



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



fleet management techniques, centralizing the services required to meet state department and employee transportation needs; the appointment of a Medi-Cal czar to negotiate reimbursement rates with hospitals; the use of surplus land and unused rights-of-way belonging to Caltrans to create added revenue for the state; and the establishment of a bidding process for airline ticket prices so that state employee travel is purchased at the cheapest possible cost. Areas in which the Commission will continue to press for reform, based on prior reports and recommendations, include elder care, children's services, revenue collection, and environmental protection.

Workers' Compensation: Containing the Costs (February 1993) focuses on the major cost-drivers in California's current workers' compensation system and examines how the program can be reformed to meaningfully benefit employers and employees. Initially, the report explains that employees may make a claim for workers' compensation when they are injured and away from work for three days. The Commission also describes the five basic types of workers' compensation benefits available: medical benefits, which provide an injured worker with the medical and hospital treatment reasonably required to cure or relieve the effects of the injury; temporary disability, which provides an injured worker with payments to replace two-thirds of his/her average weekly earnings—subject to specified limits—during the time it takes to recover from the disability; permanent disability, which provides a permanently injured worker with payments to replace two-thirds of his/her average weekly earnings—subject to specified limits; vocational rehabilitation, which provides an injured worker with a variety of job services and allowances to facilitate returning to work; and death benefits, which entitle the dependents of a fatally injured worker to \$5,000 in burial expenses and a cash benefit ranging from \$95,000 to \$115,000 (based on the number of dependents).

The Commission notes that although workers' compensation benefits are largely privately administered, several state government agencies have important roles in workers' compensation administration. For example, the State Compensation Insurance Fund is an independent agency of the state created to write workers' compensation insurance coverage; the Workers' Compensation Insurance Rating Bureau (WCIRB) periodically develops and recommends premium rates for each of the more than 400 employment classifications; the Department of Business Licenses and regulates the business practices of insurance carriers,

and reviews, adopts, modifies, or rejects the proposed rate changes developed by the WCIRB; the Department of Industrial Relations compiles labor statistics and conducts audits of claims and insurers; and the Department of Personnel Administration administers the provision of workers' compensation benefits to state employees, among other things.

According to the report, costs associated with workers' compensation are increasing due to an increase in the cost of medical treatment and vocational rehabilitation; few incentives in the system to control costs; rampant fraud; excessive profiteering by those who are supposed to deliver services; the inherent subjectivity of some types of claims; and the increasing number of stress claims and resulting litigation. The Commission notes that reform of the system has been stymied by powerful interest groups, such as insurance companies, attorneys and physicians, and labor unions. Of the \$10 billion spent by businesses in 1990 for workers' compensation, \$3 billion was paid in benefits, approximately \$3 billion was consumed in medical care costs; and \$4 billion went to the "middle men" of the system—insurers, consulting physicians, and lawyers.

The Commission's major findings regarding problems plaguing the workers' compensation system include the following: high workers' compensation costs are choking business but at the same time are producing little in the way of benefits for injured workers; medical costs have increased because of inefficiency, price-gouging, and unnecessary treatments; the vocational rehabilitation program lacks sufficient incentives to return employees to work quickly and to control costs; and the high incidence of fraud, the multiplicity of expensive medical/legal reports, and the subjectivity involved with stress claims all place an overwhelming burden on the workers' compensation system without benefitting the injured workers the program was designed to benefit.

To address the various problems present in the state's current workers' compensation system, the Little Hoover Commission made the following recommendation:

—the Governor and the legislature should convene a special session to focus on the workers' compensation system and facilitate the rapid implementation of reforms;

—the Governor and the legislature should enact legislation to establish managed care as the mode for delivery of medical services under the workers' compensation system;

—the Governor and the legislature should enact legislation that would estab-

lish system-wide limits for medical care under the workers' compensation system;

—the Governor and the legislature should enact legislation that focuses vocational rehabilitation services on effectiveness for returning injured workers to the labor force;

—the Governor and the legislature should enact legislation that would limit employer liability for vocational rehabilitation;

—the Fraud Assessment Commission should report to the Governor and the legislature on the effectiveness of the 1992 anti-fraud laws by July 1, 1993;

—the Governor and the legislature should enact legislation that would require employers to pay for only one medical/legal evaluation, which would be performed by a professional chosen by the injured worker;

—the Governor and the legislature should enact legislation restricting stress claims to on-the-job sudden or extraordinary events; and

—the Governor and the legislature should enact legislation prohibiting stress claims for "good faith" personnel actions.

California's \$4 Billion Bottom Line: Getting Best Value Out of the Procurement Process (March 1993) examines the state's procurement process, which results in the purchase of \$4 billion in goods, services, and construction projects every year. The Commission notes that the state's procurement process emphasizes fairness, low cost, and achieving a set of social goals, but states that none of these factors necessarily ensures that the state gets the best product to meet its needs or maximizes the use of its limited resources. Based on information provided by an advisory committee, the Little Hoover Commission chose to focus its investigation on four areas: major procurements, such as telecommunications and electronic data processing equipment; the protest process used by suppliers not awarded state contracts; the minority, women and disabled veterans program; and the Prison Industry Authority, which sells about \$150 million in goods and services to state and local government entities.

