



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.

## MAJOR PROJECTS

**A Chance to Succeed: Providing English Learners with Supportive Education** (July 1993) assails California's native language instruction program as seriously deficient in teaching non-English-speaking children to speak English; according to the study, only 5% of all such children become fluent in English, while a quarter of a million receive no English instruction at all. Under the Department of Education's native language instruction program, children are taught core courses in their native language until they are literate in English.

The Commission found that schools are not helping children to become fluent in English quickly. The report noted that schools are awarded money from the state according to the number of students who are not fluent in English, a policy which effectively creates incentives to keep these children from learning English. In response, the Commission recommended that the Governor and the legislature enact legislation to revise the state funding mechanisms for educating English learners so that schools are encouraged to help students attain English proficiency rapidly.

The Commission also concluded that the Department of Education's bias toward native language instruction as the best method for educating students who do not speak English permeates all of the Department's policies and procedures, effectively punishing schools that wish to pursue other options. According to the Commission, the Department's policy is inappropriate because federal law, court cases, and state policy all recognize that various methods of instruction may be

effective in helping English learners become fluent; unwarranted because numerous academic studies have yielded conflicting results about a single, "best" method of teaching non-English-fluent students; not feasible because about one-fourth of California's non-English-fluent students speak a language other than Spanish and there are relatively few bilingual teachers for languages other than Spanish; and counterproductive because schools are required to expend energy and resources documenting the success of other options or providing plans on how native language instruction can be achieved in the future. Accordingly, the Commission recommended that the Governor and the legislature enact legislation establishing a state framework for local control of educational methods for non-English-fluent students, directing the Department of Education to focus on holding schools accountable for student achievement rather than requiring the implementation of a single academic approach, and directing the Department to produce a report examining funding for English learner education and documenting the supplemental use of earmarked funds.

Finally, the Commission found that there is a severe shortage of teachers with the expertise in language acquisition, training in cultural diversity, and skills to enhance the classroom learning environment that are vital for meeting student needs in today's schools. In response, the Commission recommended that the Governor and the legislature enact a resolution directing the Department and the Commission on Teacher Credentialing to focus on improving teaching techniques rather than on creating a cadre of bilingual teachers.

## 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 Division 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; a 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) 366-5100; 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: K. Martin Keller; (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. 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: Gordon Damant; (916) 574-2040.* The Bureau of Home Furnishings and Thermal Insulation (BHFTI) regulates the home furnishings and insulation industries in Califor-

nia. 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 Business and Professions Code section 19000 *et seq.*

BHFTI establishes rules regarding furniture and bedding labeling and sanitation. The Bureau enforces the law by conducting extensive laboratory testing of products randomly obtained by BHFTI inspectors from retail and wholesale establishments throughout the state. To enforce its regulations, which are codified in Division 3, Title 4 of the CCR, BHFTI has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. BHFTI may also revoke or suspend a licensee's registration for violation of its rules.

• **Tax Preparer Program**—*Administrator: Jacqueline Bradford; (916) 324-4977.* Pursuant to Business and Professions Code section 9891 *et seq.*, the Tax Preparer Program registers approximately 19,000 tax preparers in California. The Program's regulations are codified in Division 32, Title 16 of the CCR. Registrants must be at least eighteen years old; have a high school diploma or pass an equivalency exam; and must have completed sixty hours of instruction in basic personal income tax law, theory, and practice within the previous eighteen months or have at least two years' experience equivalent to that instruction. Prior to registration, tax preparers must deposit a bond or cash in the amount of \$5,000 with the Program. Members of the State Bar, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from the Program's registration requirement.

## MAJOR PROJECTS

**DCA Releases 1991-92 Annual Report.** In June, the Department released its 1991-92 Annual Report, which catalogues the accomplishments of the Department, its administrative units, and its constituent occupational licensing agencies during 1991-92. Several events highlighted in the Annual Report include the Bureau of Automotive Repair's successful investigation of Sears' Automotive Repair

Shops, which led to an \$8 million settlement benefiting California consumers, a total \$50 million settlement benefiting consumers nationwide, and Sears' agreement to injunctive language which protects consumers [12:4 CRLR 43, 58-59]; DCA's intervention and filing of opposition papers in the Public Utilities Commission's proceeding on Pacific Bell's proposal to offer Caller ID in California [11:3 CRLR 51-52]; individual counseling of over 93,000 consumers and the distribution of over 200,000 pamphlets and brochures to consumers on landlord-tenant law, refunds, advertising, contracts, credit, small claims court, and other consumer topics; the replacement of many gubernatorial appointees to various DCA boards with new appointees "who are committed to protecting the public and to establishing the highest standards of conduct and professionalism for those regulated"; and the development of mechanisms to consolidate and streamline many of the administrative functions performed by DCA administrative units and bureaus.

