



INTERNAL GOVERNMENT REVIEW AGENCIES

• The Governor and legislature should establish a separate inspector general function outside the Department of Corrections to improve credibility of oversight of prison practices.

• The Governor and legislature should modify the Inmate Bill of Rights so that it reflects the federal standard of protection for prisoners; enact a carefully crafted medical parole program to allow the release of seriously ill prisoners who no longer constitute a threat to the public; enact legislation allowing mandatory AIDS testing for all prisoners; and "take every opportunity to remind the federal government of its obligation to pay the costs attached to illegal immigration."

Beyond Bottles and Cans: Reorganizing California's Recycling Efforts (March 1994) seeks to provide a framework for the reorganization of the state's efforts to regulate and encourage recycling under the California Beverage Container Recycling and Litter Reduction Act established by AB 2020 (Margolin) (Chapter 1290, Statutes of 1986). According to the Commission, although the so-called "AB 2020 program" has been a success in meeting recycling goals, its limited coverage of only some beverage containers has resulted in a small overall impact on the state's solid waste stream. Further, the Commission found that major streamlining and simplification of the AB 2020 program is needed, as is a reorganization of the state's fragmented approach to resource reuse and recycling.

Among other things, the Commission found that the placement of overlapping recycling mandates in three separate agencies—the California Integrated Waste Management and Recycling Board (CIWMB), the Department of Conservation (DOC), and the Department of Toxic Substances Control (DTSC)—has resulted in duplication of work, public confusion, and lost opportunities for maximum effectiveness in implementing state policies. In response, the Commission recommended that the Governor and the legislature enact legislation establishing a consolidated and comprehensive waste reduction, resource reuse, and recycling program within the California Environmental Protection Agency (Cal-EPA). Until the consolidation and reorganization occurs, the Commission recommended that the Governor and legislature enact legislation clarifying that CIWMB is the lead agency for all recycling issues outside of toxic substances and beverage containers; CIWMB and DOC should execute a memorandum of understanding to resolve areas of overlap and duplication; and CIWMB, DOC, and DTSC should establish an ongoing task force to coordinate all market and

technology development activities of the three agencies, with the immediate task of integrating specific CIWMB, DOC, and DTSC recycling programs into a single computerized format.

The Commission also found that the complexity of the AB 2020 beverage container recycling program hinders its expansion, undermines cost-effective implementation, and increases opportunities for fraud. In response, the Commission recommended that the Governor and legislature enact legislation to abolish the convenience zones mandate and super-market-site handling fee payments, and to establish an alternative system; establish a new simplified and predictable fee arrangement for subsidizing the AB 2020 collection system; expand the coverage of the AB 2020 program to include all beverage containers that can be accommodated by the recycled materials market; require out-of-state aluminum container and beverage bottling industries to ensure that all California redemption value (CRV)-imprinted cans are shipped to California and not to other states; and allow DOC to establish rewards for information leading to the discovery of fraudulent practices by participants in the AB 2020 program.

The Commission concluded that these changes would create the necessary structure for a comprehensive recycling program that can stimulate market development and increase reuse of a wide range of materials that must be diverted from the solid waste stream to meet state-mandated goals.

Many of the Commission's recommendations are contained in SB 2026 (Bergeson), which would abolish CIWMB and DOC's Division of Recycling, create the Department of Waste Management within Cal-EPA, and transfer the powers and duties of CIWMB and the Division of Recycling to the Department of Waste Management. (See agency report on CIWMB for more information on SB 2026.)

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: 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) regulates 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 lo-

cated 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 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 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 prac-

tice before the Internal Revenue Service are exempt from the Program's registration requirement.

MAJOR PROJECTS

• **Conran Resigns as DCA Director.** In March, Jim Conran resigned from his position as DCA Director to run for the Republican nomination for state Insurance Commissioner. During the three years Conran served as Director, DCA settled the largest consumer fraud case in the nation's history, generating \$46 million in refunds to customers of Sears auto repair shops. Conran also helped reduce the number of boards within DCA from 39 to 32, and helped force the removal of nine board executive officers, many of whom had been accused for years of failing to aggressively enforce the laws on behalf of consumers. Following Conran's resignation, Governor Wilson appointed former DCA Deputy Director C. Lance Barnett to serve as Interim Director pending the appointment of Conran's replacement.

