



Recommendations for Legislative Consideration From Audits Issued During 2007 and 2008

December 2008 Report 2008-701



CALIFORNIA STATE AUDITOR

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December 22, 2008

2008-701

Dear Governor and Legislative Leaders:

As you know, the Bureau of State Audits is a resource to the Legislature for oversight and accountability and as such, conducts independent audits as mandated or as directed by the Joint Legislative Audit Committee. While our recommendations are typically directed to the auditee, we also make recommendations for the Legislature to consider in striving for efficient and effective government operations. This special report summarizes those outstanding recommendations we made during 2007 and 2008 for the Legislature to consider or recommendations for the auditee to seek legislative changes. In addition, we have included a listing of legislation chaptered in the 2007–08 Legislative Session based, in part, on recommendations from our audit reports.

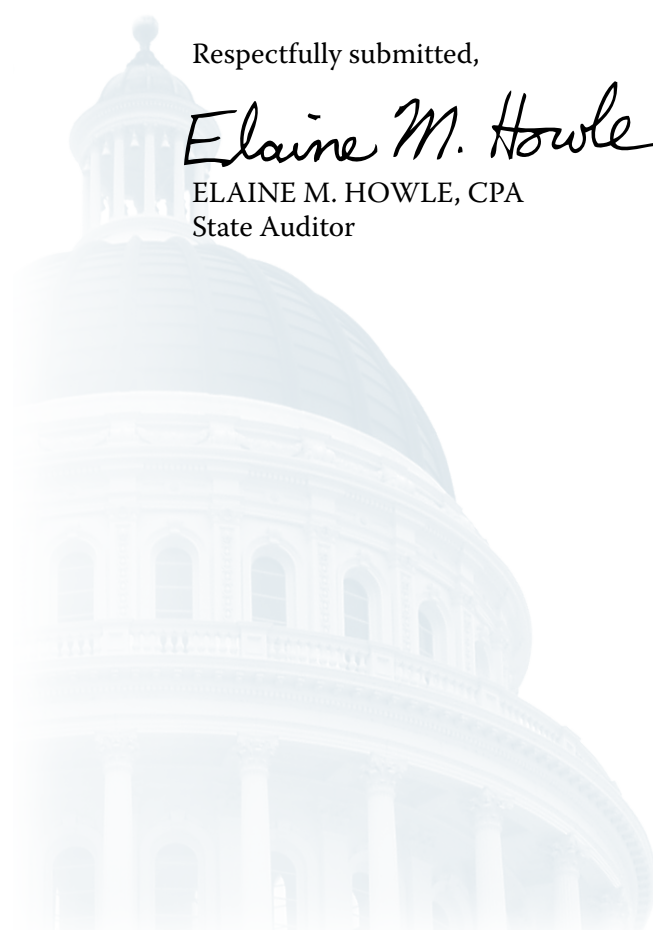
If you would like more information or assistance regarding any of the recommendations or the background provided in this report, please contact Debbie Meador, Chief of Legislative Affairs, at 445-0255, extension 292.

Respectfully submitted,



Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor



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K-12 Education

Ensure Flexible Funding for School Districts That Provide Transportation Services

Recommendation

The Department of Education (Education) should seek legislation to allow funding for all school districts that provide transportation services to ensure that funding is flexible enough to account for changes that affect school districts' transportation programs.

Background

California's school districts transported almost 91,000 special education students (at a total cost of more than \$438 million) and more than 830,000 regular education students (at a total cost of \$777 million) during fiscal year 2004–05. To help offset some of the transportation expenditures school districts incur in providing transportation services to students, the Legislature created the Home-to-School Transportation (Home-to-School) program, which is administered by Education.

In March 2007 we reported that the legally prescribed funding mechanism prevents some school districts that did not receive Home-to-School program funds in the immediate preceding fiscal year from receiving these funds because of the basis of allocation. To ensure that school districts can participate and receive funds for the Home-to-School program, we recommended that Education seek legislation to revise the current laws to allow funding for all school districts that provide transportation services to regular and special education students. In addition, we recommended that Education seek legislation to ensure that funding is flexible enough to account for changes that affect the school districts' transportation program, such as large increases in enrollment.

Report

2006-109 Home-to-School Transportation Program: The Funding Formula Should Be Modified to Be More Equitable (March 2007)

Note: Chapter 155, Statutes of 2008 (ACR 114), does not specifically change Home-to-School program funding. However, it requests that the superintendent of Public Instruction convene a committee to investigate cost savings and best practices for school districts operating Home-to-School programs. AB 699 and AB 694 of the 2007–08 Regular Session did not pass, but would have changed Home-to-School funding.

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Higher Education

Require California Community Colleges to Implement Strategies to Control the Cost of Textbooks

Recommendation

The California Community College Board of Governors (board) and the system office of the community colleges (system office) should seek legislation that gives them the authority to require campuses to implement the recommendations aimed at lowering college textbook costs. Further, if the system office and the board believe such legislation would be an intrusion into local district affairs, they should seek legislation that requires the college districts to implement the recommendations.

