AFFAIRS

*Director: Jim Conran*

*(916) 445-4465*

*Consumer Infoline:*

*(800) 344-9940*

*Infoline for the Speech/Hearing Impaired: (916) 322-1700*

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; a 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: *James Schoning*; (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) regu-

lates six industries: private security services (security guards and private patrol operators) (Business and Professions Code section 7544 *et seq.*), repossessioners (Business and Professions Code section 7500 *et seq.*), private investigators (Business and Professions Code section 7540 *et seq.*), alarm company operators (Business and Professions Code section 7590 *et seq.*), security guard training facilities (Business and Professions Code section 7552 *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: *K. Martin Keller*; (916) 574-2040. 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 in-

sulation 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 issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. BHFTI may also revoke or suspend a licensee's registration for violation of its rules.

- **Tax Preparer Program**—Administrator: *Jacqueline Bradford*; (916) 324-4977. Pursuant to Business and Professions Code section 9891 *et seq.*, the Tax Preparer Program registers approximately 19,000 tax preparers in California. The Program's regulations are codified in Division 32, Title 16 of the CCR. Registrants must be at least eighteen years old; have a high school diploma or pass an equivalency exam; and must have completed sixty hours of instruction in basic personal income tax law, theory, and practice within the previous eighteen months or have at least two years' experience equivalent to that instruction. Prior to registration, tax preparers must deposit a bond or cash in the amount of \$5,000 with the Program. Members of the State Bar, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from the Program's registration requirement.

## MAJOR PROJECTS

**Senate Subcommittee Holds Annual DCA Oversight Hearings.** On October 19-20 and November 10 and 17, the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, held its annual oversight hearings on the Department and various agencies within DCA. Senator McCorquodale opened the hearings by noting that the Subcommittee has been delegating the responsibility to thoroughly evaluate consumer-related boards and bureaus and establish criteria which might determine whether a given regulatory program should be abolished, consolidated with another program, or transformed to better



meet the needs of consumers. The Subcommittee structured its hearings as follows:

- On October 19, the Subcommittee heard a presentation from Steve Olson, Deputy Director of the Department of Finance, on performance budgeting. Under SB 500 (Hill) (Chapter 641, Statutes of 1993), DCA has been designated as one of four state departments which will pilot-test performance budgeting as an alternative to the state's traditional budgeting process. (See agency report on LEGISLATIVE ANALYST'S OFFICE for related discussion.) The Department intends to test the new procedure on its own budget and those of its bureaus.

Next, DCA Director Jim Conran discussed some of the accomplishments of the Department and its agencies in the areas of improved examinations, enhanced enforcement tools and processes, and DCA's move to streamline and consolidate the functions of its bureaus. Conran explained that DCA will create a Division of Licensing to handle the examination and licensing functions of all its bureaus; it will also create a single toll-free 800 number for easy consumer access to all the bureaus, and the number will provide service to consumers in over 100 languages. Conran stated that he welcomes the Subcommittee's investigation into the possible restructuring of DCA and its agencies, and noted that the performance of all DCA agencies should be comprehensively evaluated within the next five years. Such an evaluation, said Conran, should be guided by the following inquiries: (1) Should government continue to regulate this particular trade or profession? (2) What is the best regulatory scheme for this particular trade or profession? (3) What would be gained by a merger or consolidation of various boards, commissions, and/or bureaus? (4) Do the boards have the enforcement tools and resources they need to get the job done?

Center for Public Interest Law (CPIL) Director Robert C. Fellmeth also presented testimony on October 19. Professor Fellmeth addressed the traditional justifications for occupational regulation, and argued that licensing is only one of many regulatory alternatives which should be considered when a marketplace flaw justifies some governmental intrusion. He stated that the "prior restraint" licensing alternative should be reserved for trades and professions in which incompetence will cause irreparable harm [13:4 CRLR 5]; under this definition, half of DCA's licensing boards should be abolished and replaced with a more tailored regulatory alternative or combination thereof, such as

a bond, a certification system to protect the use of a title, or enhanced disclosure requirements.

Also on October 19, the Subcommittee heard from Gerald Beavers of the Legislative Analyst's Office (LAO), which agrees with Professor Fellmeth's criterion for the propriety of licensing and has recommended the abolition of the DCA agencies which license certified public accountants, boxers, barbers, cosmetologists, guide dog trainers, cemeteries and crematories, funeral directors and embalmers, private investigators, repossessioners, security guards, electronic and appliance repair dealers, the home furnishings and thermal insulation industries, landscape architects, certified shorthand reporters, and tax preparers. [13:2&3 CRLR 35, 38] Beavers stated that regulatory programs which continue in existence should be regularly required to demonstrate that their functions meet the goals which have been established for them by the legislature. Beavers echoed Professor Fellmeth's admonition to "figure out what you're trying to protect against, and then structure your system to address that problem."