• **Senate Subcommittee Hearings Result in "Sunset" Proposal.** Last fall, the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale, held four days of hearings on various proposals intended to improve the overall efficiency of DCA's occupational licensing agencies. [14:1 CRLR 17-19] On April 11, the Subcommittee released its final report, which makes recommendations on four general issues addressed at the hearings.

• First, the Subcommittee rejected the recommendation of the Legislative Analyst's Office (LAO) that all the separate boards, commissions, and programs within DCA be eliminated and their authorities consolidated under the DCA Director. On two occasions, LAO has urged such a structure based upon the following factors: (1) most regulatory boards are dominated by members of the very trade or profession purportedly regulated by that board in the public interest; (2) the state could take advantage of significant economies of scale if board staffs, offices, and management were consolidated; and (3) the centralization of all boards' databases would make it easier for boards to cross-check licensees' records for enforcement and licensing purposes. [13:2&3 CRLR 38; 12:2&3 CRLR 53] However, the Subcommittee found no evidence that consolidating all boards under DCA would improve the efficiency or effectiveness of the licensing agencies, and cited a 1990 study which found that overall consolidation or centralization of licensing boards under a single administrative entity is not only ineffective at improving consumer protection but



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actually counterproductive. The Subcommittee noted that implementation of LAO's recommendation in other states has met with little success, and opined that other solutions may be more effective in reforming California's regulatory system and providing oversight of DCA agencies.

• The "other solution" adopted by the Subcommittee has been embodied in SB 2036 (McCorquodale), which would subject all regulatory agencies within DCA to a "sunset" review every four years (see LEGISLATION). Under the May 18 version of the bill, the "sunset" review would be conducted by a new Joint Legislative Sunset Review Committee under 11 specified criteria; the review would be conducted one year and four months prior to the "sunset" date established in each board's enabling act. Prior to the review, each board would be required to produce specified information, documentation, and descriptions of its activities; the board would have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulatory mechanism consistent with the public health, safety, and welfare.

The Subcommittee found that "sunset" review, which has been implemented successfully in many other states, "would enable the legislature to make reasoned decisions about the necessity of government intervention in the marketplace and to balance the interests of government regulation to the benefit of the public and consumer." The Subcommittee noted that the regular "sunset" schedule would also provide stability in the legislature's ability to "continually check, evaluate, and exercise its oversight functions..." and the specified criteria would ensure that all agencies are measured against the same standards rather than "subjective criteria and special interest pressures which may not primarily favor the public's interests."

• Third, based upon its review of specified agencies, the Subcommittee made the following recommendations: (1) the Cemetery Board and the Board of Funeral Directors and Embalmers should be merged into one bureau; (2) the Speech-Language Pathology and Audiology Committee and the Hearing Aid Dispensers Examining Committee should be merged into one committee under the jurisdiction of the Medical Board; (3) the Tax Preparer Program should be eliminated, but the \$5,000 bond requirement for tax preparers should be retained; (4) the composition of the State Board of Accountancy should be revised to eliminate several certified public accountant members, to enable the

Board to "focus more on its enforcement activities and less on protecting the interests of the profession it regulates"; (5) the Board of Dental Examiners' (BDE) Committee on Dental Auxiliaries should be abolished and the composition of BDE should be revised to reflect greater representation for dental auxiliaries; (6) the Board of Landscape Architects should be eliminated; (7) the Board of Registration for Professional Engineers and Land Surveyors and the Board of Registration for Geologists and Geophysicists should be merged into one board; and (8) the Board of Psychology and the Board of Behavioral Science Examiners should be required to revoke the license of any therapist found to have engaged in sexual relations with a patient or any act of sexual abuse. (See the agency reports on each of these boards for a full discussion of these recommendations.) These findings have been embodied in SB 2037 (McCorquodale), SB 2038 (McCorquodale), and SB 2039 (McCorquodale) (see LEGISLATION).

• Finally, the Subcommittee briefly addressed one aspect of the enforcement process used by DCA occupational licensing agencies. The Subcommittee found a "clear absence of accountability by the Department of Justice in providing legal services to the boards." Specifically, the Subcommittee noted that DOJ fails to itemize its billing of DCA agencies for legal services rendered, such that the agencies are unable to determine exactly how much time deputies attorney general actually spend on their cases. As amended May 18, SB 2038 (McCorquodale) would require the AG's Office to provide itemized statements of service rendered to DCA agencies; at this writing, the AG's Office is lobbying for removal of that provision because it states it is in the process of improving the recordkeeping of its DAGs and the itemization of its billing to other agencies.