Background

Textbook prices have increased at a rate significantly outpacing that of the median household income, and the financial burden imposed on students because of these rising prices, combined with escalating student fees, increase the likelihood that some students will forgo or delay pursuing a postsecondary education. The increase in the publishers' invoice prices, or the prices that publishers charge retailers, is driving the rise in campus bookstores' retail prices, which leads to increasing textbook costs for students. Another factor inflating the cost of textbooks are the markups that campus bookstores add to the prices of the textbooks they buy from publishers.

The largest of California's three postsecondary educational systems, the community colleges, consist of 110 colleges and serve about 2.5 million students. The community colleges' 17-member board sets policy and provides guidance for the 110 colleges, and it has the authority to develop and implement policy. Thus, we believe that the system office and its board have the authority to implement recommendations aimed at lowering college textbook costs. Our report provided recommendations to the community colleges to increase awareness and transparency about reasons campus bookstores add markups to publishers' invoice prices for textbooks and recommendations intended to ensure that faculty are aware of steps they can take to possibly reduce textbook costs. However, in the system office's response to the audit report, they indicated that they do not believe they have the statutory authority to direct colleges to implement all recommendations. Therefore, in our comments to their response, we recommended that if they do not believe they have this authority, the system office and the board should seek authority from the Legislature to require college districts to implement these recommendations.

Report

2007-116 *Affordability of College Textbooks: Textbook Prices Have Risen Significantly in the Last Four Years, but Some Strategies May Help to Control These Costs for Students* (August 2008)

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HEALTH AND HUMAN SERVICES

Ensure State Departments Share Sex Offender Housing Data and Clearly Define Single-Family Dwelling and Residential Facility

Recommendation

Require the Department of Justice (Justice), the Department of Social Services (Social Services), and the Department of Alcohol and Drug Programs (Alcohol and Drug) to coordinate with one another to develop an approach that will allow them to generate information on an as-needed basis that identifies all sex offenders living in licensed residential or child care or foster care facilities. In addition, consider amending the law to clearly define a single-family dwelling and a residential facility and to specify whether the single-family dwelling restriction for sex offenders applies to juvenile sex offenders.

Background

Our comparison of the databases from the two departments—Social Services and Alcohol and Drug—with Justice’s database of registered sex offenders showed that at least 352 licensed residential facilities housed sex offenders as of December 13, 2007. The Sex Offender Registration Act requires that all persons that reside in California and found to have committed certain sexual offenses must, for the remainder of their lives, register as sex offenders with certain regional entities. Social Services and Alcohol and Drug are responsible for licensing various facilities, including residential facilities that serve six or fewer individuals.

Our comparison of Social Services’ database of licensed facilities with Justice’s database of registered sex offenders found 49 instances in which the registered addresses in Justice’s database were the same as the official addresses of facilities licensed by Social Services to serve children such as family day care homes.

Through our review of the Department of Corrections and Rehabilitation’s database of parolees, we identified several instances of two or more sex offenders on parole residing in the same hotel room. For example, we found that a hotel in Stockton was the legal residence for 90 sex offenders on parole. State law does not generally allow sex offenders on parole to reside with other sex offenders in a single-family dwelling that is not what it terms a “residential facility.” However, it is not clear as to whether a single unit within a multifamily dwelling such as a hotel is considered a single-family dwelling. Moreover, although state law does not prohibit two or more sex offenders from residing at the same “residential facility,” it does not clearly define whether residential facilities include those that do not require a license, such as sober living facilities. Furthermore, the law is unclear as to whether the residency restriction applies to juvenile sex offender parolees.

Report

2007-115 Sex Offender Placement: State Laws Are Not Always Clear, and No One Formally Assesses the Impact Sex Offender Placement Has on Local Communities (April 2008)

Note: AB 2593 of the 2007–08 Regular Session did not pass, but would have implemented some of these recommendations.

Promote Awareness of the Safely Surrendered Baby Law

Recommendation

To promote the awareness of California's Safely Surrendered Baby Law (safe-surrender law), consider amending the law to specify the agency that should administer the safe-surrender program and provide or identify funding for the agency so that it can effectively administer the program, including providing outreach and monitoring efforts and continued annual reporting to the Legislature on the law's impact.

Background

The safe-surrender law provides a lifesaving alternative to distressed individuals who are unwilling or unable to care for a newborn baby 72 hours old or younger by allowing them to surrender the baby confidentially and legally to staff at a hospital or other designated safe-surrender site. Although the intent of the safe-surrender law is admirable, the law does not impose on any state agency sufficient requirements to publicize its availability, thus potentially reducing the law's effectiveness. Specifically, along with establishing the process for surrendering a baby, the safe-surrender law originally required the Department of Social Services (Social Services) to report to the Legislature annually, from 2003 to 2005, specific data concerning surrendered and abandoned babies to demonstrate the law's impact. However, the reporting requirement did not extend past 2005. Additionally, the safe-surrender law does not require any state agency to make the public aware of the law or to actively monitor its success on an ongoing basis.

According to the chief of its Office of Child Abuse Prevention, Social Services has fulfilled its statutory obligations related to the safe-surrender law through 2005. In addition, Social Services asserted that ongoing awareness efforts at the local level, combined with a lack of an "alarming increase" in the number of abandoned babies, mitigate Social Services' need to conduct additional activities related to the safe-surrender law. However, our audit revealed that although Social Services has fulfilled its statutory obligations, awareness efforts at the local level vary from county to county.

