



DEPARTMENT OF CONSUMER AFFAIRS

Director: Jim Conran

(916) 445-4465

Consumer Infoline: (800) 344-9940

Infoline for the Speech/Hearing

Impaired: (916) 322-1700

In addition to its functions relating to its 37 boards, bureaus, and commissions, 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.

On March 19, the Senate approved Governor Wilson's appointment of Jim Conran as DCA Director.

MAJOR PROJECTS:

LAO Recommendation Prompts Public Hearings, Flurry of Restructuring Proposals. In its February analysis of the Governor's proposed 1992-93 budget, the Legislative Analyst's Office (LAO) shocked state government and the trades and professions it regulates by recommending the enactment of legislation to terminate the separate existence of DCA's 37 boards, bureaus, and commissions. The recommendation prompted DCA to schedule a series of hearings across the state to reexamine its structure and that of its constituent agencies, and touched off a flurry of restructuring proposals in the legislative and executive branches.

According to LAO's report, elimination of DCA's agencies as independent entities would greatly improve the existing regulatory framework. The report proposed, among other things, that DCA assume most of the licensing, regulatory, and administrative functions currently performed by its 37 subordinate agencies.

The LAO report maintained that consolidation would result in four important benefits. First, the merger of the existing agencies would create regulatory consistency. Licensing and enforcement efforts would be controlled by a centralized DCA staff working under uniform guidelines with an integrated computer database. License renewal, complaint processing, and other administrative functions, despite the diversity of occupations and professions regulated, would be based on

similar criteria.

Second, LAO predicted that consumer access to information would be greatly improved by the consolidation of agencies; centralized recordkeeping under a common database would allow consumers to obtain information and services relating to virtually all licensed occupations in California from one central location.

Third, administrative efficiency may improve due to economies of scale. For example, by using a large staff to perform license issuance and complaint processing, the consolidated DCA would avoid the individual costs of each board having its own staff for these purposes. Similarly, centralized DCA offices would eliminate the costs associated with maintaining separate offices in various cities for each board or bureau. The LAO report suggested that consolidation, once fully implemented, could result in multimillion dollar savings annually.

Finally, LAO opined that consolidation would reduce the potential for the inevitable conflicts of interest which arise when professional representatives control the agency regulating their own profession, as is currently the case with many DCA boards. Although LAO's plan would allow "advisory committees" to assist DCA in establishing licensing requirements, it also would give the Department the responsibility of eliminating unnecessary barriers to entry into a given occupation. Beyond its safeguards against actual conflicts of interest, the consolidation proposal would mitigate perceived conflicts of interest by preserving an organizational identity separate from any specific profession or occupation, according to the report.

In addition to the proposed merger plan, LAO's analysis of the 1992-93 budget bill made other recommendations to improve DCA's fiscal fitness, such as the proposed elimination of general funding for DCA's Division of Consumer Services. This Division, which is responsible for promoting and protecting consumer interests in their purchase of goods and services, currently receives about 45% of its monies from the state's general fund. LAO found no valid justification for reliance on general fund support and recommended that Division costs be funded entirely by fee revenues from DCA's boards and bureaus.

During the months of March, April, and May, DCA conducted public hearings to solicit recommendations from the public to help redefine and restructure the agency. In his "open letter to Californians" announcing the hearings, DCA Director Jim Conran noted that DCA's basic struc-

ture has changed little since 1970, when it was created to serve as an umbrella agency to more than thirty independent boards and committees. Proposals to streamline DCA and/or its constituent agencies have surfaced occasionally over the past two decades, but few changes have won the approval of the legislature.

At the hearings, DCA invited recommendations on whether the system that now exists provides cost-effective services to the people of California; specifically, the Department sought public comment in three areas. First, DCA requested suggestions on the best administrative structure for enforcement of consumer protection laws. Second, DCA sought input on whether to centralize many of the services provided by individual boards, thus increasing governmental efficiency. Finally, DCA solicited suggestions on consumer complaint handling. The procedures for handling and disclosing consumer complaints vary widely between agencies. DCA appears ready to standardize its complaint handling procedures for all agencies. Although a separate investigation by DCA's general counsel on complaint disclosure has not yet culminated in an articulated policy, complaint disclosure appears to be an area ripe for department-wide change within the agency.