DCA Releases 1992-93 Annual Report. In May, DCA released its 1992-93 Annual Report, which catalogues the accomplishments of the Department, its administrative units, and its constituent occupational licensing agencies during 1992-93. Several events highlighted in the Annual Report include DCA's convening of the March 1993 "Medical Summit" to solicit input for improving the enforcement process of the Medical Board, and the Board's subsequent adoption of "one of the most progressive information disclosure policies in the country" [13:2&3 CRLR 78-81]; the Bureau of Automotive Repair's crackdown on smog check certificate fraud; the completion of occupa-

tional analyses and revamping of the licensing examinations by several DCA agencies; 18 consumer protection news conferences on various issues, including Halloween costume flammability, earthquake and fire safety, and fraud in the areas of smog certificates, auto repair, construction, and funeral/cemetery services; the distribution of over 170,000 consumer publications; and the development of an orientation program for new board members.

The Annual Report also includes brief summaries of the 1992-93 accomplishments of DCA's regulatory boards, bureaus, and programs, and their numerical statistics in the areas of licensing, exam pass rates, complaints, investigations, and enforcement actions.

Smog Check Legislation Signed by Wilson, Approved by EPA. For the past year, 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. 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. [14:1 CRLR 19; 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.

During the first few months of 1994, the legislature designed a package of bills aimed at targeting the worst polluting vehicles, by requiring them to be fixed or get off the road, while saving the jobs of the mechanics currently employed at the Smog Check stations throughout the state.



On March 24, EPA Administrator Carol Browner and California Environmental Protection Agency Secretary James Strock signed a memorandum of agreement (MOA) on the legislature's proposed changes to California's Smog Check Program. Among other things, the MOA commits both EPA and the state to test remote sensing, which uses lasers to detect gross-polluting vehicles, and allows the state to keep most test and repair functions in private facilities; the MOA also recognizes the new California program as complying with federal requirements.

Accordingly, on March 30, Governor Wilson signed the package of bills—AB 2018 (Katz), SB 521 (Presley), and SB 198 (Kopp). Together with a fourth bill (SB 629 (Russell), signed by Wilson on January 27), these bills create a new statewide Smog Check Program which:

- requires the establishment, by January 1, 1995, of test-only centers able to inspect 15% of vehicles in urban areas, including gross polluters, tampered vehicles, and high-mileage fleet vehicles; 2% of vehicles will be selected randomly through the Department of Motor Vehicles to go to test-only centers;

- directs BAR to award one or more contracts for the test-only centers to each affected area by January 1, 1995;

- increases the cost repair limit to \$450 (except no limit applies to gross polluters), effective January 1, 1995; and

- establishes a repair and scrapping assistance program to cushion the impact to low-income drivers; this program will be funded by a voluntary fee of up to \$50 paid by new car buyers who will, in turn, be allowed to skip one smog inspection.

California must now adopt regulations to implement the new Smog Check Program and submit a state implementation plan for EPA approval. (See LEGISLATION for more information.)

BEAR Rulemaking Update. On May 12, the Office of Administrative Law (OAL) approved BEAR's amendments to 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 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. [14:1 CRLR 20; 13:4 CRLR 20-21]

At this writing, BEAR has not published notice of its intent to adopt new sections 2710.5, 2726, and 2726.5, and amendments to section 2760, Title 16 of the CCR, which would implement the service contractor registration program authorized by SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993). [14:1 CRLR 20; 13:4 CRLR 22]

Tax Preparer Rulemaking Update. At this writing, the Tax Preparer Program's proposed amendment to section 3230, Title 16 of the CCR, which would reduce the registration and renewal fees for tax preparers from \$50 to \$40 each, awaits review and approval by OAL. [14:1 CRLR 20]

BHFTI Rulemaking Update. On February 8, OAL approved BHFTI's amendments to section 1107, Title 4 of the CCR, which increase its initial and biennial renewal licensing fees to the maximum extent allowed by law; specifically, the action raises BHFTI's licensing fees by 50% for all new and renewal licenses for which application is made or which expires on or after March 1. [14:1 CRLR 20]