**Strategic Plan Released.** Also in June, DCA released its *Strategic Plan to Create a World-Class Consumer Protection Organization.* In the Strategic Plan, DCA identifies its mission: "to empower and protect the consumer, while supporting a fair and competitive marketplace." Toward this end, the Department has identified four key processes that support DCA's two "customer" groups (the public and licensees)—information delivery, complaint mediation, licensing, and enforcement—and has outlined goals and objectives in each area that reflect its commitment to serving the needs of these customers.

For example, in the area of information delivery, DCA's primary goal is to create "a world-class, easy, effective and efficient single point of access for the public to file complaints and obtain consumer information." The objectives identified by DCA toward reaching this goal include the establishment of an accessible 800 number as a single point of access for consumers to call for information and file complaints by January 1, 1994; a simplification of the complaint process so consumers can file in any medium and in any language by January 1, 1994; establishment of a compensation system for unit staff based on knowledge, in order to give DCA a competitive edge in the recruitment and retention of employees by September 1994; and the creation of a continuous feedback mechanism to track customer satisfaction by September 1994. The *Strategic Plan* establishes similar goals and objectives in each of the other



## INTERNAL GOVERNMENT REVIEW AGENCIES

service areas provided by DCA to its customers.

In July, DCA announced that it has begun to implement and apply its *Strategic Plan* goals and objectives to the Department's administrative units and bureaus. DCA created five "tactical teams"—Application Licensing, Files, Mailroom, Cashiering, and Enforcement—whose role is meet once per week and discuss ways to consolidate, streamline, and improve the functions of DCA's administrative units and bureaus in these areas. At this writing, the tactical teams are attempting to meet an October 1 deadline for fleshing out their consolidation strategies.

**DCA Convenes "Death Summit."** On September 22 in San Diego, DCA convened a "Summit on Funeral and Cemetery Services" to discuss the problems which have prevented the Board of Funeral Directors and Embalmers (BFDE) and the Cemetery Board from adequately regulating the death services industry. This "Death Summit" follows on the heels of last spring's "Medical Summit," which was successful in producing numerous recommendations for changes to the Medical Board of California's (MBC) physician discipline system and has indirectly resulted in the successful negotiation and passage of SB 916 (Presley) (Chapter 1267, Statutes of 1993). (See agency report on MBC for related discussion.)

Long dissatisfied with the performance of BFDE and the Cemetery Board, DCA Director Jim Conran was instrumental in forcing the recent resignations of the executive officers of both boards. Conran opened the discussion at the Summit with a terse warning that both boards must engineer immediate and meaningful reform, or the Wilson administration will support legislation to sunset, merge, or transform both boards into bureaus. (See agency reports on BFDE and CEMETERY BOARD for related discussions.)

**Smog Check Legislation Held Over Until 1994.** Throughout the summer, legislators battled over several bills overhauling California's Smog Check Program, which is administered by DCA's Bureau of Automotive Repair (BAR). Federal law requires the state's Smog Check Program to comply with 1990 amendments to the federal Clean Air Act by November 15; in November 1992, the U.S. Environmental Protection Agency (EPA) published new regulatory guidelines setting specific air quality goals and performance standards, including enhanced requirements for state smog check programs which appear to require California to scuttle its decentralized "test-and-repair" program and replace it with a centralized "test-only" program operated by the state. Thus, at least

three bills—SB 119 (Presley), SB 1195 (Russell), and AB 1119 (Ferguson)—were introduced during 1993 to meet the federal government's requirements and November 15 compliance deadline. EPA repeatedly warned the legislature that none of the bills would sufficiently revamp the Smog Check Program such that it would meet EPA's new standards, and threatened to cut off significant highway funds to California if the state failed to enact an acceptable bill by November 15. [13:2&3 CRLR 50; 13:1 CRLR 22]

Among other things, EPA believes that California must adopt a centralized emissions inspection model, at least in the areas of highest smog concentration and least compliance with federal air quality standards. Under the EPA plan, consumers could not obtain both test and repair services from private operators licensed by BAR; instead, testing would be performed at approximately 200 government-run stations, and any needed repairs would be obtained at privately-owned automotive repair stations. EPA claims that such a system not only eliminates both fraudulent repairs and fraudulent certifications, but also provides more accurate and uniform testing since all the government stations would employ the same state-of-the-art equipment (which is prohibitively expensive for private auto repair shops). Industry members have directed their lobbying efforts toward preserving the status quo, claiming that EPA's plan would drive many auto repair shops out of business and that a split test-only and repair-only program would be time-consuming, costly, and inconvenient for motorists.