Report

2007-124 *Safely Surrendered Baby Law: Stronger Guidance From the State and Better Information for the Public Could Enhance Its Impact* (April 2008)

Note: AB 2262 of the 2007–08 Regular Session would have extended the period a person may surrender a baby at a designated site. This bill was vetoed on September 30, 2008.

Require Only Obtainable Reporting Information on Low-Level Radioactive Waste

Recommendation

To the extent that the Department of Public Health (Public Health) cannot provide the information required by the Health and Safety Code, it should seek legislation to amend the law.

Background

More than five years after its September 2002 enactment, Public Health still has not implemented requirements that the Legislature added to the Health and Safety Code, at Section 115000.1, which call for reporting on the amount of low-level waste stored in California or exported for disposal. As of April 2008 Public Health had not produced the report, nor had it yet implemented the information system needed to generate such a report. Without this information, neither the Legislature nor Public Health can accurately assess the need for a disposal facility in California.

That section of the Health and Safety Code requires Public Health to maintain for each generator of low-level waste a file of the shipping manifests for waste sent to a disposal facility, either directly or through a broker or agent. This section of the law also requires Public Health to maintain a file on each generator's low-level waste stored for decay and stored for later transfer. This and other information is required to be annually reported to the Legislature.

When Public Health finally does prepare the report, it may not contain all the information required under law. The provisions place data collection and reporting requirements on Public Health and allow it to use copies of shipping manifests from generators to provide the necessary information. However, Public Health determined that the shipping manifests do not provide information on 12 of 57 discrete data elements required by the legislation. Public Health is aware of these deficiencies and has stated it will need to revisit the issue with Public Health's executive management and the legislation's author to ensure that the required information meets the intent of the legislation.

Report

2007-114 Low-Level Radioactive Waste: The State Has Limited Information That Hampers Its Ability to Assess the Need for a Disposal Facility and Must Improve Its Oversight to Better Protect the Public (June 2008)

Prescribe a Mandatory Format for Community Benefit Plans of Tax-Exempt Nonprofit Hospitals

Recommendation

If the Legislature expects community benefit plans (plans) to contain comparable and consistent data, it should consider enacting statutory requirements that prescribe a mandatory format and methodology for tax-exempt nonprofit hospitals to follow when presenting community benefits in their plans. Additionally, if the Legislature intends that exemptions from income and property taxes granted to nonprofit hospitals should be based on hospitals providing a certain level of community benefits, it should consider amending state law to include such requirements.

Background

State law permits certain organizations, including hospitals, to obtain exemptions from paying state corporation income taxes (income taxes) and local property taxes if they are organized and operated for nonprofit purposes. State law gives the Franchise Tax Board the responsibility of determining whether an organization, such as a nonprofit hospital, qualifies for an exemption from paying income taxes, and the State Board of Equalization and county tax assessors are responsible for determining whether nonprofit hospitals qualify for an exemption from paying local property taxes.

State laws require that most tax-exempt hospitals annually submit a plan to the Office of Statewide Health Planning and Development (Health Planning), but the plan cannot be used to justify the tax-exempt status of a nonprofit hospital. In general, a plan must describe the activities the hospital has undertaken to address community needs and must assign and report the economic values of the community benefits the hospital provides. However, state law does not require Health Planning to review the plans to ensure that hospitals report the same types of data consistently, nor does Health Planning do so. Our review of the plans submitted by a sample of hospitals revealed differences in the categories included in the plans and the methods used to calculate the economic values of community benefits. We tried to compare the economic values of the community benefits that tax-exempt hospitals provided with the income taxes they were exempt from paying; however, the absence of complete and accurate data precluded a reliable and meaningful comparison.

Report

2007-107 Nonprofit Hospitals: Inconsistent Data Obscure the Economic Value of Their Benefit to Communities, and the Franchise Tax Board Could More Closely Monitor Their Tax-Exempt Status (December 2007)

Note: AB 2942 of the 2007–08 Regular Session did not pass, but would have implemented one of these recommendations by requiring a standardized format and methodology to be used when presenting community benefit information.

Business, Transportation and Housing

Determine Threshold for Assisting Local Agencies With Grade Separation Projects

Recommendation

Reconsider the intent for the Grade Separation Program (program) and the extent to which the Legislature wishes to continue assisting local agencies with their grade separation projects.

Background

Under this program, the State helps local agencies pay for projects to eliminate at-grade crossings by separating the railway and roadway so they no longer intersect, usually via an overpass or bridge. The Public Utilities Commission (Commission) must establish a list by July 1 of each year prioritizing each eligible project. Through delegated authority, the California Department of Transportation (Caltrans) annually allocates an appropriation of \$15 million to the projects included on the Commission's priority list that apply for funding.

Our review of the program found that although the average cost of a grade separation project has increased from \$2.5 million in 1974 to a current average of just more than \$26 million, the annual funding available for the program has remained the same since 1974. Local agencies say they are experiencing difficulties securing the funding necessary to pay for their share of such projects and thus may be on a priority listing and not applying for funds. Reportedly, \$165 million is needed to provide funding for the same number of projects that \$15 million provided in 1974.

In light of local agencies' limited participation in the program, we recommended that the Legislature reconsider its intent for the program and the extent to which it wishes to continue assisting local agencies with their grade separation projects. Among the possible courses of action, the Legislature could either discontinue the program or increase the annual budget.