LEGISLATION

SB 2036 (McCorquodale), SB 2037 (McCorquodale), SB 2038 (McCorquodale), and SB 2039 (McCorquodale) all resulted from the Fall 1993 oversight hearings held by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale (see MAJOR PROJECTS). During the hearings, the Subcommittee focused on developing a set of criteria under which it could evenhandedly evaluate the need for and performance of DCA occupational licensing agencies, and examined specific pairs of DCA regulatory programs to determine whether they should be abolished, merged, or restructured. [14:1 CRLR 17-19]

- **SB 2036 (McCorquodale)**, as amended May 18, would create a "sunset" review process for all DCA occupational licensing agencies, requiring all DCA agencies to be comprehensively reviewed every four years. "Sunset" is an action-forcing mechanism which enables the legislature to more effectively oversee the agencies to which it has delegated authority; the concept has been successfully applied in numerous other states since the mid-1970s and was urged for enactment in California by the Little Hoover Commission in 1989. [9:4 CRLR 32-34] SB 2036 would impose a "sunset" date in the

statute creating each occupational licensing agency within DCA. The bill would also create a Joint Legislative Sunset Review Committee within the legislature, which would review the performance of each DCA agency approximately one year prior to its sunset date; the bill specifies 11 categories of criteria under which an agency and its performance will be evaluated. Following review of the agency and a public hearing, the Committee would make recommendations to the legislature on whether the board should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case the agency at issue would cease to exist and all powers and duties of the former agency would transfer to the Department of Consumer Affairs) or pass legislation extending the sunset date for another four years. [S. *Appr*]

- **SB 2037 (McCorquodale)**, as amended May 18, would abolish the Cemetery Board and the Board of Funeral Directors and Embalmers, and create in their place a single Bureau of Funeral and Cemetery Services under the supervision of the DCA Director; merge the Hearing Aid Dispensers Examining Committee and the Speech-Language Pathology and Audiology Committee into a single board under the jurisdiction of the Medical Board of California; and eliminate the Tax Preparer Program, but maintain the existing requirement that tax preparers file a \$5,000 surety bond.

Two provisions in the April 5 version of the bill (which would have merged BEAR and BHFTI into a single, consolidated bureau, and transferred the Court Reporters Board of California to the Judicial Council) were deleted at the May 9 hearing of the Senate Business and Professions Committee, as these provisions have not yet been the subject of a public hearing by the McCorquodale Subcommittee. Also at the May 9 hearing, the Committee tentatively decided to merge the funeral and cemetery boards into one board (not a bureau); at this writing, this language is expected to be amended into SB 2037 when it reaches the Assembly. [S. *Appr*]

- **SB 2038 (McCorquodale)**, as amended May 18, would eliminate the nine-member Committee on Dental Examiners (which is currently an advisory committee to the Board of Dental Examiners) and revise the composition of BDE to reflect somewhat greater representation of dental auxiliaries; reduce the size of the Board of Accountancy from eight licensees and four public members to six licensees and three public members; and re-



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quire the Attorney General's Office to provide itemized statements of services rendered to DCA agencies to which it provides legal representation.

Earlier versions of SB 2038 would have abolished the Board of Landscape Architects (BLA) and merged the Board of Registration for Professional Engineers and Land Surveyors (PELS) with the Board of Registration for Geologists and Geophysicists (BRGG). At the May 9 hearing of the Senate Business and Professions Committee, representatives of these boards and affected trade associations expressed support for SB 2036 and lobbied tenaciously against SB 2038, urging Senator McCorquodale to delete the abolition/merger provisions applicable to them in SB 2038 and allow them to participate in the SB 2036 sunset process on an expedited basis. Senator McCorquodale agreed to delete the provisions of SB 2038 applicable to these boards and to amend SB 2036 to establish July 1, 1997 as the sunset date for BLA and BRGG, and July 1, 1998 as the sunset date for PELS. [S. *Appr.*]

• **SB 2039 (McCorquodale)**, as amended April 5, would require the Board of Psychology and the Board of Behavioral Science Examiners to revoke the license of any psychotherapist who is found to have engaged in any act of sexual abuse, sexual relations with a patient, or sexual misconduct that is substantially related to the qualifications, functions, or duties of a psychotherapist. The bill would impose the same requirement on the Medical Board's Respiratory Care Examining Committee as to its licensees, and revise certain licensing requirements and other provisions related to respiratory care practitioners. [A. *Health*]

