



INTERNAL GOVERNMENT REVIEW AGENCIES

struction costs. In order to streamline the review and approval process, the Commission recommends that the Governor and legislature do the following:

- create a "one-stop shopping system" so that school districts have a single point of contact for school facilities projects;
- set guidelines within which the State Architect could exercise independent authority to use school fees to hire retired employees or contract out for plan checking services;
- require the Office of the State Architect to convene a panel to receive input on and review interpretive guidelines and operating procedures; and
- direct the State Architect to proceed with administrative changes to address the delays and inconsistencies he has identified in the school facilities and plan check process.

The Field Act, California's landmark school structural safety law, generally prohibits schools from placing students in structures which were not built under the Act; as a result, schools are unable to consider existing, vacant buildings as alternatives when seeking classroom space. Although the Field Act appears to add an extra margin of safety for the construction of school buildings compared to the requirements of the Uniform Building Code (UBC) as it is applied to other types of construction, the Field Act also adds to the cost of school facilities. In spite of the Field Act requirements, many students—possibly as many as two million—attend classes each day in non-Field Act space because of waivers, exemptions, and lack of enforcement. To allow for greater use of available facilities, the Commission recommends that the Governor and legislature:

- establish an inspection process that would allow a ten-year waiver for school districts to use UBC Type I and Type II buildings as classroom space when enrollment projections exceed available or expected resources to meet those projections;
- establish an inspection process that provides school districts with a permanent Field Act equivalency certificate for UBC Type I and Type II buildings that offer joint educational opportunities;
- augment the inspection budget of the Office of the State Architect and give the Office increased enforcement powers to deal with school structures and portable classroom buildings that are not in compliance with the Field Act; and
- extend the existing three-year waiver to a more reasonable timeframe that would allow school districts to pursue realistic plans to eliminate the need for a waiver.

The Commission also found that some state policies and requirements have either blocked or failed to promote long-range planning and creative asset management practices by school districts. While the state attempts to provide planning guides and information to assist school districts in long-term planning, only a few districts have been able to work around the obstacles placed by some of the state's regulations. These districts, such as San Diego and Modesto, have been able to use a wide range of alternatives available to them and forge community support for moving ahead in conjunction with other levels of local government to meet school needs. In order to maximize the local responsibility and allow the districts to function at their best, the Commission recommends that the Governor and the legislature take the following actions:

- modify the Naylor Act to require full market value pricing for sale of land for the purpose of developing school facilities or, at the very least, give school districts an equal opportunity to purchase surplus land from other governmental entities at discounted prices;
- abolish unused-site penalties and requirements that discourage school districts from maximizing revenues from assets;
- direct an appropriate state body to determine the added cost to school construction of public policies that dictate the use of prevailing wage and that set goals for minority/women enterprise participation;
- enact legislation to allow students to attend school in any district when their neighborhood school is too crowded to allow them to attend; and
- create a task force to examine the deferred maintenance practices and make recommendations that will place future building upkeep efforts on a sound foundation.

If the Commission's recommendations are put into effect, a significant savings in the costs of creating school facilities for the expected additional students could occur through reliance on prefabricated buildings, more intensive use of existing schools through year-round calendars, the reopening of vacant facilities, and creative partnerships with private-sector facilities. The Commission notes that its proposals would require the school districts to convince local residents that there is a need for new facilities and to establish good working relationships with local planning bodies to ensure that appropriate provisions for school facilities are made.

Recent Hearings. On June 15, the Commission held two public hearings; the

first focused on school fiscal matters, and the second focused on the state's management of its real property. On August 26, the Commission held a public hearing on the state's workers' compensation program, focusing on the costs, benefits, and problems plaguing the current system. On September 23, the Commission held a public hearing on state procurement policies and practices, including the major electronic data processing/telecommunications purchases by the state and the Prison Industry Authority.

DEPARTMENT OF CONSUMER AFFAIRS

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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.

MAJOR PROJECTS

DCA Initiates Investigation of Medical Board Enforcement Unit. In early July, DCA Director Jim Conran asked the California Highway Patrol (CHP) to investigate the enforcement unit of the Medical Board of California (MBC); CHP subsequently agreed. According to internal letters and memoranda, CHP will investigate what Conran called "serious allegations of misconduct" by the upper staff of MBC's enforcement program; among other things, staff is accused of closing physician misconduct cases filed by consumers without investigating them. CHP will also look into alleged falsification of employee time records, misuse of state time, vehicles, equipment, and frequent-flyer credits, and improper recruitment and promotional practices. Although Conran originally asked the state Attorney General's Office to conduct the investigation, the AG declined on the basis of a



conflict of interest. (See *infra* agency report on MBC for related discussion.)

