



INTERNAL GOVERNMENT REVIEW AGENCIES

procurement process, especially when Lottery staff raise concerns; foster an environment of open communication with vendors; and develop contingency plans when vendors raise concerns about elements of the procurement process, and implement those plans when necessary.

Continued Improvement Needed in the State's Controls Over its Operations (June 1994) contains BSA's findings regarding the state's control of its financial activities and its compliance with federal grant requirements and state regulations. Among other things, BSA found that the state continues to have many weaknesses in its accounting, auditing, and administrative control structure; these weaknesses, which BSA found in numerous departments, result in inaccurate financial statements, noncompliance with state and federal regulations, and waste, loss, and misuse of state resources. Among others, BSA made the following findings:

- The Department of Health Services did not have adequate procedures for monitoring and collecting almost \$240 million in accounts receivable.

- The Department of Transportation lost approximately \$972,000 in interest earnings because of \$6 million in late billings reviewed by BSA.

- The Department of General Services has not audited within the required three years 80 of the 151 departments to which it delegated purchase authority totalling more than \$214 million as of August 1993.

- Because the Department of Finance allowed certain departments to use funds that would have been available for future general fund expenditures, the state has approximately \$16.5 million less for future general fund expenditures than originally anticipated.

- The state did not fully comply with federal regulations in 28 of the 46 major grants BSA reviewed.

- The Stephen P. Teale Data Center has not attempted to collect approximately \$14 million in undercharges to the Department of Motor Vehicles from prior years and approximately \$94,000 in undercharges to the Governor's Office from prior years.

- The Stephen P. Teale Data Center could not provide records, including those identifying amounts owed by individual clients, to support \$18.6 million in amounts due from other funds, and could provide no supporting documentation for \$2.4 million in contracts payable.

- The state does not recognize the liability for earned vacation credit in its budgetary basis financial statements and, as of June 30, 1994, that liability was \$1 billion.

- The Office of Criminal Justice Planning purchased more than \$840,000 in computer equipment with federal grant money when the purchase was not authorized in the grant agreement, and the Office could not provide evidence of other authorization for the purchase.

Despite these ongoing problems, BSA noted that the state has made significant improvements in certain areas as a result of its response to weaknesses previously identified by BSA and the Office of the Auditor General (OAG). [11:4 CRLR 37-38; 11:3 CRLR 47] For example, for fiscal year 1990-91, OAG reported that the Office of Local Assistance did not have an adequate system in place to ensure that local educational agencies reported interest earned on advances from the state for construction projects [11:2 CRLR 45]; by fiscal year 1992-93, the Office had corrected that deficiency.

Other BSA Reports. BSA released several other reports since May 19, including the following: *Investigative Activity Report and Public Reports of Investigations Completed by the Bureau of State Audits From January 1 Through July 31, 1994* (September 1994); *The Adelanto Redevelopment Agency Needs to Improve its Procedures to Comply with the Community Redevelopment Law* (July 1994); and *State of California Financial Report, Year Ended June 30, 1993* (June 1994).

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 14-15:

AB 2711 (V. Brown), as amended August 26, enacts the State Government Strategic Planning and Performance Review Act which requires the Controller, the Department of Finance (DOF), and BSA, in consultation with the Legislative Analyst, to develop a plan for conducting performance reviews of all state agencies. This bill requires DOF to survey state agencies to obtain specified information concerning strategic plans and to identify state agencies for which DOF recommends the development or updating of a strategic plan. Those identified agencies would be required to develop a strategic plan and report to the Governor and the Joint Legislative Budget Committee regarding the steps being taken to develop and adopt the plan. This bill was signed by the Governor on September 24 (Chapter 779, Statutes of 1994).

SB 1989 (Marks), as amended May 16, would have required the State Auditor, by March 1, 1995, to prepare a specified report that recommends to the legislature the scope and approach to conduct a state-

wide performance review. This bill died in committee.

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

Executive Director:

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

Statute provides that no more than seven of the thirteen members of the Commission may be from the same political party. The Governor appoints five citizen members, and the legislature appoints four citizen members. The balance of the membership is comprised of two Senators and two Assemblymembers.

This unique formulation enables the Commission to be California's only truly independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...."

The Commission seeks to achieve these ends by conducting studies and mak-



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

MAJOR PROJECTS

Timber Harvest Plans: A Flawed Effort to Balance Economic and Environmental Needs (June 1994) reviews the state's efforts to accommodate multiple uses of California's productive forests without degrading their value or allowing any one use to dominate or exclude the others. Specifically, the Forest Practice Act, Public Resources Code section 4511 *et seq.*, requires the state Board of Forestry to regulate timbercutting so as to achieve "the goal of maximum sustained production of high-quality timber products...while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, regional economic vitality, employment and aesthetic enjoyment." According to LHC, "[c]reating a process that meets the variety of concerns expressed...has proven an elusive goal."