Input received during the hearings in San Diego, Los Angeles, Fresno, San Francisco, and Sacramento will be considered by Conran and others at DCA as the agency makes policy choices for the years ahead. A report and summary of the public recommendations is expected to be available later this summer. In addition to the written summary of the hearings, DCA representatives expect to outline the results of the recent public hearings in a report to the legislature scheduled for October.

While DCA was holding statewide hearings to plan for its future, the legislature was formulating a proposal for its demise. In May, a bipartisan group of legislators led by Assemblymembers Delaine Eastin and Bev Hansen drafted a proposal abolishing DCA and transferring its constituent regulatory agencies to existing cabinet-level agencies for administrative oversight and support. For example, boards regulating the construction and design industries would remain within the State and Consumer Services Agency; boards regulating business and non-health-related trades and professions would be transferred to the Business, Transportation and Housing Agency; and boards regulating health-related trades and professions would be transferred to



the Health and Welfare Agency.

Invited to participate in discussion of this proposal, the Center for Public Interest Law (CPIL) generally opposed it on the following grounds: there are distinct economies of scale in DCA's provision of administrative support services (including legal, investigative, accounting, testing, and computer services) to all of its constituent agencies, which would be fragmented and lost if DCA's agencies were parceled out among three cabinet-level departments; there are numerous policy questions common to all DCA agencies (e.g., complaint disclosure) which rightfully warrant common review for the sake of consistency; and the existing placement of these regulatory boards and bureaus within the Department of Consumer Affairs sets a tone for these agencies which is badly needed. Additionally, CPIL disputed the legislators' prediction that abolition of DCA and transfer of its agencies would save \$1.2 million.

CPIL offered an alternative restructuring proposal for DCA, its constituent agencies, and other state agencies which are involved in the enforcement processes of DCA's agencies (such as the Attorney General's Office, which prosecutes agency discipline proceedings, and the Office of Administrative Hearings (OAH), whose administrative law judges preside over agency discipline proceedings). Specifically, CPIL recommended that the legislature remove all discipline/enforcement functions from DCA and its boards and commissions. All DCA investigators (including those employed by individual DCA agencies, such as the Medical Board) should be transferred to the Attorney General's Office so that they can work directly with and under the supervision of the prosecutors who try discipline cases. Second, the responsibility to preside over disciplinary hearings should be transferred exclusively to the administrative law judges of OAH. Where expertise is required and the caseload in a particular area is large, OAH may allow its ALJs to specialize by subject area. Volunteer expert practitioners could serve as expert witnesses whom the ALJs may call in open session and subject to full cross-examination if needed. These ALJs should be allowed to impose interim remedies to protect the public, and to make the final decision in all professional discipline cases (i.e., the existing authority of DCA agencies to review the ALJ's decision would be deleted). CPIL also recommended the removal of the superior court step in judicial review of ALJ disciplinary decisions, and the establishment of a one-step appeal directly to the court of appeal.

[11:4 CRLR 19-20; 10:1 CRLR 12-16; 9:3 CRLR 6-7]

CPIL also suggested that DCA create a special unit of attorneys and advocates charged with representing consumer interests in board rulemaking proceedings, similar to the Public Utilities Commission's Division of Ratepayer Advocates. The addition of an intervenor compensation mechanism would encourage outside public interest and consumer organizations and representatives to participate in these proceedings as well.

Finally, the Center proposed the elimination of unnecessary DCA agencies, including the Board of Certified Shorthand Reporters, the Board of Registration for Professional Engineers and Land Surveyors, the Board of Landscape Architects, the Board of Registration for Geologists and Geophysicists, the Bureau of Electronic and Appliance Repair, the Board of Barbering and Cosmetology, and the Board of Guide Dogs for the Blind. CPIL suggested the consolidation and/or transfer of several existing agencies, including the merger of the Cemetery Board and the Board of Funeral Directors and Embalmers; the Board of Accountancy and the Tax Preparer Program; the Board of Psychology and the Board of Behavioral Science Examiners; the Board of Registered Nursing and the Board of Vocational Nurse and Psychiatric Technician Examiners; the Hearing Aid Dispensers Examining Committee and the Speech-Language Pathology and Audiology Examining Committee; the merger of the Board of Podiatric Medicine into the Medical Board (podiatrists are physicians and are subject to the Medical Practice Act); and the transfer of the Board of Examiners of Nursing Home Administrators to the Department of Health Services (which sets standards for nursing homes). [5:2 CRLR 12]