The Subcommittee also invited testimony from representatives of other jurisdictions which have deregulated many of the trades and professions still regulated by DCA agencies and/or which regulate them in a very different way. Representatives from Florida, Colorado, and Canada testified on various issues, including Colorado's landmark 1976 enactment of a statewide "sunset" law for all occupational licensing programs (which was described as "an experiment in regulatory terror"). According to Bruce Douglas from Colorado's Division of Registration, "Sunset works, within limited expectations. We have abolished thirty regulatory programs, including the entire funeral industry (morticians and embalmers), landscape architects, the athletic commission, abstractors, professional sanitarians, and hearing aid dealers. We've done all this with minimal harm to consumers, if any." Douglas also noted that Colorado has consolidated its barber and cosmetology boards and its nursing and psychiatric technician boards, and abolished continued education requirements for all professions and trades (including physicians). Douglas stated that the sunset concept even helps in reviewing boards whose existence is clearly justified, because it "helps to hone their focus."

Finally, representatives from three DCA agencies whose performance is deemed superior—the Bureau of Automotive Repair, the Board of Psychology, and the Board of Registered Nursing—were

invited to present testimony on their regulatory programs.

- On October 20 and November 10, the Subcommittee requested formal presentations by specified pairs of DCA regulatory agencies on several issues related to the possible restructuring of the boards. Specifically, the Subcommittee requested comments on (1) whether the trades and/or professions regulated by those boards should be deregulated and both boards abolished; (2) whether the two boards should be merged; and (3) whether either or both boards should be transformed into bureaus which lack a multi-member policymaking board and operate under the direct control of the DCA Director. To assist it in evaluating the boards' presentations and performance, the Subcommittee convened a "panel of commentators" who were invited to question the board representatives and present testimony or comments. The panel consisted of DCA Deputy Director Karen McGagin, LAO's Gerald Beavers, and CPIL Supervising Attorney Julianne D'Angelo.

During the two hearing days, representatives of the following DCA boards were required to appear before the Subcommittee (see the agency reports on these boards for a summary of the testimony presented):

- the Board of Funeral Directors and Embalmers and the Cemetery Board;
- the Board of Accountancy and the Tax Preparer Program;
- the Board of Landscape Architects and the Board of Architectural Examiners;
- the Board of Registration for Geologists and Geophysicists and the Board of Registration for Professional Engineers and Land Surveyors;
- the Board of Registered Nursing and the Board of Vocational Nurse and Psychiatric Technician Examiners;
- the Hearing Aid Dispensers Examining Committee and the Speech—Language Pathology and Audiology Examining Committee;
- the Board of Dental Examiners and its Committee on Dental Auxiliaries; and
- the Board of Psychology and the Board of Behavioral Science Examiners.

- On November 17, the Subcommittee devoted a full day to presentations about various enforcement issues, including complaint intake and investigation, the prosecutorial services provided by the Attorney General's Office, the adjudication process presided over by administrative law judges from the Office of Administrative Hearings, disciplinary guidelines, diversion programs for substance-abusing licensees, agency public disclosure policies, and the use of "intermediate sanc-



tions" short of license revocation, such as citations and fines, letters of reprimand, and telephone disconnect authority where unlicensed practice is involved.

At this writing, the Subcommittee is preparing a final report on the hearings and will release its legislative recommendations in early 1994.

**DCA Releases Results of "Death Summit."** On September 22, DCA convened a "Summit on Funeral and Cemetery Services" to discuss the problems which have prevented the Board of Funeral Directors and Embalmers and the Cemetery Board from adequately regulating the death services industry. [13:4 CRLR 20] On October 12, DCA released a summary of the recommendations made by Summit participants; the recommendations pertain to the scope of each board's regulation, consumer services, investigation and enforcement efforts, funding and resources, and board appointments and processes.

Regarding the scope of regulation, the participants recommended that the boards systematically review and prioritize areas of potential consumer harm, then craft appropriate methods to regulate each major area; address business practices related to sales of preneed contracts, as this appears to be a primary area requiring review; update licensing standards and examinations; broaden the scope of regulation to include currently unregulated individuals and activities; and utilize other existing regulatory avenues for functions that are not unique to this industry.

Regarding consumer services, the participants recommended that the boards establish consumer-friendly services and standards for timely response; improve the notification process, both for consumers and licensees; broaden sources of board information on industry practices beyond the complaint process; and improve consumer education and information regarding consumer rights and choices relating to funeral and cemetery services.