SB 2101 (McCorquodale), as amended April 4, would make several revisions to the enabling acts of various DCA boards and agencies. Among other things, this bill would prohibit an institution, firm, or individual from offering a certified firearms course unless the institution, firm, or individual has received a Firearm Training Facility Certificate from BSIS; prohibit a person from instructing a firearms course unless that person has received a Firearms Training Instructor Certificate issued by BSIS; prohibit an institution, firm, or individual from offering BSIS' certified baton course unless that institution, firm, or individual has received a Baton Training Facility Certificate from BSIS; prohibit a person from instructing a BSIS-approved baton course unless that person has received a Baton Training Instructor Certificate issued by BSIS; prohibit an alarm company operator

license from being issued in any name that is the same as or so similar to that of an existing licensee as would tend to deceive the public, or in any name that would otherwise tend to be deceptive or misleading; require all BEAR service dealers that renew expired registrations to pay all accrued and unpaid delinquency and renewal fees; and require BEAR to design and approve a sign that is required to be placed in all electronic and appliance repair locations operated by a service dealer. [A. *CPGE&ED*]

SB 629 (Russell), AB 2018 (Katz), SB 198 (Kopp), and SB 521 (Presley) is a package of bills which finally resulted from the prolonged negotiations between California and the U.S. Environmental Protection Agency over BAR's Smog Check Program. The compromise has been approved by EPA as in compliance with federal law which became effective in November 1993 (see MAJOR PROJECTS).

• **SB 629 (Russell)**, as amended September 7, 1993, revises the Smog Check Program by requiring BAR to ensure reductions in emissions as required by federal law; revises the specification of vehicles subject to the program; requires Smog Check stations to test the fuel evaporative system and crankcase ventilation system and perform other specified tests; revises the membership and duties of BAR's Inspection and Maintenance Review Committee; requires BAR to establish a centralized computer database to perform specified functions relative to the transmission of data from Smog Check stations; revises 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; revises the repair cost limits under the program; requires 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 prohibits any person from operating or leaving standing on a highway any vehicle which is a gross polluter. In August 1993, EPA announced that SB 629 fails to satisfy federal law, and that its passage would result in immediate sanctions. The Governor signed SB 629 on January 27 (Chapter 1, Statutes of 1994), but continued the negotiations with EPA which eventually resulted in passage of the three bills below.

• **SB 521 (Presley)**, as amended March 9, requires BAR and DCA, by January 1, 1995, to implement a program whereby 15% of the vehicles registered in urban

areas which have not complied with federal ambient air quality standards ("enhanced areas") will be tested at test-only stations which are privately operated pursuant to DCA contract, as specified. The following types of vehicles in enhanced areas must be tested at test-only stations: gross polluters identified either by remote sensing devices (see AB 2018 below) or through a regular smog check, tampered vehicles, high-mileage fleet vehicles, a 2% random sample of vehicles selected by DMV, and other vehicles designated by BAR. If necessary to meet EPA requirements, this bill commits California to expanding the test-only network in enhanced areas in 1996. This bill was signed by the Governor on March 30 (Chapter 29, Statutes of 1994).

• **AB 2018 (Katz)**, as amended March 9, primarily obligates DCA, BAR, and the Air Resources Board to jointly undertake a pilot demonstration program with EPA, under specified oversight by BAR's Inspection and Maintenance Review Committee, to determine the effectiveness of alternative loaded mode dynamometers as compared to the equipment required under BAR's existing Smog Check Program; quantify emissions reductions from a remote sensing program designed to identify gross polluters beyond what is otherwise required by EPA; determine if gross polluters can be successfully identified and directed to test-only stations by targeting methods other than remote sensing; and determine the extent of expansion of the test-only network in enhanced areas (see SB 521 above) in order to meet EPA's emission reduction performance standards. This bill was signed by the Governor on March 30 (Chapter 27, Statutes of 1994).

• **SB 198 (Kopp)**, as amended March 14, primarily contains the vehicle repair assistance and buy-back program components of the compromise. This bill permits new car buyers to skip Smog Check compliance upon the first biennial registration of their car if they make a donation at time of initial registration in an amount determined by DCA not to exceed \$50; DMV is required to transmit those donations to the Treasurer for deposit in the High Polluter Repair or Removal Account; and DCA may use funds from the Account to establish and implement a program for the repair or replacement of high polluters, as defined. This program provides for payment to the owner of a high polluter for up to 80% of the total costs of repair, not to exceed \$450, or for the market value of a high polluter being removed, not to exceed \$800. DCA is authorized to increase these amount limits to reflect changes in



the Consumer Price Index. This bill was signed by the Governor on March 30 (Chapter 28, Statutes of 1994).