Assemblymember Eastin then directed the Assembly Office of Research to consult with CPIL and formulate a restructuring proposal based upon the Center's suggestions. The AOR proposal, which is still being formulated at this writing, tentatively adopts CPIL's enforcement system, consumer advocacy, and intervenor compensation suggestions, and restructures DCA and its constituent agencies. Under AOR's preliminary proposal, all existing DCA boards, commissions, and bureaus would become licensing/regulation boards, restricted to establishing licensing standards, administering the licensing function, and setting performance/competence standards for the trade or profession through rulemaking. No enforcement

functions would be performed by these boards. Similar to the original Eastin/Hansen proposal, AOR would create three separate subject-matter "divisions" within DCA: a Design/Construction Division, an Automotive/Electronic & Fiduciary Division, and a Health Division—each of which would include the various relevant agencies within DCA. Each of these subject-matter divisions (not the individual boards) would have its own support staff, its own data processing system, its own central testing unit, and its own legal unit—paid for pro rata by each of the boards in the division.

The preliminary AOR proposal also calls for the creation of a nine-member Consumer Protection Commission to oversee the divisions and the boards, funded through special funds derived pro rata from each of the boards. The Commission would assume the role of the DCA Director in reviewing all board rulemaking, and would also preside over a massive "sunrise review" of all existing boards within a three-year period to determine which should be eliminated or combined. The Commission would be comprised of nine public members (per diem volunteers, not full-time employees); no member could be a licensee of any DCA board. Seven Commission members would be chosen by the Governor, and one each by the Assembly Speaker and Senate Rules Committee. The Commission would choose a DCA Director (instead of the Governor) to oversee the staff of the Commission and the Divisions. Additionally, the membership of all boards would be reduced to no more than five members, three appointed by the Governor and one each by the Assembly and Senate.

Other variations on these themes may emerge before the summer ends. Assemblymember Jackie Speier has expressed interest in creating a Division of Compliance within DCA, and transferring to it all enforcement functions of DCA agencies other than the Medical Board, its allied health licensing programs, and the nursing boards. For its part, DCA has circulated numerous deregulation proposals projecting estimated savings from the abolition of specified boards or existing regulatory programs currently administered by DCA agencies. For example, DCA forecasts \$6.3 million in savings if the private investigator, private patrol operator, alarm company operator, dog protection operator, and locksmith regulatory programs of the Bureau of Collection and Investigative Services were abolished. Over \$600,000 could be saved if the Medical Quality Review Committees of the Medical Board were



eliminated.

At this writing, none of these proposals has been introduced in legislation.

LEGISLATION:

AB 1551 (Bentley) is a DCA-sponsored clean-up bill to AB 1827 (Bentley) (Chapter 133, Statutes of 1991), which modified the Small Claims Act at Code of Civil Procedure section 116.110 *et seq.* [11:4 CRLR 51] As amended January 17, AB 1551 removes unlawful detainer actions from the jurisdiction of small claims court; authorizes a small claims court to continue matters in order to permit the parties to attempt resolution by informal or alternative means; and specifies that, upon appeal of a small claims court judgment to the superior court, no party has a right to a trial by jury. This bill, which contained an urgency clause, was signed by the Governor on February 19 (Chapter 8, Statutes of 1992).

AB 2739 (Speier). Existing law requires certain persons engaged in a trade or business who negotiate primarily in the Spanish language, orally or in writing, to deliver an unexecuted Spanish language translation of a contract or agreement to the other party to the contract, with specified exceptions; DCA is required to verify the accuracy of these translations. As amended April 20, this bill would expand this provision to require that if these same negotiations are conducted in any language other than English, an unexecuted translation of the contract or agreement into the language into which it was primarily negotiated must be delivered to the other party to the contract. This bill would also revise existing law which requires that the notice of default of an obligation secured by the deed of trust that is a contract or agreement, as described, or a home improvement contract, be in Spanish if negotiations were principally conducted in that language, to require that it be in any language in which the obligation was principally negotiated. [A. Jud]