Regarding investigation and enforcement activities, the participants recommended that the boards develop priorities for enforcement activities; improve the effectiveness of enforcement and audit activities; and create better communication networks to keep board members informed of audit and enforcement activities and their outcomes.

Regarding funding and resources, the participants recommended that the boards increase fee revenues; develop broad-based funding mechanisms from outside the industry; improve efficiencies by sharing resources across boards and contracting for selected services; and consider es-

tablishing a fund to compensate consumers who have been wronged by licensees, a state fund for the burial of indigents, and county "potter's fields" on unused government lands.

Regarding board appointments and processes, the participants recommended that DCA consider proposing the merger of the two boards, or at least combining both executive officer positions into one; improve board effectiveness; and encourage public interest groups to have ongoing involvement in board activities.

DCA requested that each board review the recommendations in order to identify those that are acceptable as within the board's current authority; those that are not feasible or beneficial at this time; those requiring further study; and those acceptable recommendations which would require new legislation. At this writing, neither board has responded to DCA's request (see the agency reports on these boards for related discussions).

**Conran Urges Toy Safety During Holiday Season.** During December, DCA Director Jim Conran held a series of press conferences all over the state urging parents to be vigilant about the toys their children play with at home, school, and day care. He noted that many toys—especially inexpensive ones manufactured by foreign companies and sold in dime stores or grocery stores—contain small parts which break off easily and may become lodged in a child's throat or otherwise injure the child. He also announced that DCA and the federal Consumer Product Safety Commission (CPSC), as part of a joint investigation and action, recently tested 162 toys purchased in stores throughout California and issued recall orders on 60 of them. Under a cooperative agreement with CPSC, DCA's Bureau of Home Furnishings and Thermal Insulation is responsible for toy safety testing in California. [13:1 CRLR 40; 12:4 CRLR 84]

**Smog Check Update: Citizen Lawsuit Filed; Legislative Stalemate Continues.** California's Smog Check Program, which is administered through DCA's Bureau of Automotive Repair (BAR), has been the focus of heated debate between the state and federal governments for the past year. Under federal law, the state's Smog Check Program was required to comply with 1990 amendments to the federal Clean Air Act by November 15, 1993 or risk losing over \$750 million in federal highway funds. Although the California legislature failed to agree upon a program which meets the federal standards before adjourning last September, the U.S. Environmental Protection Agency (EPA),

which administers the Act, agreed not to initiate sanctions against the state so long as state and federal officials continued negotiations toward an acceptable plan. [13:4 CRLR 20]

Specifically, EPA believes that California's current Smog Check Program has failed because of its "decentralized" format, which allows approximately 9,000 private auto repair garages to test, repair, and retest the same vehicle before issuing a smog certificate. The EPA contends that such a self-serving system not only promotes the likelihood of fraud on the consumer, but also results in false test results due to lack of uniform testing equipment among the numerous smog inspection garages. Thus, EPA guidelines prefer a "centralized" model which provides for testing at approximately 200 government-operated sites; any needed repair work would be performed by independent garages. The legislature continues to reject the EPA plan, stating concern about the potential economic loss to the auto repair industry; some observers also contend that the Wilson administration is caught up in a power struggle with the Clinton administration over this issue.

On December 17, Senator Tom Hayden followed through on his threat to initiate a citizen lawsuit against EPA if it failed to enforce sanctions on California for noncompliance with the Act; in an attempt to bring about meaningful negotiations by state officials, Hayden filed suit in federal court seeking to compel EPA to impose sanctions against California, which could amount to the state's loss of \$1 billion in federal highway funds and restrictions on new development. While EPA officials note that state and federal authorities may still reach a compromise agreement, Hayden claims that his technical advisers believe the emerging compromise will not fully comply with the federal mandates. At this writing, the first court hearing is scheduled for March 4.

At this writing, the Senate Transportation Committee has not announced plans to reconsider SB 119 (Presley), the only pending proposal which the EPA has stated may satisfy federal standards; the Committee previously rejected SB 119 on August 31. [13:4 CRLR 23-24] Presently, there is some indication that the legislature may pursue SB 1195 (Russell) or SB 629 (Russell); many critics note that because both bills fall short of the federal requirements, the state's enactment of either bill could expedite the ultimate showdown between federal and state authorities (see LEGISLATION).