Budget Crisis Heavily Impacts DCA. California's 1992-93 state budget abolished several advisory boards which previously existed under the auspices of DCA, including the advisory boards to the Bureau of Automotive Repair, the Bureau of Home Furnishings and Thermal Insulation, the Bureau of Electronic and Appliance Repair, the Bureau of Collection and Investigative Services (BCIS), and the Tax Preparer Program. AB 979 (Bates), the budget bill, defunded those advisory boards as of July 1, and ABX 66 (Vasconcellos) eliminated the advisory boards from the enabling statutes of their constituent agencies. Although the agencies themselves still exist, they no longer have advisory boards to assist them with their duties. Also, the Collection Agency Act (CAA), which was enforced by BCIS, was eliminated entirely from the Business and Professions Code pursuant to a sunset date of July 1, 1992, which was part of the CAA when it was enacted. Although SB 315 (Deddeh) would have enacted a new CAA, that bill was vetoed by Governor Wilson on September 27. As a result, the statutes regulating the collection agency trade and BCIS' power to enforce those statutes have both expired. (See *infra* agency update on BCIS for related discussion.)

Also due to the state's budget crisis, all of DCA's special-funded agencies are required to cut their budgets by 10%. Specifically, AB 979 instructs all special-funded agencies to "identify efficiencies" up to a 10% reduction in expenditures from 1991-92 expenditures, and to transfer that amount to the state's general fund on June 30, 1993. The budget bill also took all of the interest which had accrued on each agency's special fund and transferred it to the general fund; took all salary savings resulting from a 4.7% salary cut in state employee pay and transferred that to the general fund; and requires DCA to cut its collective travel line item by 50% from last year. In an effort to assist the agencies in making these cuts, the budget bill allows them to temporarily tap their reserve funds. Normally, agencies are required to maintain three months' worth of operating expenses in their reserve fund; however, the affected agencies are exempted from that requirement provided that they raise their licensing fees or further reduce their expenditures so as to increase their reserve funds to the required levels within a specified time period.

The requirement that special-funded agencies make 10% cuts and transfer the money to the general fund raises a legal

issue due to the nature of the special-fund agencies, the purpose(s) for which the funds were collected, and the effect such a cut and transfer could have on the agencies. In *Daugherty v. Riley*, 1 Cal. 2d 298 (1934), the California Supreme Court held that a legislative act requiring the transfer of funds from the Division of Corporations' (DOC) special fund to pay for the completion of a state office building was unconstitutional. The court emphasized that the law from which the DOC drew its authority was enacted for the protection of the public and that funds derived therefrom were for the purpose of paying for the cost of regulation and were not for general tax or revenue purposes. The court characterized the money in DOC's fund as being a trust fund raised for a particular purpose, and noted that it "would appear to be self-evident that the legislature may not on the one hand set up a department to authorize, regulate and supervise business transactions large and small, imposing fees upon those affected for the purpose of carrying out the purposes of the law, and on the other hand permanently divert the funds thus raised and constituting the life blood of the department to a general fund or other general tax purpose." The court also found it significant that the fund transfer severely impaired DOC financially, while the duties of DOC remained the same. Further, the court found that when the legislature does transfer a special fund reserve temporarily from one purpose to another, such transfers are to be deemed as "loan[s] from the special fund to be returned to that fund as soon as funds are available." Along with other precedent, the *Daugherty* decision indicates that the transfer of special-fund monies to the general fund as mandated by this year's state budget may violate California law. (See *supra* COMMENTARY for related discussion.)

DCA Restructuring Update. Proposals involving the restructuring of DCA are currently on hold; although some changes were made due to the budget crisis (see *supra*), any actual reorganization of the Department is on hold. Recommendations from the Legislative Analyst's Office last spring led to the proposal of a variety of reorganization plans. [12:2&3 CRLR 50] AB 118 (Eastin), which incorporates many recommendations proposed by the Center for Public Interest Law, is the most developed proposal to date (see *infra*). AB 118 was sent to interim study, and hearings on the issue are expected to be conducted by the Senate Business and Professions Committee this fall; at this writing, dates for those hearings have not been set by the Committee.

DCA Reveals Extensive Abuses by Sears Auto Repair Centers. On June 11, DCA announced that its Bureau of Automotive Repair (BAR) would seek to revoke or suspend the registration of 72 Sears auto repair shops in California for various violations of the Auto Repair Act. Among other things, Sears was accused of disseminating false or misleading statements, fraud, departure from accepted trade standards, failure to clearly state parts and labor on an invoice, and false advertising. The charges were the result of a year-long undercover investigation by BAR during which investigators were sold unnecessary service and parts 90% of the time during 38 initial undercover runs. The investigation also revealed that Sears auto mechanics were working under a quota system whereby they were asked to sell a certain number of specific types of repairs during every eight-hour shift. The charges led to the filing of a number of class actions against Sears in several different states. On September 2, Sears announced that it had settled the disciplinary action and all the civil lawsuits at a cost of over \$46 million; as part of the settlement, affected customers will receive \$50 coupons good for merchandise in any Sears store. In addition, DCA will receive \$5 million in the settlement; \$3.5 million of that amount will reimburse DCA for its investigation costs and \$1.5 million will fund auto repair training programs at California community colleges. Sears admitted no wrongdoing in the settlement. (See *infra* agency report on BAR for related discussion.)