AB 2743 (Lancaster), as amended April 9, is DCA's omnibus bill which would make numerous changes to existing laws providing for the licensing and regulation of various businesses and professions pursuant to the provisions of the Business and Professions Code. Among other things, this bill would authorize boards in disciplinary proceedings to request the administrative law judge to direct the licentiate, in certain circumstances, to pay to the board a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The bill would also specifically authorize a board within the Department to revoke,

suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or misrepresentation. The bill would also require the DCA Director to adopt regulations to implement, interpret, and make specific the provisions of the federal Americans with Disabilities Act. [A. Floor]

SB 1304 (Lockyer), as amended April 6, regarding the use of interpreters in judicial proceedings, would require the State Personnel Board to designate languages for which interpreter certification programs shall be established for use in administrative hearings, establish standards and procedures to approve entities which will test and certify administrative hearing interpreters, adopt programs for interpreter recruiting, training, and continuing education and evaluation, and establish guidelines for fees or set fees for these programs and services. This bill would also require the State Personnel Board to establish an administrative hearing interpreters advisory panel to assist the Board in the performance of its duties. [12:1 CRLR 34] [S. Floor]

AB 683 (Moore), as amended April 1, would establish a Legal Access Pilot Program and Advisory Commission within the DCA Tax Preparer Program to, among other things, register and regulate non-lawyers providing legal assistance; provide that the pilot program be implemented using existing Tax Preparer Program administrative and support staff; and provide for an advisory commission to advise the program administrator and specify the duties and functions of the program administrator and commission. [S. B&P]

AB 3748 (Chacon). Existing law provides a comprehensive scheme for the regulation of travel promoters, defined as a person who sells, provides, furnishes, contracts for, arranges, or advertises that he/she can or may arrange, or has arranged, wholesale or retail air or sea transportation either separately or in conjunction with other services. As amended April 7, this bill would repeal those provisions and instead provide for 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, commission, or other valuable consideration. The bill would create a State Travel Sellers Authority and a Travel Advisory Commission within DCA, and specify registration requirements. [A. CPGE&ED]

AB 3483 (Margolin). Existing law provides that nothing shall prohibit any city or county or city and county from

levying a business license tax solely for revenue purposes on licensees of one of the agencies within DCA. As introduced February 21, this bill would require the business license tax number to be disclosed on any license or certification application or license or certification renewal application by a licensee or certificate holder of any board, commission, or agency within DCA. [A. CPGE&ED]

AB 3566 (Polanco), as introduced February 21, would prohibit a person from practicing as a licensed industrial hygienist unless that person has obtained, in a prescribed manner, a license from DCA, except as specified. This bill would prescribe requirements for licensure as a licensed industrial hygienist that include professional experience and passage of an examination authorized by DCA or certification by the American Board of Industrial Hygiene. This bill would also create the Industrial Hygiene Licensing Board, composed of seven persons, and would require DCA, in cooperation with the Board, to adopt regulations to administer and enforce the bill's provisions. [A. CPGE&ED]

SB 2044 (Boatwright), as amended April 2, would add Chapter 1.5 to Division 1 of the Business and Professions Code, stating legislative findings regarding unlicensed activity in the professions and vocations regulated by DCA, and authorizing all DCA boards, bureaus, and commissions to establish, by regulation, a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. SB 2044 would also provide that if, upon investigation, any of twelve specified DCA boards, bureaus, or commissions 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 or registered with the agency to offer or perform those services, that agency may issue a citation containing an order of correction which requires the violator to cease the unlawful advertising and to notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising. SB 2044 would also require the DCA Director to develop guidelines and prescribe components for mandatory continuing education programs administered by any board within the Department. [A. CPGE&ED]

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 34-35:



SB 1036 (Killea and Rosenthal), as amended July 10, would establish state policy on the use and operation of "900/976" telephone numbers by state agencies. [A. U&C]

AB 126 (Moore), as amended July 10, would enact the "One-Day Cancellation Law," which would provide a car buyer with the right to rescind a contract until the close of business on the first business day after the day of the sale. [S. Jud]

AB 1555 (Filante) would, among other things, require DCA to administer and enforce the provisions of the Filante Tanning Facility Act of 1988; make it unlawful for any and all tanning facilities to operate at a specific location without a license issued by DCA; and permit DCA to deny, suspend, or revoke a license. [S. B&P]

AB 735 (Areias) would have included provisions prescribing the maximum lawful finance charge which may be imposed on any retail installment account with respect to amounts charged to the account on or after January 1, 1992. This bill died in committee.