After numerous legislative debates and amendments to the Presley and Russell bills, EPA Administrator Carol Browner finally announced on August 26 that SB 119 (Presley) would establish a program which would meet EPA's standards. However, in what was characterized by the *San Diego Union-Tribune* as a "\$1 billion game of chicken," the Wilson administration then opposed the Presley bill and pressed ahead with SB 1195 (Russell), expressing doubt that the Clinton administration would actually sanction California, which has 54 electoral votes President Clinton may need for reelection. In what it characterized as "calling the President's bluff," a defiant legislature rejected the Presley bill on several occasions at the end of August. However, in an eleventh-hour move and in exchange for Browner's promise not to impose sanctions so long as negotiations continued, Senate President pro Tempore David Roberti held up legislative action on SB 1195 until the legislature reconvenes in January.

In a related matter, Senator Tom Hayden is considering filing a lawsuit to compel EPA to impose sanctions on California for failing to meet the November 15 deadline. According to Hayden, this action would strengthen the EPA's bargaining position in its dealings with California's political leadership and may encourage interested parties to work harder to reach a compromise.

**BEAR Proposes Rulemaking Package.** On September 3, BEAR published notice of its intent to amend sections 2700, 2710, 2713, 2721, 2722.5, 2722.6, 2725, 2742, 2752, 2770, and 2771, Title 16 of the CCR. Some of the more significant changes in this rulemaking package include the following provisions:

—Changes to section 2713 would define a service dealer's place of business (which must be registered with BEAR) to include a location to which a customer has been directed by a service dealer to deliver his/her equipment for transportation to the service dealer; however, it would not include the location of a common carrier to which the customer has been directed by the service dealer.

—Existing section 2721 requires a service dealer to provide a consumer with a receipt when removing a set or appliance from that consumer's residence. Proposed changes to section 2721 would require that the service dealer include a summary of the consumer's problem with the set or appliance on the receipt, and changes to sections 2721, 2722.6, 2725, and 2742 would add references to sets or appliances removed from a home office or private motor vehicle.

—Section 2752 provides that a charge for each service call shall be quoted by a service dealer prior to making each service call; BEAR's proposed changes would provide that a diagnosis fee, if charged, shall also be quoted prior to a service call and included in the service call charge.

—Section 2770 specifies a complaint information system and provides that BEAR shall maintain registration information for current registrants and for five years following the inactivation of a registration; BEAR's proposed changes would provide that the Bureau maintain registration for current registrants and for three years following the inactivation of a registration.

—Section 2771 implements a procedure for BEAR to issue citations; proposed changes would add a reference to Business and Professions Code section 148 and provide that a failure to comply with a final order of abatement could result in disciplinary action or other appropriate judicial or regulatory relief being taken against the cited person.



At this writing, BEAR is scheduled to hold a public hearing on the proposed revisions on October 28 in San Jose.

**BHFTI Rulemaking Update.** In May, BHFTI published notice of its intent to adopt new sections 1383, 1383.1, 1383.2, 1383.3, 1383.4, 1383.5, and 1383.6, Title 16 of the CCR, which establish a system for the issuance to a licensee of a citation containing an order of abatement and/or an order to pay an administrative fine where the licensee violates the Bureau's licensing act or any regulation adopted pursuant thereto, and establish a system for the issuance of an administration citation to an unlicensed person who is acting in the capacity of a licensee under BHFTI's jurisdiction. [13:2&3 CRLR 75-76] Following the hearing, DCA adopted the regulations and forwarded them to the Office of Administrative Law (OAL) for review and approval; on September 8, OAL approved the new sections.

**New BAR Rulemaking Proposed.** On July 23, BAR published notice of its intent to amend sections 3340.1, 3340.5, 3340.7, 3340.15, 3340.16.6, 3340.17, 3340.42, 3340.35, 3363.2, and 3363.4, Title 16 of the CCR, which—among other things—would make various revisions to the state's motor vehicle inspection and maintenance program, commonly known as the Smog Check program. Among other things, the proposed changes would add applicable definitions regarding specially-constructed vehicles subject to the Smog Check program; make two-cylinder vehicles initially registered in California after March 31, 1994, subject to the Smog Check program; establish new requirements for test analyzer system units regarding their communications readiness; substitute the October 1991 edition of BAR's *Exhaust Gas Analyzer Specifications* for the June 1989 edition of that publication as the reference document to be used by licensed stations to perform Smog Check inspections and repairs; and provide that the Department of Motor Vehicles—instead of the Office of Traffic Safety—is the designated state agency responsible for the ignition interlock device program.