DCA Conducts Consumer Law Training Program. DCA's Legal Affairs Division conducted Consumer Law Training Programs at various locations throughout the state from April through June. The program, presented to attorneys, paralegals, mediators, court personnel, consumer advocates, and law students, focused on consumer protection laws regarding contracts, credit, landlord/tenant issues, warranties, auto repair cancellation rights, small claims laws, and alternative dispute resolution. Much of the training was based on DCA's *Consumer Law Sourcebook*. DCA hopes to present the seminar again in Sacramento later this year.

■ LEGISLATION

AB 118 (Eastin and Hansen) would have abolished DCA and established a nine-member Consumer Protection Commission which would assume the duties of DCA and the DCA Director, except those relating to discipline. The Commission would also have assumed the duties now



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exercised by the Office of Administrative Law concerning the approval of regulations for the Commission's constituent boards. Also, the bill would have established a Division of Regulatory Compliance in the Department of Justice; the Division would succeed to all functions of DCA and its constituent boards concerning the investigation and prosecution of disciplinary matters. The bill would also have provided that in disciplinary actions, the decision of the administrative law judge presiding over the hearing would not be subject to review by the Division or by any board. The bill would also have revised the membership of the constituent boards and committees by reducing the number of members on each board to five, with three appointed by the Governor and one each by the Assembly and the Senate. AB 118 would also have merged the Board of Registered Nursing and the Board of Vocational Nurse and Psychiatric Technician Examiners, and merged the Board of Funeral Directors and Embalmers and the Cemetery Board. The bill would have eliminated numerous advisory boards and created a Division of Consumer Advocates. This bill was sent to interim study by the Senate Business and Professions Committee.

ABX 66 (Vasconcellos) abolishes 47 specified advisory bodies, including the Consumer Advisory Council, BCIS' Collection Agency Advisory Board and Private Security Services Advisory Board, the Advisory Board of the Bureau of Electronic and Appliance Repair, the Advisory Board of the Bureau of Automotive Repair, the Tax Preparer Advisory Committee, and the Home Furnishings Advisory Board. This bill was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992).

AB 687 (Brown) would have directed the President of the State Bar to establish a task force to study, evaluate, compare, and make recommendations concerning alternatives to the current State Bar, and would have required the task force to report to the legislature and the State Bar by no later than May 1, 1993. Specifically, Speaker Brown sought to require the task force to consider abolishing the State Bar as it currently exists and placing its regulatory functions under DCA. This bill was vetoed by the Governor on September 30.

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 52-53:

AB 2743 (Frazee) is DCA's omnibus bill which makes 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 authorizes boards in disciplinary proceedings to request the administrative law judge to direct the licensee, in certain circumstances, to pay to the board a sum not to exceed the reasonable costs of the investigation and enforcement of the case; specifically authorizes boards within the Department to revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact, or that the licensee, in support of another's license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application; provides, as additional grounds for the denial of a license, knowingly making a false statement or knowingly omitting to state a material fact required to be revealed in a license application; and requires the DCA Director to adopt regulations to implement, interpret, and make specific the provisions of the federal Americans with Disabilities Act. This bill was signed by the Governor on September 30 (Chapter 1289, Statutes of 1992).

SB 1304 (Lockyer), regarding the use of interpreters in judicial proceedings, requires 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 also requires 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] This bill was signed by the Governor on September 18 (Chapter 770, Statutes of 1992).

SB 2044 (Boatwright) adds 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 also provides that if, upon investigation, any of sixteen 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 also requires the DCA Director to develop guidelines and prescribe components for mandatory continuing education programs administered by any board within the Department. This bill was signed by the Governor on September 28 (Chapter 1135, Statutes of 1992).

SB 1036 (Killea and Rosenthal) would have established state policy on the use and operation of "900/976" telephone numbers by state agencies. This bill was vetoed by the Governor on September 26.