**BEAR Service Contract Action.** On January 28, BEAR is scheduled to recon-



vene its Service Contract Summit Group, so that members can review the Bureau's progress in implementing service contract requirements and provide their suggestions regarding the service contractor registration program authorized by SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993). [13:4 CRLR 22]

In order to implement SB 798's registration requirement, BEAR has tentatively announced the proposed adoption of sections 2710.5, 2726, 2726.5, and amendments to section 2760, Title 16 of the CCR. Proposed section 2710.5 would require that all service contractor applicants provide specified information to BEAR, in addition to the information required by Business and Professions Code section 830.5. Examples of such information include disclosure of the name and address of the service contract seller's administrator; a copy of the service contractor's proposed service contract form; location information pertaining to any financial institution holding a funded escrow account if the contractor has elected to use such; location information pertaining to the insurance carrier of any contract reimbursement insurance policies if such was elected; and criminal or administrative licensing history information relating to the individuals and entities named in the application.

Proposed section 2726 would regulate recordkeeping procedures and require service contractors to maintain the following information: the number of total service contracts which are in effect; the duration remaining on all contracts; the purchase price for service contracts; the names and addresses of all service contract holders; and proof of financial security.

Proposed section 2726.5 would require service contractors to file a copy of the most current service contract form with BEAR prior to its use.

Proposed amendments to section 2760 would require service contractors to pay both a registration and annual renewal fee of \$60 for each place of business engaged in the issuing, selling, offering for sale, and/or administering of service contracts in California.

In addition to the discussion of these draft regulatory proposals, the January meeting will focus on definitional issues within current regulations. For example, participants are expected to discuss the definition of the term "place of business" for service contractors; establishing criteria for accepting "a comparable audited financial statement with its home government"; determining what constitutes "proof" that a seller's contracts were administered by a service contract adminis-

trator who has a valid reimbursement insurance policy; establishing a procedure for service contractors to verify to BEAR that funded accounts held in escrow are equal to 25% of deferred revenues; and defining an acceptable "funded account."

**Other BEAR Rulemaking.** On September 3, BEAR published notice of its intent to amend sections 2700, 2710, 2713, 2721, 2722.5, 2722.6, 2725, 2742, 2752, 2770, and 2772, Title 16 of the CCR. Among other things, the changes would define a service dealer's place of business (which must be registered with BEAR) to include a location to which a customer has been directed by a service dealer to deliver his/her equipment for transportation to the service dealer; require that a diagnosis fee, if charged, shall be quoted prior to a service call and included in the service call charge; and require that a service dealer include a summary of the consumer's problem with a set or appliance on the receipt provided when the service dealer removes a set or appliance from that consumer's residence. [13:4 CRLR 20-21] At this writing, the changes await adoption by BEAR and review and approval by the Office of Administrative Law (OAL).

**Tax Preparer Program Proposes to Decrease Fees.** On October 1, the Tax Preparer Program published notice of its intent to amend section 3230, Title 16 of the CCR, to reduce the registration and renewal fees for tax preparers from \$50 to \$40 each. The Program held a public hearing on the proposal on November 16 in Sacramento; at this writing, the proposed fee decrease awaits review and approval by OAL.

**BHFTI Proposes to Increase Fees.** On November 5, BHFTI published notice of its intent to amend section 1107, Title 4 of the CCR, to increase its initial and biennial renewal licensing fees to the maximum extent allowed by law. The Legislative Analyst's Office and DCA's Budget Office project that BHFTI will face a deficit by the end of the 1993-94 fiscal year. However, recent amendments to Business and Professions Code section 19170 increased the maximum fee for the issuance and biennial renewal of Bureau licenses. Accordingly, in order to avoid an unacceptably low reserve or deficit, BHFTI proposes to raise its licensing fees by 50% for all new and renewal licenses for which application is made or which expires on or after March 1. BHFTI held a public hearing on the proposed fee increases on December 20; at this writing, the action awaits review and approval by OAL.

**BAR Rulemaking Update.** In July 1993, BAR published notice of its intent

to amend sections 3340.1, 3340.5, 3340.7, 3340.15, 3340.16.6, 3340.17, 3340.42, 3340.35, 3363.2, and 3363.4, Title 16 of the CCR, which—among other things—would make various changes to the Smog Check program, the state's motor vehicle inspection and maintenance program. BAR decided to put this rulemaking file on hold pending the outcome of the current plans to revise the Smog Check program (*see above*).