BAR held public hearings on these proposed changes on September 10 in El Monte and September 14 in Sacramento; at this writing, the changes await review and approval by DCA and OAL.

## ■ LEGISLATION

**SB 574 (Boatwright)**, as amended September 2, is a DCA omnibus bill which makes changes to existing laws concerning several of DCA's boards and agencies. Among other things, SB 574 revises certain experience requirements and renewal periods with respect to repossession agencies

and repossessioners; provides that engaging in a business as an unlicensed private investigator or private patrol operator is an infraction under specified circumstances; removes from licensure and regulation protection dog operators; removes various conditions upon licensure of alarm company operators, and revises provisions relating to the operation of alarm companies, as specified; consolidates the list of electronic items under the term "electronic set" with respect to BEAR's jurisdiction; deletes certain references to BAR's Advisory Board; deletes the category of "tax interviewer" from the registration requirement of the Tax Preparer Program; eliminates the Tax Preparer Advisory Committee; increases certain license fees, license renewal delinquency fee amounts, revises certain financial provisions, and increases certain fine amounts for BHFTI licensees, as specified, and provides a fee for licensure as a retail furniture and bedding dealer; and eliminates licensure and regulation of medical provider consultants.

Under existing law, the small claims court has jurisdiction over a defendant guarantor who is required to respond based upon the default, actions, or omissions of another, only if the demand does not exceed \$1,500; this bill increases that limit to \$2,500. Additionally, SB 574 abolishes existing provisions of the Business and Professions Code establishing a Consumer Advisory Council within DCA. This bill was signed by the Governor on October 11 (Chapter 1264, Statutes of 1993).

**AB 1807 (Bronshvag)**, as amended September 8, is another DCA omnibus bill 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 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 boards to require that the person whose check was returned unpaid make payment of all fees by cashier's check or money order; authorize 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 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.

By definition, all provisions in a DCA omnibus bill must be noncontroversial or technical changes; as a result, DCA omnibus bills are routinely passed and signed every year. However, DCA added numerous provisions to AB 1807 in the last days of the legislative year. Several trade associations objected to the addition of new (and allegedly controversial) provisions at that late date, and the Assembly held up AB 1807; the bill will be reconsidered with the legislature reconvenes in January. [A. *Inactive File*]

**SB 842 (Presley)**, as amended July 14, authorizes all DCA agencies to issue interim orders of suspension and other license restrictions against licensees. This bill requires 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. This bill was signed by the Governor on October 5 (Chapter 840, Statutes of 1993).

**SB 500 (Hill)**, as amended August 31, enacts the Performance and Results Act of 1993, requiring the Department of Finance to develop a performance budgeting pilot project, in accordance with specified principles, involving at least four state departments, including the Steven P. Teale Consolidated Data Center, the Department of Parks and Recreation, the Department of General Services, and DCA, or other departments substituted by the Department of Finance, to be implemented during the 1994-95 fiscal year. This bill was signed by the Governor on September 30 (Chapter 641, Statutes of 1993).

**SB 47 (Lockyer)** requires 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. This bill was signed by the Governor on June 10 (Chapter 28, Statutes of 1993).



**AB 652 (Speier)**, as amended August 30, would enact the Quality in Government Act, requiring all state departments and agencies, including the legislature, to identify their external and internal customers, as defined, and to collect information regarding the provision of services to their customers and to disseminate this information to suppliers of products and services in order to improve service quality. It would also require each state department or agency to require its career executive assignment employees to be trained in the principles of total quality, as specified, and to annually review the Act and recommend to the legislature any proposals for its improvement. [*S. Appr*]

**AB 1287 (Moore)**, as amended September 8, would, until January 1, 1997, enact a comprehensive scheme for the identification, study, and regulation of "nonlawyer providers" (also known as "legal technicians" or "independent paralegals") under DCA's jurisdiction. [*A. Inactive File*]

**AB 1392 (Speier)**, as amended July 1, 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.

Under existing law, various boards within DCA are assisted by an executive officer or registrar, who is appointed by the board. This bill would provide for the Board of Accountancy, the Board of Funeral Directors and Embalmers, the Cemetery Board, the Certified Shorthand Reporters Board, the Board of Barbering and Cosmetology, the Board of Architectural Examiners, the Board of Registration for Geologists and Geophysicists, the Board of Landscape Architects, the Board of Registration for Professional Engineers and Land Surveyors, the Contractors' State License Board, and the Structural Pest Control Board, that the executive officer or registrar is appointed by the Governor, subject to Senate confirmation, and that the officer and employees are under the control of the director of consumer affairs. [*S. B&P*]