Report

2007-106 Grade Separation Program: An Unchanged Budget and Project Allocation Levels Established More Than 30 Years Ago May Discourage Local Agencies From Taking Advantage of the Program (September 2007)

Note: Chapter 315, Statutes of 2008 (AB 660), revised the program by, among other things, increasing the maximum amount available to a single project. AB 353 and AB 1845 of the 2007–08 Regular Session did not pass, but would have partially addressed our recommendations.

Change Statutory Term Length to Promote Board Stability

Recommendation

To promote stability in its leadership and to bring the tenure of Santa Clara Valley Transportation Authority (VTA) board members in line with comparable transit agencies, VTA should request the Legislature to amend its enabling statutes to allow for a four-year board term.

Background

VTA, which is responsible for both transit services and transportation planning within Santa Clara County, is governed by a board of directors (board), which comprises 12 appointed officials who hold other elected offices, and is managed by a general manager who oversees seven divisions. VTA, one of the largest independent transit districts in California, has received criticism in recent years from, among other sources, an organizational and financial assessment published in March 2007 by a consultant VTA hired. VTA has responded to this assessment by making numerous improvements across its organization.

In comparing the structure of the board with those of other California transit agencies of comparable size and scope, we found that although VTA has a similar structure to other transit agencies, it has the shortest board tenure of the agencies compared. One reason for this condition is that the term length established in statute for board members is only two years—the shortest of all the comparable agencies. To further promote stability, we recommended the VTA seek a change to its enabling statutes to increase the term length from two years to four years.

Report

2007-129 Santa Clara Valley Transportation Authority: It Has Made Several Improvements in Recent Years, but Changes Are Still Needed (July 2008)

Environmental Protection

Increase the Maximum Proportion the State Board Can Allocate for Multidistrict Projects

Recommendation

The State Air Resources Board (state board) should seek legislation to revise state law to increase the 10 percent maximum proportion it can allocate for multidistrict air projects. If the state board opts not to seek this revision, the Legislature may wish to consider it.

Background

The state board, in conjunction with participating air pollution control districts and air quality management districts (collectively, local air districts), offer an emissions reduction incentive program—the Carl Moyer Memorial Air Quality Standards Attainment Program (Moyer Program). The Moyer Program helps private companies, public agencies, and individuals undertake projects to retrofit, repower, or replace existing engines to reduce pollution emissions beyond what is required by law or regulations.

Among other things, our review of the Moyer Program revealed that California law impedes emission reductions by allowing the state board to set aside only 10 percent of Moyer Program funds for projects that operate in more than one local air district. A higher cap could lead to emission reductions at a lower cost per ton. To maximize the use of Moyer Program funds, we recommended that the state board seek legislation to revise state law to increase the 10 percent maximum proportion it can allocate for multidistrict projects. If the state board opts not to seek this revision, the Legislature may wish to consider it.

Report

2006-115 The Carl Moyer Memorial Air Quality Standards Attainment Program: Improved Practices in Applicant Selection, Contracting, and Marketing Could Lead to More Cost-Effective Emission Reductions and Enhanced Operations (June 2007)

Note: SB 895 and AB 2865 of the 2007–08 Regular Session did not pass, but would have increased the amount of funds available for multidistrict projects to 20 percent of program funds.

Designate Oversight of Electronic Waste Disposal to One Specific Agency

Recommendation

Require state agencies to track more accurately the amounts of electronic waste (e-waste) they generate, recycle, and discard. Moreover, if more targeted, frequent, or extensive oversight related to state agencies' recycling and disposal of e-waste is necessary, consider assigning this responsibility to a specific agency.

Background

We found that state agencies do not consistently report the amount of e-waste they divert from municipal landfills. E-waste is electronic devices such as computers, televisions, fax machines, or copy machines that are at or near the end of their useful lives. Although state law requires state agencies to track only their amounts of solid waste, some report annually the amount of e-waste they divert from municipal waste streams. However, the state agencies we reviewed did not consistently calculate the amounts reported.

Further, a state agency's decision regarding how to dispose of e-waste is subject to review by the Department of General Services (General Services) and by local entities. However, our audit found that these reviews are infrequent and may not always identify instances in which state agencies have improperly discarded e-waste. General Services' records indicated that it had reviewed the five state agencies in our sample between 1999 through 2004; however, these reviews did not focus on how e-waste was discarded. Similarly, state regulations do not prescribe how often local program entities must inspect generators of hazardous waste and such inspections include state agencies that generate hazardous waste but may fail to include state agencies that generate only e-waste.

Moreover, we found that each of the five large state agencies we examined as part of our audit, improperly disposed of some electronic waste due in part to the lack of clear communication from oversight agencies and a general lack of knowledge about e-waste.

Report

2008-112 Electronic Waste: Some State Agencies Have Discarded Their Electronic Waste Improperly, While State and Local Oversight Is Limited (November 2008)

State and Consumer Services

Allow Setting Fees by Regulation

Recommendation

To strengthen its operational oversight, the Department of Corporations (Corporations) should seek legislative authority to allow it to set fees by regulation and, as part of that authority, require that Corporations annually assess its fee rates and establish fees that are reasonably related to the cost of providing the services supported by its fees.