## LEGISLATION

**AB 1807 (Bronshvag)**, as amended September 8, is a DCA omnibus bill which would make numerous revisions to the enabling statutes of various DCA agencies. Among other things, the bill would authorize all DCA boards to establish by regulation a system for an inactive category of licensure; prohibit boards from granting a license until amounts owed by an applicant or licensee for fees, fines, or penalties that were paid with a bad check are paid, together with applicable delinquency and other fees; authorize boards to require that the person whose check was returned unpaid make payment of all fees by cashier's check or money order; authorize boards to provide written notices, including notices, orders, or documents served under the Administrative Procedure Act, by regular mail; and require each person holding a license or other authority to engage in a profession or occupation issued by a DCA board to notify the issuing board of any change of address within thirty days of the change.

Existing law authorizes certain DCA boards to issue citations if, upon investigation, the board has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services without being properly licensed, and to require the violator to cease the unlawful advertising, and to notify the telephone company furnishing services to disconnect the telephone service to any number contained in the unlawful advertising. AB 1807 would delete the requirement to notify the telephone company to disconnect the telephone service, and expand the list of agencies authorized to issue citations and request disconnection of the telephone service to include the Board of Registration for Geologists and Geophysicists, the Structural Pest Control Board, the Acupuncture Committee, the Board of Psychology, and the Board of Accountancy. [A. Inactive File]

**AB 652 (Speier)**, as amended August 30, would enact the Quality in Government Act, requiring all state departments and agencies, including the legislature, to



identify their external and internal customers, as defined, and to collect information regarding the provision of services to their customers and to disseminate this information to suppliers of products and services in order to improve service quality. It would also require each state department or agency to require its career executive assignment employees to be trained in the principles of total quality, as specified, and to annually review the Act and recommend to the legislature any proposals for its improvement. [S. *Appr*]

**AB 1287 (Moore)**, as amended September 8, would, until January 1, 1997, enact a comprehensive scheme for the identification, study, and regulation of "nonlawyer providers" (also known as "legal technicians" or "independent paralegals") under DCA's jurisdiction. [A. *In-active File*]

**AB 1392 (Speier)**, as amended July 1, would require every board, commission, examining committee, or other agency within DCA to notify DCA whenever any complaint has gone thirty days without any investigative action. The bill would also require DCA to determine when a backlog of complaints justifies the use of Department staff to assist in complaint investigation, and would authorize the DCA Director to review any complaint filed with a board, commission, examining committee, or other agency within DCA.

Under existing law, various boards within DCA are assisted by an executive officer or registrar, who is appointed by the board. This bill would provide for the Board of Accountancy, the Board of Funeral Directors and Embalmers, the Cemetery Board, the Certified Shorthand Reporters Board, the Board of Barbering and Cosmetology, the Board of Architectural Examiners, the Board of Registration for Geologists and Geophysicists, the Board of Landscape Architects, the Board of Registration for Professional Engineers and Land Surveyors, the Contractors' State License Board, and the Structural Pest Control Board, that the executive officer or registrar is appointed by the Governor, subject to Senate confirmation, and that the officer and employees are under the control of the director of consumer affairs. [S. *B&P*]

**AB 1067 (Baca)**, as introduced March 2, would repeal current provisions regarding the regulation of sellers of travel, defined to mean any person who in this state offers for sale, at wholesale or retail, transportation, or transportation-related services at a fee, commission, or other valuable consideration. The bill would also create a State Travel Sellers Authority and a Travel Advisory Commission thereun-

der within DCA and specify registration requirements. [A. *CPGE&ED*]

**AB 795 (Bowler)**, as amended March 29, would require all public entities that receive state funds to hold all meetings, retreats, and conferences in California, unless the public entity can establish a compelling reason for not doing so or the out-of-state meeting is sponsored by the National League of Cities or the National Association of Counties. [A. *LGov*]

**SB 993 (Kelley)**, as introduced March 5, would state the intent of the legislature that all legislation becoming effective on or after January 1, 1995, which either provides for the creation of new categories of health professionals who were not required to be licensed on or before January 1, 1994, or revises the scope of practice of an existing category of health professional, be supported by expert data, facts, and studies, including prescribed information, and be presented to all legislative committees of the legislature that hear that legislation prior to its enactment. [S. *B&P*]

**SB 1010 (Watson)**. Existing law provides that it is the policy of this state that the composition of state boards and commissions be broadly reflective of the general public, including ethnic minorities and women. As introduced March 5, this bill would require the Governor and every other appointing authority to annually publish, and make available to the public, a report containing the number of appointments made to any state body to which the above policy applies, indicating each appointee's gender and ethnic heritage. [S. *Rls*]

**AB 1926 (Peace)**. Under existing law, it is unlawful to make a false or fraudulent representation in connection with the payment of motor vehicle or other specified insurance claims or to commit certain fraudulent acts with respect to automotive repair. As introduced March 5, this bill would require all DCA boards to revoke the licenses of any licensees found to have violated any of the specified insurance fraud laws. [A. *F&I*]

