



require every regulation to include a citation to the statute or constitutional provision being interpreted, carried out, or otherwise made more specific by the regulation. [S. Rls]

AB 633 (Conroy), as amended April 12, would require the California Environmental Protection Agency to establish a moratorium on the adoption of any new or proposed regulations until January 1, 1995; require that agency to examine the effect on the economy of all regulations adopted since January 1, 1992, if any; and require the agency to identify all regulations that are more stringent than required under federal law, and permit the agency to revise a regulation to make it less stringent than under federal law without the approval of OAL. [A. CPGE&ED]

AB 969 (Jones), as amended May 3, would require a state agency proposing to adopt or amend any administrative regulation to assess the ability of California to compete with businesses in other states in its adverse economic impact statement. [A. W&M]

AB 1807 (Bronshvag), as amended May 3, would authorize boards within the Department of Consumer Affairs to provide required written notices, including rulemaking notices, orders, or documents served under the APA, by regular mail. [A. W&M]

SB 726 (Hill), as introduced March 3, would require a state agency, when proposing to adopt a regulation that affects small businesses, to adopt a "plain English" policy statement overview regarding each proposed regulation containing specified information; draft the regulations in plain English, as defined; and make available to the public a noncontrolling plain English summary of a regulation, if the regulation is technical in nature. [A. CPGE&ED]

SB 513 (Morgan), as amended May 6, would require all state agencies to assess, when proposing the adoption or amendment of any administrative regulation, the potential impact the proposed change may have on California jobs and business expansion, elimination, or creation, and require that the result of this assessment accompany the notice of proposed action. [S. Appr]

AB 1144 (Goldsmith), as amended May 3, would require state agencies to implement any standard, rule, or regulation that has been adopted by a federal agency to the extent permitted by state law and to the extent possible within the adoption process, unless the state agency finds that the burden created by the new local standard rule or regulation is justified by the benefit to human health, public safety,

public welfare, or the environment. [A. LocG]

AB 64 (Mountjoy), as amended March 3, would prohibit any regulation adopted, amended, or repealed by a state agency, as defined, pursuant to the APA from taking effect unless and until the legislature approves the regulation by statute within 90 days of its adoption, amendment, or repeal by the state agency. [A. CPGE&ED]

LITIGATION

In *State Water Resources Control Board and Regional Quality Control Board, San Francisco Region v. Office of Administrative Law*, No. A054559 (Jan. 20, 1993), the First District Court of Appeal affirmed the trial court's 1990 holding that WRCB's challenged wetlands policies are regulations within the meaning of the APA; the rules are not exempt from the APA; and since the rules were not adopted pursuant to the APA, they are unenforceable. [12:1 CRLR 29] The First District rejected the boards' contention that the directives were meant to be something other than regulations, noting that "if it looks like a regulation, reads like a regulation, and acts like a regulation, it will be treated as a regulation whether or not the agency in question so labeled it."

BUREAU OF STATE AUDITS

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Created by SB 37 (Maddy) (Chapter 12, Statutes of 1993), the Bureau of State Audits (BSA) is an auditing and investigative agency under the direction of the Commission on California State Government Organization and Economy (Little Hoover Commission). SB 37 delegated to BSA most of the duties previously performed by the Office of Auditor General, such as examining and reporting annually upon the financial statements prepared by the executive branch of the state, performing other related assignments (such as performance audits) that are mandated by statute, and administering the Reporting of Improper Governmental Activities Act, Government Code section 10540 *et seq.* BSA is also required to conduct audits of state and local government requested by the Joint Legislative Audit Committee (JLAC) to the extent that funding is available. BSA is headed by the State Auditor, appointed by the Governor to a four-year

term from a list of three qualified individuals submitted by JLAC.

The Little Hoover Commission reviews reports completed by the Bureau and makes recommendations to the legislature, the Governor, and the public concerning the operations of the state, its departments, subdivisions, agencies, and other public entities; oversees the activities of BSA to ensure its compliance with specified statutes; and reviews the annual audit of the State Audit Fund created by SB 37.