**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, trans-

portation, or transportation-related services at a fee, commission, 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 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*]

**SB 798 (Rosenthal)**, as amended August 30, requires service contractors, as defined, to register with BEAR, and prohibits a service contract seller, as defined, from issuing, selling, or offering for sale a service contract unless he or she (1) discloses certain financial information, (2) obtains a service contract reimbursement insurance policy, (3) sells service contracts which are administered by a service

contract administrator, as defined, who has obtained service contract reimbursement insurance, or (4) maintains a specified funded escrow account. The bill also prohibits a service contract administrator from administering service contracts unless he or she has obtained a service contract reimbursement insurance policy. Among other things, this bill requires the filing of the form of a service contract issued by a service contractor prior to its use and authorizes the DCA Director (through BEAR) to invalidate the registration of a service contractor for specified reasons and to investigate complaints against a service contractor. The bill requires a service contractor to pay various registration and renewal fees, as specified.

Existing law requires a BEAR service dealer to pay a specified fee for each place of business operated in this state. This bill requires a service dealer or a service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state, to hold a valid BEAR registration and to pay required registration fees.

Existing law permits the sale of a service contract to a buyer, except as specified, in addition to or in lieu of an express warranty if the contract fully discloses the terms, conditions, and exclusions of the contract and the contract contains specified information. This bill requires the contract to include a statement identifying the person who is financially and legally obligated to perform the services specified in the service contract, including the name and address of that person.

The bill sets forth grounds for various citations and administrative fines, as specified. The bill also adds, as an exception to the disclosure provisions of the California Public Records Act, specified financial data contained in applications for registration or registration renewal as a service contractor or financial data regarding funded escrow accounts for service contracts. This bill was signed by the Governor on October 11 (Chapter 1265, Statutes of 1993).

**AB 936 (Rainey)**, as amended August 30, changes references in existing law from the Bureau of Collection and Investigative Services to the Bureau of Security and Investigative Services (BSIS). This bill also repeals, reenacts, reorganizes, and revises existing provisions which require an individual to obtain a permit from BSIS to lawfully perform his/her trade as a locksmith. This bill requires a locksmith, including an individual, company, association, partnership, or corporation, to be li-



censed and requires an employee of a locksmith to be registered. This bill was signed by the Governor on October 11 (Chapter 1263, Statutes of 1993).

**AB 1972 (Horcher).** Existing law provides that any person who knowingly engages a nonexempt unlicensed repossession agency, after being notified by BSIS in writing of that agency's unlicensed status, is guilty of a misdemeanor. As amended August 26, this bill deletes the requirement of written notice by BSIS of the agency's unlicensed status. AB 1971 also amends the list of prohibited acts by employees of repossession agencies to include failing to report a violent act involving the employee to the licensee or the licensee's qualified certificate holder within 24 hours. This bill also requires any licensee and other specified individuals, including immediate family members, to dispose of any financial interest in any repossession agency within a specified time period after revocation of the license, and also prohibits those individuals from acquiring any interest in a repossession agency during a period of suspension or revocation of the license. This bill was signed by the Governor on October 11 (Chapter 1269, Statutes of 1993).

**SB 756 (Kelley),** as amended August 30, provides for an increase in fees, as of January 1, 1995, for persons licensed as private investigators, private patrol operators, and related capacities. This bill was signed by the Governor on October 11 (Chapter 1266, Statutes of 1993).

**AB 2226 (Frazee).** Existing law requires every person licensed as a private investigator, private patrol operator, or armored contract carrier who carries a firearm in the course of employment to have a valid firearms qualification card and, among other things, requires completion of a course of training in the carrying and use of firearms and the passage of a written test, as prerequisites to obtaining the qualification card. As introduced March 5, this bill would provide that any person who, while a peace officer, completed a course of training and obtained the basic certificate prescribed by the Commission on Peace Officer Standards and Training shall, upon presentation of proof to BSIS, be exempt from those training and testing requirements. [A. CPGE&ED]

**AB 117 (Murray).** Existing law relating to the licensure of private investigators, patrol operators, and related persons authorizes the DCA Director (through BSIS) to adopt rules and regulations establishing the qualifications of persons eligible to carry firearms while employed by a private patrol operator, any lawful business as a security guard or patrolperson,

or an armored contract carrier; adopt procedures governing the filing of charges by local authorities with respect to applicants for registration with BSIS for failure to meet standards for registration; and adopt recordkeeping requirements for identifying all firearms in the possession or control of specified employees. As amended May 4, AB 117 would extend that rule-making authority to cover private investigators and their employees, and make related changes. It would also extend the rulemaking authority to fixing qualifications for bodyguards and to the establishment of procedures, qualifications, fees, and conditions under which licensed private investigators or bodyguards who hold valid firearms qualification cards will be issued a permit by the Director to carry a concealed firearm. The bill would specify that, after January 1, 1994, these procedures are the exclusive means whereby those licensees, acting within the scope of the activities for which they are licensed, and going to or from home or work, may carry a concealed firearm.