Background

Corporations issues and renews licenses; examines and investigates licensees; and collects periodic assessments from certain licensees in regulating the securities and financial services industries, including businesses such as securities brokers and dealers, investment and financial planners, and certain fiduciaries and lenders. The fees and assessments it collects support Corporations' functions.

Between 2001 and the time we issued our report in January 2007, Corporations had not analyzed the licensing and examination fees it charged businesses to determine whether the fees matched its costs of providing the related services. As a result, it had consistently overcharged for some activities and undercharged for others. Since some of the fees collected by Corporations, such as licensing fees, are generally set by statute and cannot be raised without a change in the law, we recommended that to strengthen its operational oversight, Corporations seek legislative authority allowing it to set fees by regulation. Specifically, we recommended that this legislative authority require that Corporations annually assess its fee rates and establish fees that are reasonably related to its cost of providing services.

Report

2005-123 Department of Corporations: Its Needs Stronger Oversight of Its Operations and More Efficient Processing of License Applications and Complaints (January 2007)

Strengthen the Competitive Procurement Process

Recommendation

Clarify in statute that the requirements in the State Administrative Manual (administrative manual) and the State Contracting Manual (contracting manual) related to competitive procurement are regulations with the force and effect of law.

Background

The State's procurement system is structured to foster competition and to ensure that unless otherwise justified, state agencies secure the highest quality goods for the lowest offered price. In the administrative and contracting manuals, the State provides guidance and places certain requirements on state agencies to ensure that procurements are competitive whenever possible. Various provisions of the administrative and contracting manuals related to competitive bidding set forth requirements that a state must, or in other instances, should follow. Typically, state law requires provisions that are regulations, such as many of those in the administrative and contracting manuals to be approved under the California Administrative Procedures Act (act). However, in 1998 legislation was adopted exempting the administrative and contracting manuals from the act, most likely in response to an appellate court opinion finding that a provision of the administrative manual was an invalid regulation because it was not approved under the act.

During our audit we reviewed contract purchases by the California Highway Patrol (Highway Patrol). We found problems in the procurements and we concluded that the Highway Patrol did not sufficiently explain in its justification why the price offered under the contract was fair and reasonable. However, even though the contracting manual requires a justification, it does not prescribe the contents of that justification. If certain provisions in the administrative and contracting manuals pertaining to competitive bidding are regulations having the force and effect of law, an argument could be made that failure to comply with those provisions would result in a contract becoming void. However, our legal counsel has advised us that since that legislation was enacted in 1998, no court has definitively found that the provisions of the administrative and contracting manuals relating to competitive bidding are regulations having the force and effect of law. Therefore, to ensure the requirements in the administrative and contracting manuals related to competitive procurement are regulations with the force and effect of law, we recommended that the Department of General Services seek legislation making that clarification.

Report

2007-111 California Highway Patrol: It Followed State Contracting Requirements Inconsistently, Exhibited Weaknesses in Its Conflict-of-Interest Guidelines, and Used a State Resource Imprudently (January 2008)

Designate Oversight of Electronic Waste Disposal to One Specific Agency

Recommendation

Require state agencies to track more accurately the amounts of electronic waste (e-waste) they generate, recycle, and discard. Moreover, if more targeted, frequent, or extensive oversight related to state agencies' recycling and disposal of e-waste is necessary, consider assigning this responsibility to a specific agency.

Background

We found that state agencies do not consistently report the amount of e-waste they divert from municipal landfills. E-waste is electronic devices such as computers, televisions, fax machines, or copy machines that are at or near the end of their useful lives. Although state law requires state agencies to track only their amounts of solid waste, some report annually the amount of e-waste they divert from municipal waste streams. However, the state agencies we reviewed did not consistently calculate the amounts reported.

Further, a state agency's decision regarding how to dispose of e-waste is subject to review by the Department of General Services (General Services) and by local entities. However, our audit found that these reviews are infrequent and may not always identify instances in which state agencies have improperly discarded e-waste. General Services' records indicated that it had reviewed the five state agencies in our sample between 1999 through 2004; however, these reviews did not focus on how e-waste was discarded. Similarly, state regulations do not prescribe how often local program entities must inspect generators of hazardous waste and such inspections include state agencies that generate hazardous waste but may fail to include state agencies that generate only e-waste.

Moreover, we found that each of the five large state agencies we examined as part of our audit, improperly disposed of some electronic waste due in part to the lack of clear communication from oversight agencies and a general lack of knowledge about e-waste.

Report

2008-112 Electronic Waste: Some State Agencies Have Discarded Their Electronic Waste Improperly, While State and Local Oversight Is Limited (November 2008)

Prescribe a Mandatory Format for Community Benefit Plans of Tax-Exempt Nonprofit Hospitals

Recommendation

If the Legislature expects community benefit plans (plans) to contain comparable and consistent data, it should consider enacting statutory requirements that prescribe a mandatory format and methodology for tax-exempt nonprofit hospitals to follow when presenting community benefits in their plans. Additionally, if the Legislature intends that exemptions from income and property taxes granted to nonprofit hospitals should be based on hospitals providing a certain level of community benefits, it should consider amending state law to include such requirements.