The report describes and analyzes the state's Timber Harvest Plan (THP) process administered by the California Department of Forestry and Fire Protection (CDF) and the Board of Forestry (BOF), the policymaking arm of CDF which is statutorily required to adopt Forest Practice Rules to achieve the "maximum sustained production" goal. Timberland owners who wish to harvest trees must submit a THP prepared and signed by a registered professional forester to CDF for analysis; depending on the characteristics of the stand being cut and its surrounding geology, CDF may be assisted by the Department of Fish and Game (DFG), the Division of Mines and Geology of the Department of Conservation, the Department of Parks and Recreation, and/or the Water Resources Control Board (WRCB) or one of its regional water quality control boards. The THP, which has been certified as functionally equivalent to an environmental impact report under the California Environmental Quality Act, must analyze a number of project-specific issues, including the start and completion dates of harvesting; the existing condition of the forest, such as the location of streams and roads, acreage, presence of sensitive wild-

life, and a description of the land; and the anticipated approach for harvesting without damaging the environment, including the silvicultural method to be used (*e.g.* evenaged or unevenaged management), the logging equipment to be used, erosion control plans, and habitat protection steps.

Once submitted to CDF, the THP is analyzed and reviewed by a multi-agency review team; the site may be inspected; mitigation measures to minimize the environmental impact of the proposed harvest may be suggested or required; and the THP is subject to a 15-day public comment period. Following the public comment period, the CDF Director must decide whether to approve or reject the THP. If the Director approves the THP, his/her decision may be appealed by the DFG or WRCB Director; it may also be challenged within 30 days to a superior court. If the CDF Director rejects the THP, the THP submitter may appeal to BOF, which must hold a public hearing on the appeal. If the Board upholds the CDF Director's decision, the THP submitter may challenge that decision in court.

Following its review of the THP process and a public hearing on February 24, LHC made two major findings about the process and proposed reform of the state's approach in eight recommendations. First, the Commission found that the THP process is complex, inequitable, and costly, producing frustration for the administering state departments, the timber industry, and environmental advocacy groups. According to the Commission, the state departments claim that they lack the resources to perform the thorough review required by a combination of complex state and federal laws; in addition to being critical of approval delays, the timber industry claims that demands for more detailed information are making the THPs more lengthy and costly for the harvesters; and environmental groups claim that the limited amount of time for public input effectively rules out any meaningful analysis and response.

In response to its first finding, the Commission recommended that the Governor and the legislature direct BOF, in consultation with CDF, DFG, the timber industry, and environmental groups, to develop integrated policies and guidelines to govern wildlife, fish, and plan issues raised by THPs. Also, because LHC found that BOF is constantly revising the Forest Practice Rules, the Commission recommended that the Governor and legislature enact legislation making regulations promulgated by BOF effective at one or two specific dates per year (such as January 1 or July 1) to eliminate confusion.

Finally, LHC suggested that the Governor and legislature enact legislation extending the public comment period for THP reviews and requiring notification of outcome.

Aside from being procedurally defective, LHC found that the process does not work. The Commission found that the THP process has not proven effective in achieving a sound balance between economic and environmental concerns because it assesses potential damage on a site-by-site basis rather than across entire ecosystems, making it difficult to assess cumulative impacts over time and throughout watersheds. The Commission also determined that litigation, rather than resolution, is often the focus of the participants, leading to a strained decisionmaking process and lack of consensus. Also, the Commission found that resources and priorities are devoted to issues of process rather than outcome; as a result, people are more interested in whether the correct procedure is followed than in determining how effective mitigation measures are.

In response to its second finding, the Commission recommended that the Governor and legislature enact legislation that would require the completion of master protection plans for watersheds containing productive forests; establish a public appeals process to allow non-litigation challenges to THP approvals; and direct CDF to draft a plan within one year for shifting priorities from plan review to performance monitoring, feedback on effectiveness of requirements, and enforcement activities. Also, the Governor and legislature should direct the Board of Forestry to establish a certification process allowing timber owners to satisfy environmental concerns in advance of harvest proposals, and to develop an objective environmental risk assessment system that would assist in the evaluation of THPs.

Recent Hearings. On June 23, the Commission held a public hearing on boot camps and work-intensive incarceration programs; the hearing was part of the Commission's study of alternative methods of dealing with juvenile and adult inmates. Hearing participants included state officials representing the California Youth Authority, San Quentin, CDF, chief probation officers from several counties, a panel of boot camp graduates, and administrators of private-sector programs.

On August 23, the Commission held a public hearing on the state workforce and civil service issues. Hearing participants included a state government expert from the Nelson A. Rockefeller Institute of Government, top California officials from the State Personnel Board and the Depart-



ment of Personnel Administration, a representative of the California State Employees Association, and personnel experts from various state departments.

■ LEGISLATION

SB 1604 (Hart). Existing law provides that the Governor shall appoint five of the thirteen members of the Little Hoover Commission, the legislature appoints four members, and the balance of the membership is comprised of two Senators and two Assemblymembers. As introduced February 22, this bill would have made the gubernatorial appointments subject to Senate confirmation. On July 9, Governor Wilson vetoed the bill, stating that "[b]y limiting the number of members from the same political party and dividing the appointments between the legislature and Governor, current law provides a balance to ensure the independence of the Little Hoover Commission. This misguided measure would undermine, not enhance, that balance and independence."

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 Di-

vision 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.*), repossessors (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 insulation industries; BHFTI is also responsible for toy safety testing for the state of California. The Bureau is established in