Existing law also provides that a private investigator may only provide services to protect a person, but not property, when incidental to an investigation. AB 117 would instead provide that a private investigator may provide services to protect a person even when he/she does not protect property and when it is incidental to an investigation, or when he/she is also licensed as a private patrol operator. AB 117 would also require licensees carrying or using a firearm to comply with certain insurance requirements. [A. CPGE&ED]

**SB 393 (Deddeh),** as introduced February 23, would enact a new Debt Collection Practices Act, under which third-party debt collectors would be regulated. BSIS' former Collection Agency Act sunsetted on June 30, 1992. [12:4 CRLR 68] Among other things, the Act would provide for regulation by BSIS, exemptions from regulation, and the imposition of fees which would be deposited into a continuously appropriated fund. If enacted, the bill's provisions would take effect immediately as an urgency measure and remain operative until July 1, 1995. [S. InsCl&Corps]

**SB 394 (Deddeh),** as amended April 22, would require any person engaged in the business of collecting claims for others or conducting the activities of a collection agency, as defined, to record a verified certificate of operation as a collection agency with the recorder's office of the county of the collection agency's principal place of business. This bill would exempt from this requirement specified persons or entities that engage in collection activities that are minor and incidental to other pri-

mary business activities, and would also require a collection agency to maintain a bond in the amount of \$10,000. This bill would take effect immediately as an urgency measure. [A. F&I]

**AB 561 (Speier),** as amended May 20, would enact a Collection Agency Act under which BSIS would license and regulate persons engaged in the business of collecting claims for others or conducting a collection agency. The bill would provide that, effective April 1, 1994, no person shall engage in the business of collecting claims for others or conduct a collection agency, as defined, relating to any person either as debtor or creditor, present in this state, unless he/she holds a valid collection agency license. [A. W&M]

**SB 119 (Presley)** was a comprehensive proposal for bringing California's Smog Check Program into compliance with the EPA's new requirements (see MAJOR PROJECTS). As amended August 30, the bill would have:

- declared that the current Smog Check Program has been beneficial, but its emission reductions have fallen short of expected targets, the program is incapable of identifying and repairing enough vehicles to meet emission reduction targets, and BAR's Inspection/Maintenance (I/M) Review Committee has identified a program to correct the current deficiencies;

- established an "enhanced" inspection program in urbanized areas classified as serious, severe, or extreme nonattainment areas for ozone or moderate or serious nonattainment areas for carbon monoxide, and continued the existing "basic" program in other areas where it currently operates;

- authorized any air district to join the enhanced or basic program if DCA concurs; DCA could decline a request if not cost-effective or feasible;

- authorized the Air Resources Board to direct either program's implementation in ozone transport regions or commute corridors, as defined;

- repealed the January 1, 1999 sunset date on the Smog Check Program;

- revised emission reduction standards;

- required implementation of the enhanced program on January 1, 1995, with full phase-in within one year;

- required enhanced programs to separate test and repair functions, having test-only stations operated privately under contract, if feasible, or by the state;

- required a sufficient number of test-only stations for public convenience, and set a ten-mile limit on the average driving distance to the closest test-only station;

- set a maximum waiting time of fifteen minutes for 90% of inspections;



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—added a loaded mode (versus idle) dynamometer test, a functional test of specified elements of the vehicle's emissions control system, and other elements;

—authorized "Gold Shield" (GS) smog check stations which combine test and repair, and provided that GS stations may test and repair failed vehicles if previously tested at a test-only station, provided that tampered or gross-polluting vehicles are excluded;

—subjected GS stations to stricter licensing standards, allowed GS stations to issue certificates of compliance, and authorized vehicle dealers to act as GS stations and sell vehicles they have tested, subject to specified procedures, disclosure requirements, and responsibility for repairs to vehicles which subsequently fail a smog inspection;

—set new repair cost limits for both programs after January 1, 1994, and raised limits by \$25 to \$150 (to a new range of \$75 to \$375), depending on the age of a vehicle;

—established a vehicle buy-back program in enhanced areas for failed vehicles, with prices to be determined by DCA;

—activated the federal \$450 repair cost minimum if the buy-back program is delayed or if funding is inadequate;

—required an on-road audit of the inspection program in at least one enhanced area, authorized an audit in one or more basic areas as a means of detecting gross polluters and tampered vehicles, and authorized the use of remote sensing equipment and pullovers for random roadside emission testing;