Background

State law permits certain organizations, including hospitals, to obtain exemptions from paying state corporation income taxes (income taxes) and local property taxes if they are organized and operated for nonprofit purposes. State law gives the Franchise Tax Board the responsibility of determining whether an organization, such as a nonprofit hospital, qualifies for an exemption from paying income taxes, and the State Board of Equalization and county tax assessors are responsible for determining whether nonprofit hospitals qualify for an exemption from paying local property taxes.

State laws require that most tax-exempt hospitals annually submit a plan to the Office of Statewide Health Planning and Development (Health Planning), but the plan cannot be used to justify the tax-exempt status of a nonprofit hospital. In general, a plan must describe the activities the hospital has undertaken to address community needs and must assign and report the economic values of the community benefits the hospital provides. However, state law does not require Health Planning to review the plans to ensure that hospitals report the same types of data consistently, nor does Health Planning do so. Our review of the plans submitted by a sample of hospitals revealed differences in the categories included in the plans and the methods used to calculate the economic values of community benefits. We tried to compare the economic values of the community benefits that tax-exempt hospitals provided with the income taxes they were exempt from paying; however, the absence of complete and accurate data precluded a reliable and meaningful comparison.

Report

2007-107 Nonprofit Hospitals: Inconsistent Data Obscure the Economic Value of Their Benefit to Communities, and the Franchise Tax Board Could More Closely Monitor Their Tax-Exempt Status (December 2007)

Note: AB 2942 of the 2007–08 Regular Session did not pass, but would have implemented one of these recommendations by requiring a standardized format and methodology to be used when presenting community benefit information.

Allow the Medical Board to Adjust Physicians' License Fees

Recommendation

The Medical Board of California (medical board) should seek amendments to allow it the flexibility to adjust physicians' license fees when necessary to maintain its fund balance at or near the mandated level.

Background

The medical board is a consumer protection agency responsible for protecting the public through the proper licensing and regulation of California's health care professionals and the enforcement of the Medical Practice Act. The medical board accounts for its activities in the contingent fund, its operating fund, which is supported primarily by statutorily set license fees collected from physicians and surgeons (physicians). The Business and Professions Code requires the medical board to maintain a reserve, or fund balance, that will cover approximately two months of operating expenditures. Recently, the fund balance in the contingent fund exceeded the mandated level by more than 100 percent—the fund balance increased by \$6.3 million, to \$18.5 million, in fiscal year 2006–07, representing 4.3 months of reserves. We recommended that the medical board seek legislation to allow it the flexibility to adjust physicians' license fees when necessary to maintain its fund balance at or near the mandated level.

Report

2007-038 Medical Board of California: It Needs to Consider Cutting Its Fees or Issuing a Refund to Reduce the Fund Balance of Its Contingent Fund (October 2007)

Note: AB 547 of the 2007–08 Regular Session addressing this recommendation was vetoed on September 26, 2008.

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General Government

Determine Threshold for Assisting Local Agencies With Grade Separation Projects

Recommendation

Reconsider the intent for the Grade Separation Program (program) and the extent to which the Legislature wishes to continue assisting local agencies with their grade separation projects.

Background

Under this program, the State helps local agencies pay for projects to eliminate at-grade crossings by separating the railway and roadway so they no longer intersect, usually via an overpass or bridge. The Public Utilities Commission (Commission) must establish a list by July 1 of each year prioritizing each eligible project. Through delegated authority, the California Department of Transportation (Caltrans) annually allocates an appropriation of \$15 million to the projects included on the Commission's priority list that apply for funding.

Our review of the program found that although the average cost of a grade separation project has increased from \$2.5 million in 1974 to a current average of just more than \$26 million, the annual funding available for the program has remained the same since 1974. Local agencies say they are experiencing difficulties securing the funding necessary to pay for their share of such projects and thus may be on a priority listing and not applying for funds. Reportedly, \$165 million is needed to provide funding for the same number of projects that \$15 million provided in 1974.

In light of local agencies' limited participation in the program, we recommended that the Legislature reconsider its intent for the program and the extent to which it wishes to continue assisting local agencies with their grade separation projects. Among the possible courses of action, the Legislature could either discontinue the program or increase the annual budget.

Report

2007-106 Grade Separation Program: An Unchanged Budget and Project Allocation Levels Established More Than 30 Years Ago May Discourage Local Agencies From Taking Advantage of the Program (September 2007)

Note: Chapter 315, Statutes of 2008 (AB 660), revised the program by, among other things, increasing the maximum amount available to a single project. AB 353 and AB 1845 of the 2007–08 Regular Session did not pass, but would have partially addressed our recommendations.

Require Only Obtainable Reporting Information on Low-Level Radioactive Waste

Recommendation

To the extent that the Department of Public Health (Public Health) cannot provide the information required by the Health and Safety Code, it should seek legislation to amend the law.

Background

More than five years after its September 2002 enactment, Public Health still has not implemented requirements that the Legislature added to the Health and Safety Code, at Section 115000.1, which call for reporting on the amount of low-level waste stored in California or exported for disposal. As of April 2008 Public Health had not produced the report, nor had it yet implemented the information system needed to generate such a report. Without this information, neither the Legislature nor Public Health can accurately assess the need for a disposal facility in California.

