



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

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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



exists to believe that the conduct or activity of a board, its members, or employees constitutes a violation of criminal law.

MAJOR PROJECTS

DCA Releases CHP Investigation of Medical Board. On January 20, DCA Director Jim Conran and Sandra Smoley, Secretary of the State and Consumer Services Agency, released the California Highway Patrol's (CHP) investigative report on the Medical Board of California (MBC); Conran had requested the independent investigation in July 1992 to probe allegations of serious misconduct by upper staff members in MBC's enforcement unit. [12:4 CRLR 42] The CHP report sustained six of the seven allegations made, including a claim that MBC officials engaged in "case dumping"—the inappropriate disposition of consumer complaints against physicians in California; the report indicated that an audit team closed 200–300 complaints without appropriate investigation, simply to ease MBC's burgeoning backlog of consumer complaints. Additionally, the report noted that MBC management itself has admitted that six investigations regarding possible negligence at Martin Luther King Hospital in Los Angeles were poorly investigated and documented; CHP concluded that at least two of those cases should have been referred to discipline rather than closed. CHP also described a number of other cases which its investigation team believed were inappropriately closed by MBC.

In addition to "case dumping," the report sustained the following allegations: (1) MBC employees used state time for inappropriate reasons, including conducting personal business; (2) MBC employees engaged in irregularities in the promotional and job placement processes; (3) MBC employees misused state vehicles and equipment; (4) MBC employees misused "frequent flyer" mileage credits earned at state expense; and (5) MBC employees misused undercover driver's licenses.

At a press conference on January 20, Conran and Smoley expressed outrage at the CHP's findings, and noted that the Wilson administration had already begun to address the matter by replacing eleven of the nineteen Board members and by forcing the resignation of former MBC Executive Director Ken Wagstaff. [13:1 CRLR 13, 44–45] In addition, following the release of the report, Conran and MBC organized a March 18–19 Medical Summit, at which seventy community, consumer, and medical leaders and MBC staff and Board members reviewed all aspects of MBC's disciplinary policies and practices; the primary areas of focus were the Board's complaint process, enforcement

process, disciplinary options, and information disclosure policies.

Since the Summit, DCA has taken an active role in negotiating the language and provisions of SB 916 (Presley), an MBC restructuring bill sponsored by the Center for Public Interest Law in response to the CHP report. (See agency report on MBC for related discussion.)

DCA Restructuring Update. Talk of restructuring DCA and its various boards has been circulating in Sacramento for over one year. [13:1 CRLR 13] The latest development is a report issued in February by the Legislative Analyst's Office (LAO). In its *Analysis of the 1993–94 Budget Bill*, LAO again recommended that the legislature eliminate the separate agencies within DCA; eliminate the state's regulatory role in thirteen currently-regulated areas; and consolidate the remaining functions under the DCA Director. LAO's recommendations regarding this consolidation are similar to those it made to no avail in its review of the 1992–93 Budget Bill. [12:2&3 CRLR 53] According to LAO, the following problems exist with the current structure:

- Most appointed board members are representatives and practitioners of the occupations and professions they license and regulate; this may create conflicts of interest and diminish public confidence in the effectiveness of the regulatory process.

- Most boards and bureaus have their own regulatory and administrative staff, management, and offices, even though many of those entities have extremely small staffs. As such, the state cannot take advantage of the economies of scale that would be realized if there were a pool of staff to perform the overall licensing and regulatory responsibilities.

- Boards maintain separate databases regarding their licensees' activities, such as complaints filed, enforcement actions, and dispositions; this makes it difficult for boards to cross-check licensees' records in order to prevent, where appropriate, licensees barred from one profession from becoming licensed in another similar profession.

- The fragmentation of licensing and regulatory activities makes it difficult for licensees as well as the general public to access the regulatory bodies for needed information.

According to LAO, eliminating the separate boards and bureaus is necessary to promote the effectiveness and responsiveness of the state's regulatory process, and would result in potential multimillion-dollar savings annually to special funds by reducing the cost of administration and management overhead.

Next, LAO recommended that the state stop regulating several consumer-related business activities. In determining whether the state should continue to regulate a particular area, LAO recommended that the state consider whether the board or bureau protects the public from a potential health or safety risk that could result in death or serious injury; whether the board or bureau protects the consumer from severe financial harm; and whether there are federal mandates that require the state to regulate certain activities. Based on its criteria, LAO recommended that the state remove its regulatory authority over activities currently licensed by the following DCA agencies: the Board of Accountancy, the Athletic Commission, the Board of Barbering and Cosmetology, the Board of Guide Dogs for the Blind, the Cemetery Board, the Bureau of Investigative and Collection Services (BCIS), the Bureau of Electronic and Appliance Repair (BEAR), the Board of Funeral Directors and Embalmers, the Bureau of Home Furnishings and Thermal Insulation (BHFTI), the Board of Landscape Architects, the Certified Shorthand Reporters Board, and the Tax Preparers Program (TPP).