The following bills died in committee: **AB 2739 (Speier)**, which would have required that, if specified contract negotiations are conducted in any language other than English, an unexecuted translation of the contract or agreement into the language in which it was primarily negotiated must be delivered to the other party to the contract; **AB 683 (Moore)**, which would have established a Legal Access Pilot Program and Advisory Commission within DCA's Tax Preparer Program to, among other things, register and regulate non-lawyers providing legal assistance; **AB 3748 (Chacon)**, which would have provided 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; **AB 3483 (Margolin)**, which would have required business license tax numbers to be disclosed on any license or certification application or renewal application by a licensee or certificateholder of any board, commission, or agency within DCA; **AB 3566 (Polanco)**, which would have prohibited a person from practicing as a licensed industrial hygienist unless that person has obtained, in a prescribed manner, a license from DCA; **AB 126 (Moore)**, which would have enacted the "One-Day Cancellation Law" to 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; and **AB 1555 (Filante)**, which would have, among other



things, required DCA to administer and enforce the provisions of the Filante Tanning Facility Act of 1988.

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 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

California's 1992-93 Budget Enacted. On September 2, following a period of more than two months during which the state government operated without a budget, Governor Wilson finally signed California's 1992-93 budget into law; the enactment of the budget ended the state's reliance on IOUs, or registered warrants, which the state had been issuing since the beginning of the fiscal year on July 1. In

addition to the Budget Act itself, the budget package includes 23 "trailer bill" measures that make the statutory amendments necessary to achieve budgeted savings.

Although the \$57.4 billion budget largely spares the public schools and the state prison system, it requires deep cuts into health and welfare services for the poor, higher education, and local governments; overall, the budget results in a 5.2% reduction from last year's spending, the first such decline in over fifty years. Although the budget contains no direct tax increases, it does increase general fund revenues through various indirect taxation methods, such as requiring the transfer of money from special-funded state regulatory agencies, boards, and commissions to the state's general fund (*see supra* COMMENTARY). Additionally, the budget eliminates 47 advisory boards, including advisory boards to the Bureau of Automotive Repair, the Bureau of Home Furnishings and Thermal Insulation, the Bureau of Electronic and Appliance Repair, the Tax Preparer Program, and the Bureau of Collection and Investigative Services.

Commencing on September 8, LAO released a series of reports analyzing major features of the 1992-93 California budget. Included among LAO's findings are the following:

- **Local Government Funding.** LAO noted that from a fiscal perspective, the primary feature affecting local governments is a \$1.3 billion reduction in property tax funding for 1992-93 contained in SB 844 and SB 617. LAO noted that the local government funding reductions are primarily accomplished by reducing local governments' share of the local property tax revenues and simultaneously increasing the share that is allocated to local school districts; the increased school district property tax revenues then reduce the amount of funds that the state is required to provide to the school districts. Also, cities' and counties' share of the state's cigarette tax revenues are permanently reallocated to the general fund, and certain state-mandated local programs were made optional for the 1992-93 year, so that no state reimbursement will be provided to any local agencies which choose to continue compliance with such mandates. LAO concluded, "Local agencies will experience major funding reductions for 1992-93. It is likely that these funding reductions will result in service reductions as well as tax and fee increases locally."

- **Health and Welfare Funding.** LAO noted that the 1992-93 budget includes \$12.8 billion from the general fund and \$3

billion from state special funds for health and welfare funding; the general fund allocation to such programs constitutes a 7% decrease from estimated spending for these programs in 1991-92. For example, the maximum grants under the Aid to Families with Dependent Children (AFDC) program were reduced by 4.5% from their 1991-92 levels. Further, the Department of Social Services is directed to seek federal waivers in order to reduce AFDC grants by an additional 1.3%, for a total reduction of 5.8%. Similar cuts were also made to the Supplemental Security Income/State Supplementary Program, the General Assistance program, in-home supportive services, regional centers for the developmentally disabled, Medi-Cal, and public health programs. In addition to budget cuts, the state budget also calls for various cost-saving measures to be implemented by these programs. For example, the state anticipates that the largest savings in the Medi-Cal program will come from accelerated implementation of various "managed care" programs, in which Medi-Cal providers are paid a fixed amount per person to provide services; the usual "fee-for-service" system pays Medi-Cal providers for individual services they provide.

- **Judiciary and Criminal Justice Funding.** The 1992-93 budget for judiciary and criminal justice programs includes \$3.6 billion from the general fund and \$377 million from state special funds; the general fund amount represents a reduction of 6.2% below estimated spending for these programs in 1991-92. LAO noted that trial court programs received significant unallocated reductions while judiciary and correctional programs received small funding reductions—relative to their overall appropriation.

- **General Government Spending.** According to LAO, each fiscal year specified amounts are transferred from special funds to the general fund to finance certain state activities. In 1992-93, however, several additional transfers were required in order to address the general fund's revenue shortfall. As noted above, special-funded agencies must reduce their expenditures by 10% during 1992-93, and transfer that amount to the general fund on June 30, 1993. The 1992-93 Budget Act also eliminates funding for 47 advisory boards and commissions and restricts funding for most remaining advisory boards and commissions to six months. Additionally, the Wilson administration asked for and obtained legislative approval of Memoranda of Understanding (MOUs) for 19 state employee bargaining units; among other things, the MOUs will hold the state's