**AB 117 (Murray)**. Existing law relating to the licensure of private investigators, patrol operators, and related persons authorizes the DCA Director (through BSIS) to adopt rules and regulations establishing the qualifications of persons eligible to carry firearms while employed by a private patrol operator, any lawful business as a security guard or patrolperson, or an armored contract carrier; adopt procedures governing the filing of charges by local authorities with respect to applicants for registration with BSIS for failure to meet standards for registration; and adopt

recordkeeping requirements for identifying all firearms in the possession or control of specified employees. As amended May 4, AB 117 would extend that rule-making authority to cover private investigators and their employees, and make related changes. It would also extend the rulemaking authority to fixing qualifications for bodyguards and to the establishment of procedures, qualifications, fees, and conditions under which licensed private investigators or bodyguards who hold valid firearms qualification cards will be issued a permit by the Director to carry a concealed firearm. The bill would specify that, after January 1, 1994, these procedures are the exclusive means whereby those licensees, acting within the scope of the activities for which they are licensed, and going to or from home or work, may carry a concealed firearm.

Existing law also provides that a private investigator may only provide services to protect a person, but not property, when incidental to an investigation. AB 117 would instead provide that a private investigator may provide services to protect a person even when he/she does not protect property and when it is incidental to an investigation, or when he/she is also licensed as a private patrol operator. AB 117 would also require licensees carrying or using a firearm to comply with certain insurance requirements. [A. *CPGE&ED*]

**SB 393 (Deddeh)**, as introduced February 23, would enact a new Debt Collection Practices Act, under which third-party debt collectors would be regulated. BSIS' former Collection Agency Act sunsetted on June 30, 1992. [12:4 *CRLR 68*] Among other things, the Act would provide for regulation by BSIS, exemptions from regulation, and the imposition of fees which would be deposited into a continuously appropriated fund. If enacted, the bill's provisions would take effect immediately as an urgency measure and remain operative until July 1, 1995. [S. *InsCl&Corps*]

**SB 394 (Deddeh)**, as amended April 22, would require any person engaged in the business of collecting claims for others or conducting the activities of a collection agency, as defined, to record a verified certificate of operation as a collection agency with the recorder's office of the county of the collection agency's principal place of business. This bill would exempt from this requirement specified persons or entities that engage in collection activities that are minor and incidental to other primary business activities, and would also require a collection agency to maintain a bond in the amount of \$10,000. This bill would take effect immediately as an urgency measure. [A. *F&I*]



**AB 561 (Speier)**, as amended May 20, would enact a Collection Agency Act under which BSIS would license and regulate persons engaged in the business of collecting claims for others or conducting a collection agency. The bill would provide that, effective April 1, 1994, no person shall engage in the business of collecting claims for others or conduct a collection agency, as defined, relating to any person either as debtor or creditor, present in this state, unless he/she holds a valid collection agency license. *[A. W&M]*

**SB 1195 (Russell)**, as amended August 30, is a comprehensive proposal which purports to bring California into compliance with EPA's new air quality standards (see MAJOR PROJECTS). Among other things, this bill would:

- declare legislative intent that the current Smog Check Program has provided beneficial and reasonable emissions reductions; that its required equipment has been designed to accommodate future program enhancements; and that it has achieved greater reductions than any other inspection and maintenance (I/M) program in use today, and is more convenient and economical for the public than centralized systems elsewhere;

- expand the I/M program statewide, with provisions for exempting an attainment area if not economically feasible to implement;

- revise emission reduction standards, to be met no later than January 1, 1998;

- raise vehicle repair cost limits by \$25 to \$150 (to a new range of \$75 to \$375), depending on the age of a vehicle;

- provide for no cost limit on gross polluters and authorize regulatory requirements for the expenditure of a minimum repair amount;

- authorize a smog inspection certificate charge of up to \$10 for the state's program and administrative costs;

- add to the testing procedures a functional test of the fuel evaporative and crankcase ventilation systems, use of a loaded mode dynamometer for nitrogen oxides, and other equipment to detect non-exhaust-related volatile organic compound emissions;

- require a program for roadside emissions audits to detect gross polluters, including remote sensing of emissions and vehicle pullovers for testing and inspection, and impose a \$1,000 fine for violations;

- direct BAR to establish higher licensure and training standards for Smog Check "technicians" (currently "mechanics"), including provisions for incentives and remedial training; provide for inspection station or technician license suspen-

sions for up to sixty days for specified offenses; and establish grounds for refusing to renew a license for improper testing or repair;