Finally, LAO recommended that the remaining DCA boards, along with the Osteopathic Medical Board of California and the Board of Chiropractic Examiners, be consolidated within DCA. LAO also noted that the legislature should ensure that any regulatory function that is sustained as a state responsibility is addressing adequately the legislature's goals and objectives regarding the particular activity; thus, for any state regulatory function that the legislature decides to continue, the boards or bureaus responsible for the specific functions should be required to demonstrate to the legislature how they meet these goals and objectives and why continuation is necessary. Specifically, LAO recommended that the boards and bureaus inform the legislature of the following: the process used to ensure competency of the licensee; the frequency of onsite investigations and the results of those investigations; types of complaints filed, and how complaints and processed and resolved; and types of disciplinary actions initiated against violators and the outcome of those actions.

Also in February, DCA Director Jim Conran testified before the Senate Business and Professions Committee's Subcommittee on Efficiency and Effectiveness in State Boards and Commissions regarding the future of DCA. In his statements, Conran acknowledged the lack of communication and coordination which currently exists among the various agen-



cies, the slow pace of the enforcement process, and the difficulty complainants encounter in obtaining timely information and in understanding the process. Conran also noted that DCA's structure and operations need to change in order to adapt to the state's changing demographic makeup, global competition, and technological advances.

Conran also contended that there are built-in inefficiencies in the replication of services between DCA and its boards and the boards and their committees, and noted that he is working to consolidate functions of DCA's bureaus where possible. For example, Conran stated his preference to merge the following bureau units: the unregistered activity units of the BEAR, BHFTI, and TPP; the complaint intake and mediation units of BEAR, BHFTI, TPP, BCIS, the Bureau of Automotive Repair (BAR), and DCA's Division of Consumer Services; and the administrative functions—cashiering, licensing, registration, personnel, labor relations, training, and information systems—of BEAR, BHFTI, TPP, BAR, BCIS, and DCA.

Conran listed a number of proposals which DCA is pursuing to enhance consumer protection, including the following:

- focus enforcement actions by selecting and publicizing important cases from all bureaus, allocating resources to successfully prosecute truly egregious conduct, coordinate various law enforcement agencies, and enhance consumers' knowledge of their rights and responsibilities through media coverage;

- centralize information delivery and improve consumer access by creating a single 800 telephone number for consumers to call;

- streamline the complaint filing process by simplifying complaint forms and allowing consumers to file complaints over the telephone rather than by mail;

- improve complaint handling response times and effectiveness by establishing four regional complaint handling centers for mediation of complaints; and

- centralize license application intake and processing where feasible.

In conclusion, Conran spoke in support of a systematic reassessment of board sizes and a regular sunset review of each DCA board and bureau to ensure that continued regulation is appropriate. Finally, Conran stated his belief that DCA's boards should narrow their focus to the "basic rules of the road"—who gets in, what they can and cannot do, who stays in, standards of practice, and penalty guidelines.

DCA To Participate in Pilot Budgeting Program. On March 9, Governor Wil-

son announced his selection of four departments—DCA, the Department of Parks and Recreation, the Department of General Services, and the Stephen P. Teale Data Center—to participate in a pilot budgeting program aimed at bringing more accountability and economy to state government. Specifically, the departments will begin engaging in "performance-based budgeting," a form of budget planning that ties funding levels directly to cost savings, consumer service, and management responsibility. Under the current "workload" budgeting procedures, each state department assumes it is entitled to receive the same amount of funding it received in the previous year, plus automatic adjustments for increased workload and inflation; Wilson contends this system actually punishes innovation, since "[m]anagers who discover new ways of delivering services at lower costs to taxpayers often find their budgets reduced, and their funds diverted to less productive programs."

Under performance budgeting, after the development of a strategic plan by each department, annual budgets would take the form of a contract between legislative budget writers and the administration. The contracts would specify the resources provided to the program; the level of program performance to be delivered; procedures to hold the program accountable to the performance level; and a new scope of flexibility to be given to program managers for day-to-day operations. Further, the budget contracts would provide financial incentives for departments to achieve greater cost savings, by allowing them to reinvest up to 50% of any savings from operational efficiency into that department's discretionary activities for the next fiscal year.

