



and the "one-time only" exception to the rule—is a regulation and thus legally unenforceable unless adopted pursuant to the APA.

—April 9, 1993, OAL Determination No. 4, Docket No. 90-019 (published July 9, 1993). In May 1990, Robert Miller of the Southern California Rehabilitation Services Client Assistance Program requested that OAL determine whether policies set forth in a Department of Rehabilitation memorandum constitute regulations; the memorandum stated that a freeze has been placed on the purchase of accountable equipment if general funds are used, and defined the term "accountable equipment" as any item which has a normal useful life of at least four years and a unit acquisition cost of at least \$500. The memo also instructed employees to place a specified statement on all purchase estimates or on the procurement audit statement for certain purchases indicating that the purchase does not involve general fund expenditures.

OAL concluded that the memorandum constitutes a rule of general application, as it sets forth a procedural requirement meant to apply to all persons who fill out all purchase orders regarding equipment which fits the definition in the memorandum; OAL also found that, in a very limited sense, the memorandum implements, interprets, or makes more specific the general mandate to provide specified services to eligible clients. However, OAL also found that to any extent that the challenged rule is a regulation, it falls within the "internal management" exception to the APA, which provides that the term "regulation" does not include a rule which relates only to the internal management of the state agency. Because the memorandum "simply instructs the Department's employees on the agreed-upon method to assure that purchase orders fulfilling the Department's statutory duties will go smoothly through the process and not be delayed because of a freeze of state funds, while federal funds are still available to carry out the Department's regulatory and statutory duties," OAL concluded that the rule does not violate the APA.

LEGISLATION

AB 969 (Jones), as amended August 31, requires a state agency proposing to adopt or amend any administrative regulation to assess the ability of California businesses to compete with businesses in other states in its adverse economic impact statement. This bill was signed by the Governor on October 10 (Chapter 1038, Statutes of 1993).

SB 726 (Hill), as amended July 13, requires a state agency, as of January 1, 1994, when proposing to adopt or amend 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. This bill was signed by the Governor on October 6 (Chapter 870, Statutes of 1993).

SB 513 (Morgan), as amended September 3, requires 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. This bill was signed by the Governor on October 10 (Chapter 1063, Statutes of 1993).

AB 1144 (Goldsmith), as amended August 17, requires state agencies, where proposed state regulations are substantially different from federal requirements, to include in the notice of adoption, amendment, or repeal a brief description of the significant differences and a summary of agency efforts minimizing duplication and conflicts. The bill also requires departments, boards, and commissions within the California Environmental Protection Agency, the Resources Agency, and the Office of the State Fire Marshal to implement any federal 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 these entities find that differing state regulations are authorized by state law or 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. This bill was signed by the Governor on October 10 (Chapter 1046, Statutes of 1993).

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]

SCA 6 (Leonard), as amended February 16, would authorize the legislature to repeal state agency regulations, in whole or in part, by the adoption of a concurrent resolution. SCA 6, which would not be applicable to specified state agencies, would require the concurrent resolution to specify the regulation to be repealed or

specific references to be made, as indicated, and would subject those resolutions to the same procedural rules as those required of bills. The measure would also 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. RIs]

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 1807 (Bronshvag), as amended September 8, would authorize regulatory agencies 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. Inactive File]

BUREAU OF STATE AUDITS

State Auditor: Kurt Sjoberg
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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.

In August, Governor Wilson announced the appointment of Kurt Sjoberg as State Auditor; Sjoberg, who served as acting Auditor General from 1989-93, will receive a salary of \$101,340 a year. The appointment does not require Senate confirmation.

MAJOR PROJECTS

BSA Reviews Drug and Alcohol Abuse Reduction Programs. On September 23, BSA released a report entitled *A Review of the Accomplishment of Goals Designed to Reduce Drug and Alcohol Abuse in California*; the report was mandated by SB 2599 (Seymour) (Chapter 983, Statutes of 1988), which added provisions to the Health and Safety Code designed to reduce drug and alcohol abuse in California, improve the coordination of efforts to reduce drug and alcohol abuse, and provide direction for public policy decisions affecting drug and alcohol services. Among other things, SB 2599 encourages state and county governments to prepare master plans for reducing drug and alcohol abuse and sets long-term, five-year goals that focus on the elimination of drug and alcohol abuse in California.

In its report, BSA found that state agencies have achieved thirteen of the forty goals they could address. The attainment of these goals has resulted in—among other things—more training in the detection and prevention of substance abuse for law enforcement officials, judges, teachers, and school administrators; the dissemination to California drivers of information on the dangers of drinking and driving; sobriety checkpoints by the California Highway Patrol; and a program, operated by the California National Guard and local law enforcement agencies, designed to curb the transport of illegal substances in the state. BSA also found that state agencies have partially achieved 22 goals but have made no progress on five specific goals.

BSA also noted that all 58 counties in California are in some stage of developing master plans for reducing drug and alcohol abuse. However, BSA noted that information on the counties' progress in meeting other goals is not available to the Department of Alcohol and Drug Programs, the lead agency administering SB 2599; according to BSA, the Department does not require counties to address the goals

or report their progress in meeting the goals on the basis that it does not have the statutory authority to do so.

BSA Takes Over Whistleblower Functions. Following the dismantling of the former Office of the Auditor General (OAG) in December 1992, no state agency was authorized to administer the Reporting of Improper Governmental Activities Act [13:2&3 CRLR 31]; the Act encourages state employees and other persons to disclose improper governmental activities by prohibiting any employee from directly or indirectly using or attempting to use 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 matters within the scope of the Act. At the time of OAG's restructuring, it was receiving 400-500 calls each month on its whistleblower hotline.

However, SB 37 (Maddy) (Chapter 12, Statutes of 1993) delegated to BSA—among other duties previously performed by OAG—the responsibility for administering the Act. As of July 21, BSA's whistleblower hotline is in operation and state employees and the public may once again report misconduct in state government, anonymously if they so choose. The statewide hotline number is (800) 952-5665.

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 amended June 14, this bill would have expressly included employees of the California State University as employees of a state agency for purposes of the Act. This bill was vetoed by the Governor on September 21.

AB 1127 (Speier), as amended June 29, would have included 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. This bill was vetoed by the Governor on October 8.

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]

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

Executive Director:

Jeannine L. English

Chairperson: Nathan Shapell
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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 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