That section of the Health and Safety Code requires Public Health to maintain for each generator of low-level waste a file of the shipping manifests for waste sent to a disposal facility, either directly or through a broker or agent. This section of the law also requires Public Health to maintain a file on each generator's low-level waste stored for decay and stored for later transfer. This and other information is required to be annually reported to the Legislature.

When Public Health finally does prepare the report, it may not contain all the information required under law. The provisions place data collection and reporting requirements on Public Health and allow it to use copies of shipping manifests from generators to provide the necessary information. However, Public Health determined that the shipping manifests do not provide information on 12 of 57 discrete data elements required by the legislation. Public Health is aware of these deficiencies and has stated it will need to revisit the issue with Public Health's executive management and the legislation's author to ensure that the required information meets the intent of the legislation.

Report

2007-114 Low-Level Radioactive Waste: The State Has Limited Information That Hampers Its Ability to Assess the Need for a Disposal Facility and Must Improve Its Oversight to Better Protect the Public (June 2008)

Legislative, Judicial, and Executive

Require Counties to Report Additional DNA Penalty Information

Recommendation

To provide a full accounting of the deoxyribonucleic acid (DNA) fund money counties collect and transfer, the Legislature should consider requiring counties to include in their annual reports information on the additional DNA penalty.

Background

A voter-approved proposition, the DNA Fingerprint, Unsolved Crime, and Innocence Protection Act (DNA act), expanded the statewide program of collecting samples of DNA and storing them in a data bank (DNA program).

To assist local law enforcement agencies in collecting DNA samples, the DNA act requires the assessment of a penalty for all criminal and vehicle violations, excluding parking violations (initial DNA penalty). Each county collects payments of initial DNA penalties, deposits them into a county DNA fund, and on a quarterly basis transfers a percentage of the money to the state DNA fund. In July 2006 the DNA act was amended to levy an additional DNA penalty for all criminal and vehicle violations, excluding parking violations (additional DNA penalty). The additional DNA penalty is assessed and distributed in a manner similar to the initial DNA penalty, except that 100 percent of the penalty is transferred to the State.

The DNA act requires each county's board of supervisors to submit an Annual County DNA Identification Fund Report (annual report) to the Department of Justice (Justice) and the Legislature detailing collection and expenditure information related to the initial DNA penalty. Further, the DNA act requires Justice to post data from the annual reports on its Web site. However, state law does not require counties to report collections related to the additional DNA penalty. Therefore, Justice and other interested parties relying on Justice's Web site for information on DNA penalty collections would not be able to obtain a complete picture of all DNA penalty money collected and transferred to the State.

Report

2007-109 DNA Identification Fund: Improvements Are Needed in Reporting Fund Revenues and Assessing and Distributing DNA Penalties, but Counties and Courts We Reviewed Have Properly Collected Penalties and Transferred Revenues to the State (November 2007)

Note: AB 1198 of the 2007–08 Regular Session did not pass and did not specifically address our reporting recommendation. However, the bill would have imposed additional penalties on driving under the influence convictions.

Ensure State Departments Share Sex Offender Housing Data and Clearly Define Single-Family Dwelling and Residential Facility

Recommendation

Require the Department of Justice (Justice), the Department of Social Services (Social Services), and the Department of Alcohol and Drug Programs (Alcohol and Drug) to coordinate with one another to develop an approach that will allow them to generate information on an as-needed basis that identifies all sex offenders living in licensed residential or child care or foster care facilities. In addition, consider amending the law to clearly define a single-family dwelling and a residential facility and to specify whether the single-family dwelling restriction for sex offenders applies to juvenile sex offenders.

Background

Our comparison of the databases from the two departments—Social Services and Alcohol and Drug—with Justice’s database of registered sex offenders showed that at least 352 licensed residential facilities housed sex offenders as of December 13, 2007. The Sex Offender Registration Act requires that all persons that reside in California and found to have committed certain sexual offenses must, for the remainder of their lives, register as sex offenders with certain regional entities. Social Services and Alcohol and Drug are responsible for licensing various facilities, including residential facilities that serve six or fewer individuals.

Our comparison of Social Services’ database of licensed facilities with Justice’s database of registered sex offenders found 49 instances in which the registered addresses in Justice’s database were the same as the official addresses of facilities licensed by Social Services to serve children such as family day care homes.

Through our review of the Department of Corrections and Rehabilitation’s database of parolees, we identified several instances of two or more sex offenders on parole residing in the same hotel room. For example, we found that a hotel in Stockton was the legal residence for 90 sex offenders on parole. State law does not generally allow sex offenders on parole to reside with other sex offenders in a single-family dwelling that is not what it terms a “residential facility.” However, it is not clear as to whether a single unit within a multifamily dwelling such as a hotel is considered a single-family dwelling. Moreover, although state law does not prohibit two or more sex offenders from residing at the same “residential facility,” it does not clearly define whether residential facilities include those that do not require a license, such as sober living facilities. Furthermore, the law is unclear as to whether the residency restriction applies to juvenile sex offender parolees.

Report

2007-115 Sex Offender Placement: State Laws Are Not Always Clear, and No One Formally Assesses the Impact Sex Offender Placement Has on Local Communities (April 2008)

Note: AB 2593 of the 2007–08 Regular Session did not pass, but would have implemented some of these recommendations.