DCA to Initiate New Consumer Information Line. DCA is currently installing a new 800 telephone number to provide consumer information; the line will be connected to AT&T's translation lines which can translate the information into 128 different languages. The idea behind the project is to create a one-stop information source which enables consumers to obtain information they need about DCA and its various agencies. The boards under DCA will also be covered by the new line if they choose to opt in; DCA expects the line to be operational by the end of 1993.

■ LEGISLATION

AB 1807 (Bronshvag), as amended May 3, is one of two pending DCA omnibus bills which would make numerous revisions to the enabling statutes of various DCA agencies. Among other things,

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

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

SB 574 (Boatwright), as amended May 17, is the other DCA omnibus bill which would make changes to existing laws concerning several of DCA's boards and agencies; these changes are more fully described in the agency reports on the affected agencies. Additionally, SB 574 abolishes existing provisions of the Business and Professions Code establishing a Consumer Advisory Council within DCA. [A. CPGE&ED]

SB 842 (Presley), as amended April 13, would authorize all DCA agencies to issue interim orders of suspension and other license restrictions against licensees. This bill would require notice and a hearing on the issuance of an interim order, except where it appears that serious injury would result to the public before the matter is heard on notice. Currently, only the Medical Board of California, the



Board of Podiatric Medicine, and the Athletic Commission are authorized to suspend licenses on an interim basis and issue other interim orders imposing drug testing, continuing education, supervision of procedures, or other license restrictions. [A. CPGE&ED]

AB 652 (Speier), as amended May 4, would require state agencies to conduct customer service programs as part of their regular staff training and development activities. [A. W&M]

AB 1287 (Moore), as amended May 4, would, until January 1, 1997, enact a comprehensive scheme for the regulation and registration of "self-help legal services providers" (also known as "legal technicians" or "independent paralegals") under the jurisdiction of DCA. [A. Jud]

AB 1392 (Speier), as amended April 14, would require every board, commission, examining committee, or other agency within DCA to notify DCA whenever any complaint has gone thirty days without any investigative action. The bill would also require DCA to determine when a backlog of complaints justifies the use of Department staff to assist in complaint investigation, and would authorize the DCA Director to review any complaint filed with a board, commission, examining committee, or other agency within DCA. [A. Floor]

AB 1067 (Baca), as introduced March 2, would repeal current provisions regarding the regulation of sellers of travel, defined to mean any person who in this state offers for sale, at wholesale or retail, transportation, or transportation-related services at a fee, commissions, or other valuable consideration. The bill would also create a State Travel Sellers Authority and a Travel Advisory Commission thereunder within DCA and specify registration requirements. [A. CPGE&ED]

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

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

presented to all legislative committees of the legislature that hear that legislation prior to its enactment. [S. B&P]

SB 500 (Hill), as amended May 18, would authorize the Department of Finance to develop a performance budgeting pilot project, in accordance with specified principles, involving four state departments, including DCA, to be implemented during the 1994-95 fiscal year. The bill, if passed, would take effect immediately as an urgency statute. [S. Appr]

SB 47 (Lockyer), as introduced December 17, would require specified retailers to specify the four-hour period within which service or repair of merchandise will commence prior to the date of service or repair. [A. CPGE&ED]

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

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

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 1993-94 Governor's Budget. In January, LAO released *An Overview of the 1993-94 Governor's Budget*; this document was followed by the February release of *Analysis of the 1993-94 Budget Bill*, LAO's comprehensive examination of budget issues facing the state. LAO noted that, in light of the continuing state recession and the magnitude of actions already taken in recent years, resolving the state's fiscal crisis will require a fundamental rethinking of governmental responsibilities in California. According to LAO, although the Governor's proposed budget recognizes the magnitude of the crisis and proposes major changes in state fiscal policy, the budget as presented does not adequately address the problem and should not be adopted as proposed.

According to LAO, the state faces a budget gap of \$8.6 billion for 1993-94; this consists of a carryover deficit from 1992-93 of \$3.4 billion and a \$5.2 billion operating shortfall between baseline spending and estimated revenue in 1993-94. The Governor's budget proposes to address the budget gap by shifting \$4.3 billion of costs to other levels of government; reducing program funding by \$2.4 billion; raising \$9 billion through cost deferrals and revenue accelerations; and increasing resources by \$9 billion through repealing the renters' credit and the small business health care tax credit.

LAO noted that the current year will be the third consecutive year in which the state budget has had an ending deficit of more than a billion dollars, despite the fact