SB 1288 (Calderon). Existing provisions of the Unruh Civil Rights Act and related provisions prohibit various types of discrimination by business establishments; existing law further provides for the civil liability of a person who denies, aids, or incites a denial of these rights or makes any discrimination contrary to these provisions and sets actual damages at a minimum of \$250. As amended May 10, this bill would instead provide for actual damages at a minimum of \$1,000. The bill also would direct DCA, by June 1, 1995, to create a pilot project to provide notice to licensees of the Board of Barbering and Cosmetology that the Unruh Civil Rights Act prohibits gender-based pricing; require DCA, by June 1, 1996, to submit to the legislature, upon request, an assessment of the pilot project; and require DCA's Division of Consumer Services to develop, by June 1, 1995, and distribute consumer information on the problem of gender-based price discrimination. *[A. CPGE&ED]*

SB 1586 (Craven). Existing law requires that, unless he/she holds other specified licenses, an upholstered-furniture retailer must hold a retail furniture dealer's license from BHFTI, and a bedding retailer must hold a retail bedding dealer's license from BHFTI. As amended April 4, this bill would exempt from these provisions an individual or firm whose sole business is designing and specifying for interior spaces, and who purchases, on behalf of a client, specific amenable upholstered furniture items or specific amenable bedding items, as applicable, from an appropriately licensed wholesaler or retailer. *[A. CPGE&ED]*

SB 1713 (Hart). Existing provisions of the Private Investigator Act regulate security guards and require them to be registered. As amended April 26, this bill would declare legislative intent that security guards not be required to meet the same standards required of police officers. The bill would require BSIS, with the technical assistance of the Commission on Peace Officer Standards and Training, to develop minimum selection and training standards for armed security guards by July 1, 1995, and would require implementation of these standards through regulations by January 1, 1996. *[S. Appr]*

AB 3517 (Bronshvag), as amended April 28, would declare legislative intent that DCA contract, by December 31, 1995, with the University of California or California State University to conduct a study of the need for regulation of fitness instructors, to be financed solely from pri-

ivate donations made to the university under contract, as specified. *[S. B&P]*

AB 2857 (Ferguson), as amended April 18, would exempt from BHFTI's licensing requirements persons who sell upholstered furniture that is solely gym equipment. The bill would provide that this exemption is not intended to affect the application of certain provisions respecting false advertising to these persons. *[A. Floor]*

AB 3413 (Conroy), as amended May 17, would require each state agency to report to the Director of Finance all fees administered and collected by the agency, except for fees collected from a governmental agency, and would require the Director to develop and maintain a list of those fees. *[A. W&M]*

AB 3291 (McPherson). The Private Investigator Act provides for the licensing and regulation of private investigators, private patrol operators, armored contract carriers, firearms and baton training facilities, and employees of those licensees. As amended April 26, this bill would repeal those provisions and would reenact, reorganize, and revise those provisions; enact the Private Investigator Act for the licensing and regulation of private investigators and the Private Security Services Act for the licensing and regulation of private patrol operators, armored contract carriers, and firearms and baton training facilities. *[A. W&M]*

AB 1456 (Katz). Existing law generally requires all offices of every state agency to be kept open for the transaction of business from 8:00 a.m. until 5:00 p.m. of each day from Monday to Friday, inclusive, other than legal holidays. As amended April 18, this bill would specifically authorize any state agency to revise its hours of service for transacting business in order to ensure that the agency may adopt policies providing for flexible work hours ("flextime") with specified exceptions; and require each state agency, utilizing existing resources, to develop and implement a plan to reflect these policies. *[S. Floor]*

AB 3333 (Speier). The Tanner Consumer Protection Act provides for a third-party dispute resolution process with respect to motor vehicle sales. Existing law also requires each new motor vehicle manufacturer to establish or make available to buyers or lessees of new motor vehicles a qualified third-party dispute resolution process, as specified. As amended May 12, this bill would repeal the third-party dispute resolution provisions, substantially revise related provisions, establish a comprehensive "lemon law arbitration program" in the Department of Consumer Affairs, and require

DCA to contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between buyers and sellers. *[A. W&M]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 20-23:

AB 1807 (Bronshvag), as amended March 23, is a DCA omnibus bill which makes numerous revisions to the enabling statutes of various DCA agencies. Among other things, the bill authorizes all DCA boards to provide written notices, including notices, orders, or documents served under the Administrative Procedure Act, by regular mail, and requires 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 notify the telephone company furnishing services to disconnect the telephone service to any number contained in the unlawful advertising. AB 1807 provides for a stay of the action if the person to whom the citation was issued notifies the agency that he/she intends to contest it, and expands 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. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

AB 652 (Speier), as amended August 30, 1993, would enact the Quality in Government Act, requiring all state departments and agencies (including the legislature) to identify their external and internal customers, collect information regarding the provision of services to their customers, and 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 January 27, would, until January 1, 1998, enact



INTERNAL GOVERNMENT REVIEW AGENCIES

a comprehensive scheme for the identification, study, and regulation of "nonlawyer providers" (also known as "legal technicians" or "independent paralegals") under DCA's jurisdiction. [*S. Jud*]

AB 1392 (Speier), as amended July 1, 1993, would require every board, commission, examining committee, or other agency within DCA to notify DCA whenever any complaint has gone thirty days without 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. 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, this bill would provide that the executive officer or registrar must be appointed by the Governor, subject to Senate confirmation, and that the officer and employees are under the control of the DCA Director. [*S. B&P*]

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. Existing law also provides that any board within DCA that licenses persons to engage in a business or profession regulated under the Business and Professions Code, may suspend or revoke the license of a licensee for conviction of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. As amended April 7, this bill would provide that conviction of certain insurance related crimes is conclusively presumed to be substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued for that purpose. [*S. Jud*]

SB 394 (Deddeh), as amended April 22, 1993, 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*]

SB 8 (Lockyer), as amended August 30, 1993, 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. [*S. Inactive File*]

AB 2182 (Lee), as amended April 28, would require BHFTI to establish, by regulation, standards for accelerated aging of loosefill insulation, as specified. [*S. B&P*]

AB 2358 (Sher), as amended January 20, is no longer relevant to the Bureau of Automotive Repair or DCA.

The following bills died in committee: **AB 1067 (Baca)**, which would have repealed current provisions regarding the regulation of sellers of travel and created a State Travel Sellers Authority and a Travel Advisory Commission thereunder within DCA; **AB 795 (Bowler)**, which would have required all public entities that receive state funds to hold all meetings, retreats, and conferences in California, with specified exceptions; **SB 993 (Kelley)**, which would have stated 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; **SB 1010 (Watson)**, which would have required the Governor and every other appointing authority to annually publish, and make available to the public, a report containing information on appointments to state bodies, with regard to the state policy that the composi-

tion of state boards and commissions be broadly reflective of the general public, including ethnic minorities and women; **AB 117 (Murray)**, which would have extended BSIS' rulemaking authority to cover private investigators and their employees, and would have extended its 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; **SB 393 (Deddeh)**, which would have enacted a new Debt Collection Practices Act, under which third-party debt collectors would be regulated; **AB 561 (Speier)**, which would have enacted 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; **SB 1195 (Russell)**, a comprehensive proposal which purported to bring California's Smog Check Program into compliance with EPA's new standards (see MAJOR PROJECTS); **AB 1119 (Ferguson)**, which would have designated Smog Check station mechanics as technicians, designated the Smog Check program as the basic program, and required an enhanced program of testing and retesting at test-only stations; and **AB 622 (Knight)**, which would have eliminated BHFTI and continued the enforcement and administration of the Home Furnishings and Thermal Insulation Act by the DCA Director.

■ LITIGATION

A recent decision in a case filed by the California Medical Association (CMA) against the state, plus the pendency of a class action on the same issue, prompted Governor Wilson to issue a series of executive orders in April returning \$37.4 million to boards and commissions which regulate thousands of trades and professions, include most of DCA's agencies.

On February 22, the Sacramento County Superior Court issued an order favorable to CMA in *California Medical Association v. Hayes*, No. 374372, which challenged the legislature's 1992-93 Budget Act transfer of \$2.6 million in physician licensing fees from the Medical Board's Contingent Fund to the general fund. [*12:4 CRLR 1*] Ruling in favor of CMA on two separate constitutional grounds, the court granted CMA's petition and directed the state to return all Medical Board funds transferred under the unconstitutional provisions. First, the court found that the transfer of funds required



by the Budget Act is a "special law" which violates the state constitution because it requires physicians to pay more in general taxes than other similarly situated persons. Second, the court held that because the Budget Act transfer language purports to amend the Medical Practice Act (which restricts the use of physician licensing fees for consumer protection activities by the Medical Board and expressly prohibits the transfer of those fees to the general fund), the Budget Act language violates the single subject rule of the state constitution.