The Commission first noted that the present state procurement system focuses on low cost rather than on best value for the state. In response, the Commission recommended that the Governor and the legislature enact legislation declaring that the primary goal in conducting state procurements is to obtain the best-suited product at the best price, and that the State Administrative Manual be amended to enable state agencies to use a non-commodity, best-value evaluation procedure at their own discretion.



Next, the Commission found that the procurement process, particularly when it pertains to electronic data processing and telecommunications systems, is needlessly complex, time-consuming, and costly for the state and the suppliers. The report recommended that the Governor and the legislature direct the Department of General Services (DGS) to streamline the procurement process to avoid multiple submissions, and enact legislation that directs contract language negotiations to take place only after bids have been awarded.

The Commission also found that specifications in state requests for proposals (RFPs) are sometimes poorly drafted, too restrictive, and not conducive to the state receiving the best product to meet its needs. The report recommended that the Governor and the legislature enact a resolution that would proclaim the state's intent to use functional specifications rather than detailed technical specifications in procurements; direct the Office of Information Technology to ensure that RFPs match the scope and intent of the feasibility study reports; and direct DGS to make increased resources available to those who write specifications for procurements.

Next, the report noted that some state policies and laws impede efficient and effective procurements, in some cases driving up costs, limiting purchasing choices, and discouraging broad vendor participation. In response, the Commission recommended that the Governor and the legislature direct DGS to maintain equipment standards matrices only as advisory guidelines for departments; direct a modification of procurement procedures that would allow departments to purchase reconditioned equipment at their own discretion; and enact comprehensive legislation to reorganize, simplify, and streamline statutes relating to procurement. Also, DGS should—in consultation with vendors, state departments, and other procurement interests—review contracting and invoicing procedures and create standardized formats to be used by all departments.

Regarding the state's protest process, the Commission found that the process is fragmented, informal to a point that credibility is undermined, and hampered by the perception—if not the reality—of being a “kangaroo court” that is unfair and/or ineffective. In response, the report recommended that the Governor and the legislature direct the State Board of Control to institute formalized hearing procedures, record precedent-setting decisions, order remedies for bid award errors when appropriate, and in other ways standardize

the operation of the bid protest process; enact legislation to create an independent, binding arbitration process for those protestors who are willing to pay the costs of an alternative process; enact legislation that would require the release of all relevant records to bid participants within a timeframe sufficient to allow the filing of a detailed protest; and enact legislation to require documentation of reasons when all bids are rejected and a project is put out for rebid.

Next, the Commission reported that the state's Minority Business Enterprise/Women Business Enterprise/Disabled Veteran Business Enterprise (MBE/WBE/DVBE) program is failing to meet the goals set by law. In response, the report recommended that the Governor and the legislature eliminate the good-faith effort component of the MBE/WBE/DVBE program—which requires departments to award contracts to the lowest responsible bidder who either meets or makes a good-faith effort to meet the goals established by law—or reform the process so it achieves its intended purpose; enact legislation to abolish self-certification and set up a single-point full certification process; direct DGS to embark on an aggressive enforcement program; enact legislation that allows firms to file “global” plans with DGS as an optional way of complying with MBE/WBE/DVBE requirements; and enact legislation to protect past and current vendors in the event the state's MBE/WBE/DVBE program is found unconstitutional.

Finally, the Commission reported that the Prison Industry Authority (PIA), heavily and unwillingly subsidized by the other areas of state government, is unable to document its degree of success in meeting program goals; by law, state government agencies are compelled to buy available goods and services from PIA rather than from the private sector—regardless of price, quality, or other factors. In response, the Commission recommended that the Governor and the legislature enact legislation that allows state departments to purchase goods from PIA on the basis of best value for the department; enact legislation to give PIA the responsibility of creating a hiring process that reflects real-world conditions; and enact legislation requiring PIA to report on program outcome statistics. Also, PIA should require its annual audits to recognize and document the subsidies it receives.

■ LEGISLATION

SB 37 (Maddy) is an urgency bill which creates the Bureau of State Audits (BSA) in state government under the di-

rection of the Little Hoover Commission; SB 37 generally delegates to BSA duties previously performed by the Office of the 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. BSA will also be 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, who will be appointed by the Governor to a four-year term from a list of three qualified individuals submitted by JLAC.

With respect to BSA, the 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 revises the criteria required by legislative members for appointment to, and replacement on, the Little Hoover Commission by the Speaker of the Assembly and the Senate Rules Committee. 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 Little Hoover Commission.

DEPARTMENT OF CONSUMER AFFAIRS

Director: Jim Conran

(916) 445-4465

Consumer Infoline:

(800) 344-9940

Infoline for the Speech/Hearing

Impaired: (916) 322-1700

In addition to its functions relating to 137 boards, bureaus, and committees, the Department of Consumer Affairs (DCA) is charged with carrying out the Consumer Affairs Act of 1970. The Department educates consumers, assists them in complaint mediation, advocates their interests before the legislature, and represents them before the state's administrative agencies and courts.

The Department may intervene in matters regarding its boards if probable cause