- create an inspection waiver option, extending from two to four years the Smog Check exemption period upon payment of \$50 at the time of a new vehicle's purchase;

- establish a Motor Vehicle Replacement Program, to purchase (up to \$500) gross-polluting vehicles and replace them with new low-emitting vehicles;

- require various agencies to undertake specific actions related to the Smog Check program, such as requiring BAR's I/M Committee to examine tampering problems, ways to remove gross-polluting vehicles, implementation of the federal \$450 repair cost waiver and improvements to decentralized testing, and requiring DCA to investigate on-board diagnostic systems in vehicles for detecting excess emissions and identifying needed repairs; and

- make other miscellaneous and related changes to vehicle inspection provisions to implement the bill's requirements and make them consistent with existing law. *[S. Appr]*

**SB 629 (Russell)** would revise the Smog Check Program by requiring BAR to ensure reductions in emissions as required by federal law; revise the specification of vehicles subject to the program; require Smog Check stations to test the fuel evaporative system and crankcase ventilation system and perform other specified tests; revise the membership and duties of the Inspection and Maintenance Review Committee; require BAR to establish a centralized computer database to perform specified functions relative to the transmission of data from Smog Check stations; revise provisions relating to the use of remote sensors to identify gross polluters to, among other things, provide for roadside audits, the issuance of citations, and the imposition and disposition of specified penalties; revise the repair cost limits under the program, as specified; require BAR to implement prescribed measures, including the operation of test-only stations, if it is determined by June 30, 1995, that California will not meet federal emission reduction standards; and prohibit any person from operating or leaving standing on a highway any vehicle which is a gross polluter. *[S. Rules]*

**AB 1119 (Ferguson)**. Existing law establishes the motor vehicle inspection program, which provides for smog checks and repairs to be made by smog check station mechanics. As introduced March 2, this bill would designate those mechan-

ics as technicians, designate that program as the basic program, and require an enhanced program of testing and retesting at test-only stations. The bill would delete provisions for a fee to be charged for a certificate of compliance or noncompliance, and instead provide for the electronic filing of a certificate of compliance. *[A. Trans]*

**SB 8 (Lockyer)**, as amended August 30, would make it a misdemeanor for any towing service or any employee of a towing service to accept or agree to accept any money or anything of value from an auto repair shop and for any repair shop or any employee of a repair shop to pay or agree to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair. *[A. Jud]*

**SB 521 (Presley)**. Existing law authorizes DCA to prescribe the form of the smog certificate of compliance or non-compliance and requires the Department to annually report to the legislature on the Smog Check program. As amended August 23, this bill would state the intent of the legislature that the annual report include a discussion of the potential use of an electronic certificate of compliance or noncompliance. *[S. Conference Committee]*

**AB 2358 (Farr)**, as amended April 12, would require vehicles, trains, and commercial or other nonresidential facilities at fixed locations, if they have air-conditioning systems containing CFC-based refrigerants, to undergo inspection, biennially or upon transfer of ownership, for leaks of the air-conditioning system. The bill would require the removal of the refrigerant from, and would prohibit the addition of any refrigerant to, an air-conditioner that is in a status of noncompliance due to refrigerant leakage, and would prohibit the Department of Motor Vehicles from registering or reregistering a vehicle that is not in compliance. *[A. NatRes]*

**AB 622 (Knight)**, as introduced February 22, would eliminate BHFTI and continue the enforcement and administration of the Home Furnishings and Thermal Insulation Act by the DCA Director. *[A. CPGE&ED]*

**AB 2182 (Lee)**. Under existing law, BHFTI licenses and regulates insulation manufacturers who sell insulation material in this state. As amended July 12, this bill would specify standards for loosefill insulation unless and until BHFTI adopts a more rigorous test standard regulation. The bill would also repeal provisions re-



quiring insulation material to be certified by the manufacturer prior to sale, as specified, and authorizing an annual license fee for an insulation manufacturing license. [S. B&P]

## OFFICE OF THE LEGISLATIVE ANALYST

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Created in 1941, the Legislative Analyst's Office (LAO) is responsible for providing analysis and nonpartisan advice on fiscal and policy issues to the California legislature.

LAO meets this duty through four primary functions. First, the office prepares a detailed, written analysis of the Governor's budget each year. This analysis, which contains recommendations for program reductions, augmentations, legislative revisions, and organizational changes, serves as an agenda for legislative review of the budget. Second, LAO produces a companion document to the annual budget analysis which paints the overall expenditure and revenue picture of the state for the coming year. This document also identifies and analyzes a number of emerging policy issues confronting the legislature, and suggests policy options for addressing those issues. Third, the Office analyzes, for the Assembly Ways and Means Committee and the Senate Appropriations and Budget and Fiscal Review Committees, all proposed legislation that would affect state and local revenues or expenditures. The Office prepares approximately 3,700 bill analyses annually. Finally, LAO provides information and conducts special studies in response to legislative requests.