Although *CMA v. Hayes* pertained only to the Medical Board, several other cases had been filed and converted to a class action on behalf of other regulated professions whose licensing fees—which are statutorily restricted to consumer protection uses related to that particular trade or profession—had been similarly appropriated and transferred to the general fund. Apparently due to the pendency of those cases and the court's strong decision in *CMA v. Hayes*, the Department of Finance (DOF) decided not to appeal the superior court's ruling and Governor Wilson subsequently signed executive orders returning all the transferred funds to other affected agencies.

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 Analyzes Governor's 1994-95 Proposed Budget. In January, LAO released *An Overview of the 1994-95 Governor's Budget*; this document was followed by the February release of *Analysis of the 1994-95 Budget Bill*, LAO's comprehensive examination of budget issues facing the state and the Governor's proposal to resolve them. LAO explained that in 1993, the legislature and Governor adopted a two-year plan to achieve a balanced budget by 1994-95. [13:4 CRLR 25-26] However, due to the continuing stubborn state recession, the plan has been undermined; the administration's forecast for the California economy now assumes that the state's economic recession will extend well into 1994, with only a moderate recovery in 1995.

According to LAO's February analysis, if no corrective action is taken, the state will face a budget gap of \$4.9 billion at the end of 1994-95; this consists of a carryover deficit from 1993-94 of \$2.5 billion and a \$2.4 billion operating shortfall between baseline spending and estimated revenue in 1994-95. The Governor's budget proposes to address most of the budget gap by shifting costs to other levels of government; unlike the 1993-94 budget proposal, which relied primarily on shifting costs to local governments, the current proposal primarily relies on shifting costs to the federal government to gain \$3.1 billion toward reducing the budget gap. Of that amount, the Governor is requesting \$2.3 billion in federal funding to cover the state's education, health care, and incarceration costs related to undocumented immigrants; the other major increase in federal funding (\$600 million) would result from increasing the federal match in the state's health and welfare programs from the current 50% to 54.4%; according to LAO, both of these budget proposals would require action by Congress and the President.

The Governor's proposed 1994-95 budget also includes the following features. No overt tax increases are proposed; in fact, the budget proposes legislation which would reduce income taxes for moderate-income individuals and newly established businesses. The Governor pro-

poses to save \$1 billion through program funding reductions, including reductions in grants to poor families on Aid to Families with Dependent Children and related welfare programs, the elimination of certain Medi-Cal optional benefits (services which are not required by federal law), and the elimination of funding for perinatal services for undocumented women and their children. Through an expansion of the "realignment" concept initiated in 1991, the Governor also seeks to shift about \$3.2 billion in existing state costs for health and welfare programs from the state to the counties; to pay for these programs, counties would be allocated a higher proportion of local property tax revenues, an additional shift of state sales tax revenue, and greater state support for local trial courts. (See report on SENATE OFFICE OF RESEARCH for a summary of a related report on realignment.)

LAO noted that the Governor's proposed budget also relies on favorable outcomes in certain pending lawsuits. For example, in one case the state could gain \$600 million from a favorable decision; however, an adverse decision could require the state to refund \$2.1 billion of past tax collections, according to a preliminary estimate by the Franchise Tax Board. LAO also pointed out that other currently-pending lawsuits could have substantial negative budget impacts by 1994-95.

According to LAO, the 1994-95 outlook indicates that the state's ongoing shortfall between revenues and spending will worsen, even with a modest economic recovery; in its analysis, LAO contended that the situation requires a budget strategy that looks beyond 1994-95 and achieves ongoing and growing savings over the next several years. To that end, LAO offered six guidelines for the legislature to consider in developing a long-term budget strategy:

- One-time savings actions can buy time to implement ongoing savings; they should not be adopted as a substitute for them.
- Actions that produce significant future savings should be adopted even if they yield little or no savings in 1994-95, because the need for future savings will grow.
- Similarly, actions which result in significant future costs should be avoided.
- Existing laws that end savings, reduce revenues, or restore spending during the next few years should be reviewed.
- Federal health care reform efforts should be closely monitored since Medi-Cal cost increases are a major factor driving state spending growth. The legislature should encourage Congress and the Pres-