Require Updating of Poll Worker Training Guidelines and Monitoring County Adherence

Recommendation

Consider amending the California Elections Code (Elections Code) to explicitly direct the Office of the Secretary of State (office) to periodically update its poll worker training guidelines and to monitor county adherence to these standards.

Background

County elections officials are responsible for training poll workers. The office is responsible for administering the provisions of the Elections Code and ensuring that elections are conducted efficiently and that state election laws are followed. In 2003 the Legislature enacted a law that required the office to establish a task force to recommend uniform guidelines for training poll workers. Although the office published the *Poll Worker Training Guidelines 2006* (training guidelines), the law does not require the training guidelines to be updated. Thus, the office has not revised the standards since issuing them in 2006. Additionally, our review found that the training guidelines do not address the voting rights for decline-to-state voters, yet these voters represented almost 20 percent of all registered voters in February 2008 presidential primary election. Moreover, state law does not require the office to monitor compliance with the training guidelines. To keep training guidelines current and to ensure counties comply with the guidelines, the Legislature should consider amending the Elections Code to ensure that training guidelines are periodically updated and that the office monitors counties' compliance with standards.

Report

2008-106 *County Poll Workers: The Office of the Secretary of State Has Developed Statewide Guidelines, but County Training Programs Need Some Improvement* (September 2008)

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Appendix

Legislation Chaptered in the 2007–08 Legislative Session

The information in Table A briefly presents bills that were chaptered during the 2007–08 California Legislative Session and were based, in part, on recommendations from a Bureau of State Audits (bureau) report or the analysis of the bill relied heavily on a bureau report.

Table A
 Legislation Chaptered in the 2007–08 Legislative Session

BILL NUMBER	REPORT (ABBREVIATED TITLE)	LEGISLATION ENACTED
K-12 Education		
SB 537	<i>2002-104 California's Charter Schools (November 2002)</i>	Requires the California Research Bureau to prepare a report on key elements and actual costs of charter school oversight.
Higher Education		
AB 591	<i>2000-107 California Community Colleges: Part-Time Faculty Compensation (June 2000)</i>	Changes the definition of <i>temporary employees</i> who teach in community colleges.
Health and Human Services		
AB 978	<i>2005-129 Department of Social Services: Monitoring and Enforcement Actions (May 2006)</i>	Strengthens enforcement mechanisms in childcare facilities and community care facilities by, among other things, additional civil penalties for serious violations.
AB 1226	<i>2006-110 Department of Health Services: Medi-Cal Application and Referral Processes (April 2007)</i>	Among other things, extends the time period that applicants have to correct deficiencies in the applications to become Medi-Cal providers.
AB 1397	<i>2006-106 Department of Health Services: Licensing and Certification (April 2007)</i>	Requires the Department of Health Care Services to, among other things, deposit the specific sources of funds into specified penalties accounts and post that information on its Web site.
Business, Transportation and Housing		
AB 660	<i>2007-106 Grade Separation Program (September 2007)</i>	Among other things, increases the maximum amount available to a single project that meets certain requirements.
AB 957	<i>2000-117 The State's Real Property Assets: Surplus Real Property (January 2001)</i>	Revises Caltrans' reporting requirements to the Department of General Services concerning real property.
SB 742	<i>2004-126 Off-Highway Motor Vehicle Recreation Program (August 2005)</i>	Makes major revisions to the Off-Highway Vehicle Recreation Program and extends the sunset date.
Environmental Protection		
AB 188	<i>2000-101 California's Wildlife Habitat and Ecosystems: Land Acquisitions Planning (June 2000)</i>	Expands the information included in the state public registry of conservation easements.

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BILL NUMBER	REPORT (ABBREVIATED TITLE)	LEGISLATION ENACTED
State and Consumer Services		
AB 1296	<i>2004-123 California Public Employees' Retirement System (March 2005)</i>	Requires a health benefit plan or contractor to provide CalPERS with claims data and contract amounts for hospital services for members and annuitants.
SB 1149	<i>99108 California Public Utilities Commission: Long-Term Effects of Policy Changes are Unknown (November 1999)</i>	Extends grant program that subsidizes telephone services to rural and underserved communities and also would authorize grants to areas that lack access to emergency telephone services.
General Government		
AB 1712	<i>2005-136 Military Department: Facility Maintenance (June 2006)</i>	Declares intent of Legislature to ensure that the Military Department has adequate facilities to perform its missions and requires annual reports on status of armories to the Legislature.
Legislative, Judicial, and Executive		
AB 38	<i>2005-118 Emergency Preparedness (September 2006)</i>	Consolidates Office of Emergency Services and Homeland Security into a new agency under the newly created Secretary of Emergency Services and Homeland Security.
AB 158	<i>2006-036 Indian Gaming Special Distribution Fund (July 2007)</i>	Implements several bureau recommendations relative to allowable allocation and use of grants.
SB 686	<i>2007-030 State Bar of California: It Projects General Fund Deficits (April 2007)</i>	Among other things, requires the State Bar to submit a report to the Senate and Assembly on the status of implementing the bureau's recommendations.

In addition to the bills listed in Table A, during the 2007–08 Regular Session, AB 959 and AB 1473 were also chaptered. These bill analyses rely on information from a bureau report to provide background or support information, although the legislation is not a direct reflection of a bureau recommendation.