LAO staff is divided into nine operating areas: business and transportation, capital outlay, criminal justice, education, health, natural resources, social services, taxation and economy, and labor, housing and energy.

### MAJOR PROJECTS

**LAO Releases Paper on Performance Budgeting.** On October 25, LAO released *Performance Budgeting: Reshaping the State's Budget Process*, the first in an occasional series of papers discussing opportunities to make California government work better. LAO noted that the Governor's 1993-94 budget proposed to change the state's budgeting process by pilot testing "performance budgeting" in four state departments—the Departments

of Consumer Affairs, General Services, and Parks and Recreation, and the Stephen P. Teale Data Center—because the state's traditional budget process "has become seriously dysfunctional." Performance budgeting is the allocation of resources based on an expectation of performance levels, where performance is measured in specific, meaningful terms; it differs from the traditional approach to budgeting in that it focuses on outcomes rather than inputs or processes when deciding how to allocate resources. The Governor's proposal was enacted in SB 500 (Hill) (Chapter 641, Statutes of 1993). [13:4 CRLR 21]

LAO noted that performance budgeting has been implemented in other states, and that the federal General Accounting Office (GAO) has reviewed the results of performance budgeting in Connecticut, Hawaii, Iowa, Louisiana, and North Carolina. GAO's review indicated that states experienced mixed results from performance budgeting, in that it provided helpful budgetary decisionmaking information, but did not fundamentally change the budget process; it was not the "final arbiter" of funding decisions given the political nature of the budget process; and it gave managers greater decisionmaking flexibility. Specific reasons why performance budgeting did not fundamentally change the budget process in those five states include the fact that time, resources, and data constraints limited the use of performance information by the legislative and executive branches; legislative and executive budget decisionmakers were dissatisfied with and questioned the reliability of performance measures; and performance budgeting complicated the budget process by highlighting trade-offs among programs competing for limited resources.

According to LAO, the Wilson administration claims that its performance budgeting proposal has the following seven elements: annual budgetary contracts between legislative budget writers and the administration; operational flexibility, which could include relief from statutory requirements; incentives for performance and efficiency, including the ability to reinvest 50% of any savings into discretionary activities; an emphasis on long-term strategic planning; development of performance measures; benchmarks for measuring operational efficiency; and a commitment to quality improvement. However, LAO's assessment of the pilot project indicates that the legislature has not been provided with sufficient details regarding the administration's performance budgeting project; the pilot project lacks sufficient definition; despite project schedule slippage, the implementation should not be rushed; participating departments are

only partially representative of the range of departments in state government; implementation costs will occur, and should be budgeted for; performance needs to be verified independently; sanctions for poor performance should be considered; and departments may need additional motivation to ensure a fair test of performance budgeting.

However, LAO concluded its review by noting that, despite the limited progress to date and the important issues which still must be addressed, performance budgeting has merit and is worth pilot testing. LAO further opined that performance budgeting will require a change in the legislature's perspective toward the budget process, in that it must be willing to relinquish some control over departments and programs; it must focus on program mission, goals, and outcomes, not on inputs and processes; and it must be willing to accept a longer-term view of implementation and results. LAO recommended that the legislature establish a joint legislative committee, including representation from the fiscal committees and relevant policy committees of both houses, to oversee the pilot project, review the budgets of the pilot project departments, and review and approve the performance measures for those departments, among other things; according to LAO, the joint committee would be acting in lieu of the normal budgeting process, thus marking a significant departure from current budget practice.

**Voters Decide Budget Issues.** At the November 1993 special election, California voters approved Proposition 172, which makes permanent a special half-cent sales tax. The measure, which was approved by 58% of the electorate, states that the proceeds of the tax "shall be allocated for use exclusively for public safety services of local agencies." Local governments are expected to receive about \$1.5 billion annually from the tax. [13:4 CRLR 25]

Also at the November election, California voters rejected Proposition 169, which would have allowed all of the "trailer bills" that follow the state budget—bills that change substantive statutory provisions needed to implement the budget—to be put into one bill. Under existing law, each trailer bill must be voted on separately by the legislature. Under the defeated measure, the Governor would have been able to veto individual provisions of the bill, and the legislature could have overridden the vetoes separately.

### LEGISLATION

**ACA 2 (Hannigan)**, as introduced in December 1992, would provide that statutes enacting budget bills shall go into