AB 168 (Eastin) would have created the Board of Legal Technicians in DCA and required every person who practices as a legal technician to be licensed or registered by the Board. This bill died in committee.

OFFICE OF THE LEGISLATIVE ANALYST

Legislative Analyst: Elizabeth G. Hill
(916) 445-4656

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 consists of approximately 75 analysts and 24 support staff. The 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:

Analysis of the 1992-93 Budget Bill. In February, LAO released its detailed examination of the Governor's proposed 1992-93 budget; the analysis includes findings and recommendations on the budget's proposed funding levels. The analysis identifies and assesses the major areas of the Governor's budget, including the following:

-State and Consumer Services. Budget expenditures for State and Consumer Services Agency programs are proposed to increase in the 1992-93 budget year due to increases in audit, compliance, and enforcement programs, as well as additional funding to implement SB 2375 (Presley) (Chapter 1597, Statutes of 1990), which requires the Medical Board of California to improve its disciplinary process. In addition, LAO recommended consolidation of 37 regulatory boards, bureaus, programs, committees, and commissions within Department of Consumer Affairs (DCA) into the Department itself. According to LAO, the elimination of these regulatory agencies as separate entities and consolidation of their licensing, administrative, and regulatory programs within DCA would improve the effectiveness and efficiency of the programs and result in better service to consumers at a lower cost. (See *supra* agency report on DCA for related discussion.)

-Health and Social Services. In a two-part analysis, LAO assesses both general health issues and various social services issues, including Aid to Families with Dependent Children (AFDC). Governor Wilson proposes to cut health services expenditures from state funds in 1992-93, primarily due to the proposed elimination of almost \$1 billion for one-time Medi-Cal accrual accounting costs in the current year. LAO contends that the Governor's proposed health budget assumes that the federal government will provide California with \$637.1 million in State Legalization Impact Assistance Grant (SLIAG)

funds; however, it is possible that California will receive only \$180 million in SLIAG funds. LAO also contends that the proposed budget assumes that the state may use \$122.8 million in Proposition 99 (cigarette tax) funds to replace a like amount of general fund expenditures for Medi-Cal in 1991-92 and 1992-93. However, it appears that such use of these funds would require voter approval, as one court has already invalidated the Governor's use of Proposition 99 funds for Medi-Cal (see *supra* report on AMERICAN LUNG ASSOCIATION OF CALIFORNIA).

LAO states that the estimated amount budgeted for social services remains virtually unchanged, as increases to fund projected caseload growth are offset by savings resulting from the Governor's "welfare reform" proposals. Such savings would be achieved primarily through reductions in the maximum aid payments under the AFDC program.

-Higher Education. According to LAO, the proposed funding level for the University of California (UC) and the California State University (CSU) does not provide sufficient support to continue the current level of services and falls short by 12,000 students of fully funding the master plan level of enrollment for the CSU. The 1992-93 budget gap is estimated at \$124 million for the UC and \$219 million for the CSU. Among other things, LAO recommends that UC professors be required to teach six, rather than five, classes per academic year and that a new benchmark be used to set UC faculty salaries. Combined, LAO estimates that the two proposals could save \$64 million per year. LAO also recommends redirecting (on a voluntary basis) 10% of the freshman class at the UC and the CSU to specific local community colleges, which would save an additional \$25 million.

-General Government. LAO recommends that the homeowner property tax exemption, in addition to the renters' credit, be eliminated. LAO notes that the Governor's proposal to wipe out the renters' tax credit program eliminates tax relief benefits for renters while maintaining them for homeowners. Noting that the budget offers no policy justification for continuing to provide property tax relief to homeowners—many of whom receive substantial benefits from Proposition 13, LAO recommends that both programs be eliminated.

Within three months of the release of LAO's analysis, the Governor's proposed budget of \$60.3 billion for the 1992-93 fiscal year was estimated to fall \$9 billion short of anticipated spending needs. In addition, the 1991-92 fiscal year revenue