MAJOR PROJECTS

BSA Created to Take Over OAG's Duties. Until recently, the Office of the Auditor General (OAG) served as the nonpartisan auditing and investigative arm of the California legislature. OAG's duties included performing traditional CPA fiscal audits of various executive branch agencies or departments; investigating allegations of fraud, waste, and abuse in state government received under the Reporting of Improper Governmental Activities Act; and reviewing programs funded by the state to determine if they are efficient and cost-effective. However, the legislature shut down OAG in December 1992 after the defeat of Proposition 159, which would have established OAG in the California Constitution with the mandate to conduct independent, nonpartisan, professional audits as required by law or requested by the legislature, and exempted OAG from the expenditure limits imposed on the legislature by Proposition 140. [13:1 CRLR 11-12] Without legislative action, the legislature's failure to fund OAG would have required California to contract out audits to private entities in order to continue receiving \$16 million in federal funding; OAG estimated that such action would cost the state about twice as much as having a state agency perform the audits. Accordingly, the legislature enacted and Governor Wilson signed SB 37 (Maddy) (Chapter 12, Statutes of 1993), creating BSA and transferring most of OAG's duties to the new Bureau; SB 37 maintains OAG in existence, but its duties are limited to the performance of special audits and investigations of public entities, including performance audits, that are requested by the legislature.

Whereas OAG operates under the Joint Legislative Audit Committee (JLAC) and is dependent on the legislature for funding its annual operating budget, BSA operates under the jurisdiction of the Commission on California State Government Organization and Economy (Little Hoover Commission) and is funded through the State Audit Fund, which will be continuously



appropriated. Also, whereas OAG is headed by an Auditor General selected by the legislature, BSA is headed by the State Auditor, appointed by the Governor to a four-year term from a list of three qualified individuals submitted by JLAC. Kurt Sjoberg, who previously served as Acting Auditor General, is now serving as Acting State Auditor.

■ LEGISLATION

AB 787 (Campbell). BSA administers the Reporting of Improper Governmental Activities Act, which prohibits an employee from directly or indirectly using or attempting to use his/her official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the right of that person to disclose improper governmental activity pursuant to the Act. For purposes of the Act, the term "employee" means any individual appointed by the Governor or employed or holding office in a state department or agency. As introduced February 25, this bill would expressly include employees of the California State University as employees of a state agency for purposes of the Act. [A. CPGE&ED]

AB 1127 (Speier), as amended May 3, would include a member of the legislature among those entities to whom a person may disclose improper governmental activity pursuant to the Reporting of Improper Governmental Activities Act. [A. W&M]

SB 813 (Greene), as introduced March 4, would provide that if OAG is requested to perform an audit of a state agency, the state agency shall be required to pay the administrative costs associated with only one audit per fiscal year; the bill would also require that payment of the administrative costs associated with any additional audits conducted during that fiscal year be made by the person or entity requesting the audit. At this writing, SB 813 has not been amended to refer to BSA instead of OAG. [S. GO]

The following is a status update on bills reported in detail in CRLR Vol. 13, No. 1 (Winter 1993) at page 12:

SB 37 (Maddy) creates BSA in state government under the direction of the Little Hoover Commission; as described above, SB 37 generally delegates to BSA duties previously performed by OAG, such as examining and reporting annually upon the financial statements prepared by the executive branch of the state, performing other related assignments (such as performance audits) that are mandated by statute, and administering the Reporting

of Improper Governmental Activities Act. BSA is also required to conduct audits of state and local government requested by the Joint Legislative Audit Committee to the extent that funding is available.

With respect to BSA, the Little Hoover Commission will review reports completed by the Bureau and make recommendations to the legislature, the Governor, and the public concerning the operations of the state, its departments, subdivisions, agencies, and other public entities; oversee the activities of BSA to ensure its compliance with specified statutes; and review the annual audit of the State Audit Fund created by SB 37.

SB 37 also maintains OAG in existence, but limits its duties to the performance of special audits and investigations of public entities, including performance audits, that are requested by the legislature. This bill was signed by the Governor on May 7 (Chapter 12, Statutes of 1993).

AB 5 (Brown) was substantially amended and is no longer relevant to the Bureau of State Audits.

AB 24 (Campbell). With the enactment of SB 37 (*see supra*), this bill is no longer necessary and was dropped by its author.

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

Executive Director:

Jeannine L. English

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The Little Hoover Commission 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 mem-

bership 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 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.

Although the Little Hoover Commission, which is funded totally from the general fund, survived the 1992-93 budget negotiations, it suffered a 15% cut in its budget; the Commission is to receive \$453,000 in 1992-93, compared to \$533,000 in 1991-92 and \$609,000 in 1990-91.

■ MAJOR PROJECTS

1962-1992: 30 Years of Reform (January 1993) highlights some of the Little Hoover Commission's accomplishments over its 30-year existence; notes those areas in which the Commission will continue to seek reform; and summarizes some of the reports issued by the Commission over the last two years.

Examples of the Commission's successes over the past 30 years include the creation of the Department of General Services to provide centralized purchasing and other services for all state departments; the implementation of automotive