—continued the Smog Check certificate fee of up to \$7 per vehicle inspected;

—established authority for extensive regulatory, training, and licensing requirements, including program quality assurances, multi-tiered licensing and certification standards, remedial training, audits, recordkeeping, evaluations, revocation and suspension of licenses, and equipment;

—established a penalty for late certification of \$50 if over ten days and \$200 if more than thirty days late;

—made it unlawful to obtain or seek fraudulently, through financial or other inducement, a certificate of compliance; and

—made miscellaneous and related changes to vehicle inspection provisions to implement the bill's requirements and make them consistent with current law. This bill was rejected by the Senate Transportation Committee on August 31.

**SB 1195 (Russell)**, as amended August 30, is another comprehensive proposal which purports to bring California into

compliance with EPA's new standards. Among other things, this bill would:

—declare legislative intent that the current Smog Check Program has provided beneficial and reasonable emissions reductions; that its required equipment has been designed to accommodate future program enhancements; and that it has achieved greater reductions than any other I/M program in use today, and is more convenient and economical for the public than centralized systems elsewhere;

—expand the I/M program statewide, with provisions for exempting an attainment area if not economically feasible to implement;

—revise emission reduction standards, to be met no later than January 1, 1998;

—raise vehicle repair cost limits by \$25 to \$150 (to a new range of \$75 to \$375), depending on the age of a vehicle;

—provide for no cost limit on gross polluters and authorize regulatory requirements for the expenditure of a minimum repair amount;

—authorize a smog inspection certificate charge of up to \$10 for the state's program and administrative costs;

—add to the testing procedures a functional test of the fuel evaporative and crankcase ventilation systems, use of a loaded mode dynamometer for nitrogen oxides, and other equipment to detect non-exhaust-related volatile organic compound emissions;

—require a program for roadside emissions audits to detect gross polluters, including remote sensing of emissions and vehicle pullovers for testing and inspection, and impose a \$1,000 fine for violations;

—direct DCA to establish higher licensing and training standards for Smog Check "technicians" (currently "mechanics"), including provisions for incentives and remedial training; provide for inspection station or technician license suspensions for up to sixty days for specified offenses; and establish grounds for refusing to renew a license for improper testing or repair;

—create an inspection waiver option, extending from two to four years the Smog Check exemption period upon payment of \$50 at the time of a new vehicle's purchase;

—establish a Motor Vehicle Replacement Program, to purchase (up to \$500) gross-polluting vehicles and replace them with new low-emitting vehicles;

—require various agencies to undertake specific actions related to the Smog Check program, such as requiring BAR's I/M Committee to examine tampering problems, ways to remove gross-polluting ve-

hicles, implementation of the federal \$450 repair cost waiver and improvements to decentralized testing, and requiring DCA to investigate on-board diagnostic systems in vehicles for detecting excess emissions and identifying needed repairs; and

—make other miscellaneous and related changes to vehicle inspection provisions to implement the bill's requirements and make them consistent with existing law. [S. Appr]

**AB 1119 (Ferguson)**. Existing law establishes the motor vehicle inspection program, which provides for smog checks and repairs to be made by smog check station mechanics. As introduced March 2, this bill would designate those mechanics as technicians, designate that program as the basic program, and require an enhanced program of testing and retesting at test-only stations. The bill would delete provisions for a fee to be charged for a certificate of compliance or noncompliance, and instead provide for the electronic filing of a certificate of compliance. [A. Trans]

**SJR 10 (Committee on Transportation)** memorializes President Clinton and EPA to give California increased flexibility in assessing the effectiveness of its current Smog Check program, redesigning the program, and meeting new federal performance standards for vehicle emission reduction; the measure also requests that EPA not impose a specified discount factor on the potential effectiveness of enhancements and design elements in the California program. This measure was chaptered on June 4 (Chapter 34, Statutes of 1993).

**SB 8 (Lockyer)**, as amended August 30, would make it a misdemeanor for any towing service or any employee of a towing service to accept or agree to accept any money or anything of value from an auto repair shop and for any repair shop or any employee of a repair shop to pay or agree to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair. [A. Jud]

**SB 341 (Craven)**. Existing law authorizes the DCA Director to direct BAR to create an advisory committee to conduct a study, as specified, on auto body repair; existing law also requires the Director to report findings and recommendations to the legislature by December 1, 1993. As amended June 28, this bill instead requires the Director to report findings and recommendations to the legislature by July 1, 1994. This bill was signed by the Gover-



nor on September 8 (Chapter 379, Statutes of 1993).

**SB 521 (Presley).** Existing law authorizes DCA to prescribe the form of the smog certificate of compliance or non-compliance and requires the Department to annually report to the legislature on the Smog Check program. As amended August 23, this bill would state the intent of the legislature that the annual report include a discussion of the potential use of an electronic certificate of compliance or non-compliance. [S. Conference Committee]

**SB 575 (Rogers).** Existing law requires a certificate of compliance or non-compliance with motor vehicle emission standards upon, among other things, the transfer of registration of a vehicle, except in certain instances. As amended August 23, this bill exempts certain transfers from this requirement if a valid certificate of compliance or a certificate of non-compliance, as appropriate, was obtained. The bill also requires the transferor of a motor vehicle that is subject to emission certification requirements, and that is not subject to certain exceptions, to sign and deliver to the transferee, upon completion of the transaction, a statement, under penalty of perjury, that he/she has not modified the emission system and does not have any personal knowledge of anyone else modifying the emission system in a manner that causes the emission system to fail to qualify for the issuance of a certificate of compliance. This bill was signed by the Governor on October 9 (Chapter 958, Statutes of 1993).

**AB 2358 (Farr),** as amended April 12, would require vehicles, trains, and commercial or other nonresidential facilities at fixed locations, if they have air-conditioning systems containing CFC-based refrigerants, to undergo inspection, biennially or upon transfer of ownership, for leaks of the air-conditioning system. The bill would require the removal of the refrigerant from, and would prohibit the addition of any refrigerant to, an air-conditioner that is in a status of non-compliance due to refrigerant leakage, and would prohibit the Department of Motor Vehicles from registering or reregistering a vehicle that is not in compliance. [A. NatRes]

**AB 622 (Knight),** as introduced February 22, would eliminate BHFTI and continue the enforcement and administration of the Home Furnishings and Thermal Insulation Act by the DCA Director. [A. CPGE&ED]

**AB 2182 (Lee).** Under existing law, BHFTI licenses and regulates insulation manufacturers who sell insulation material in this state. As amended July 12, this

bill would specify standards for loosefill insulation unless and until BHFTI adopts a more rigorous test standard regulation. The bill would also repeal provisions requiring insulation material to be certified by the manufacturer prior to sale, as specified, and authorizing an annual license fee for an insulation manufacturing license. [S. B&P]

## 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

**State Passes \$52.1 Billion Budget on Time.** On June 30, Governor Wilson signed the 1993 Budget Act and various companion measures that, together, comprise the 1993-94 budget package; the budget authorizes total spending of \$52.1 billion, a \$5.5 billion decrease from 1992-93 levels. For the first time since 1986, the

budget was passed and signed before the state's new fiscal year began on July 1.

On July 6, LAO released *FOCUS Budget 1993*, highlighting major features of the 1993 California budget. For example, LAO noted that a major feature of the budget package is the adoption of the Governor's proposal to shift \$2.6 billion of property tax revenues from local governments to schools; this shift reduces the state's education funding requirement under Proposition 98 by an equivalent amount. According to LAO, the budget package partially offsets this loss to local governments by extending for six months the temporary half-cent state sales tax that was scheduled to expire on June 30, and allocating the revenue to local governments. The sales tax extension will become permanent if the voters approve a statewide ballot measure at the November 1993 special election (*see below*); local governments would receive about \$1.5 billion annually from the tax.

In May, LAO estimated that the state faced a 1993-94 budget funding gap of \$8 billion, consisting of paying off the 1992-93 carryover deficit and addressing an operating shortfall in 1993-94 between baseline spending and projected revenues. [13:2&3 CRLR 37] In its July report, LAO explained that the following actions were taken to address the budget gap:

- shifts to other levels of government reduced the budget funding gap by approximately \$3.7 billion;

- cost deferrals, loans, and revenue accelerations reduced the budget funding gap by approximately \$2.3 billion;

- program reductions, such as reductions to supplemental security income/state supplementary program grants to the disabled and elderly and in higher education, reduced the budget funding gap by approximately \$1.2 billion; and

- increasing resources, such as suspending the renter's credit, improving tax collection, and increasing higher education fees, reduced the budget funding gap by approximately \$825 million.

In September, LAO released a report entitled *State Spending Plan for 1993-94; The 1993 Budget Act and Related Legislation*, which summarizes the fiscal effect of the 1993 Budget Act and related legislation. Among other things, LAO's report indicates that the two-year budget plan adopted in June is already out of balance due to a variety of budget adjustments which increase spending over the two years by a total of \$660 million, resulting in a 1994-95 ending deficit of \$560 million in the general fund, rather than the \$100 million reserve projected by the Wilson administration when the budget was approved.