California State Auditor

January 2015

Report 2014-701

Recommendations for the Legislature From Audits Issued During 2013 and 2014

COMMITMENT INTEGRITY LEADERSHIP

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California State Auditor

Elaine M. Howle State Auditor
Doug Cordiner Chief Deputy

January 6, 2015 2014-701

Dear Governor and Legislative Leaders:

The California State Auditor's Office aims to provide oversight and to ensure the accountability of government operations. As such, my office conducts independent audits as mandated by the Legislature through statute or the budget process, or through requests directed by the Joint Legislative Audit Committee.While our recommendations are typically directed to the agencies we audit, we also make recommendations for the Legislature to consider in the interest of more efficient and effective government operations. This special report summarizes those recommendations we made during 2013 and 2014 for the Legislature to consider.

In this special report, we include recommendations that will assist the State in enhancing state revenue or recovering costs. For example, we found that long-standing shortcomings with the Department of Toxic Substances Control's recovery of cleanup costs have resulted in nearly $142 million in unbilled costs and almost $52 million in costs that were billed but uncollected. In order to allow the department to more effectively recover costs, we recommend that the Legislature consider amending state law to allow the department to use a higher interest rate for late payments and give the department the authority to require financial information from potentially responsible parties.

In some instances, we make recommendations intended to enhance the safety of California's citizens. For example, our audit of the handling of sexual harassment and sexual violence incidents at four California universities highlighted that universities do not ensure that all faculty and staff are sufficiently trained on responding to and reporting these incidents to appropriate officials, and universities must do more to properly educate students on sexual harassment and sexual violence. We recommend that the Legislature amend state law to require universities to train all of their employees annually on their obligations in responding to and reporting incidents of sexual harassment and sexual violence involving students. Additionally, we recommend that state law be amended to expressly require that incoming students be provided education on sexual harassment and sexual violence as close as possible to when they arrive on campus but no later than the first few weeks of their first semester or quarter.

The Appendix that begins on page 39 includes a listing of legislation chaptered or vetoed during the second half of the 2013–14 Regular Legislative Session that was related to the subject matter discussed in 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 Paul Navarro, Chief of Legislative and Governmental Affairs, at (916) 445-0255.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

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State Athletic Commission

Improve Broadcast Revenue Collection and Oversight of the Neurological Account and Address Administrative Deficiencies

Recommendations

1. To ensure that it accurately collects revenue, the State Athletic Commission (commission) should seek legislation, with the assistance of the Department of Consumer Affairs (Consumer Affairs), that requires promoters to submit their broadcast contracts and authorizes the commission to impose penalties on those promoters who refuse to submit these contracts.

   Status: Partially implemented. Senate Bill 309 (Chapter 370, Statutes of 2013) raises the maximum broadcasting fee collected by the commission from $25,000 to $35,000.

2. To ensure that it uses the Neurological Examination Account (neurological account) as the Legislature intended, the commission needs to conduct a thorough analysis that identifies the average cost of neurological examinations and the number of athletes whom it licenses. If, after performing such an analysis, the commission determines that it cannot comply with the law as it is currently written, it needs to work with Consumer Affairs' legal counsel and the Legislature to determine a reasonable alternative use of the neurological account.

   Status: Implemented. Senate Bill 309 (Chapter 370, Statutes of 2013) extends the sunset date for the commission to the end of 2015. Among other provisions, this bill also requires the commission to use no more than 30 percent of moneys from the neurological account to fund special neurological examinations and limits the administrative costs associated with managing and distributing the account to no more than 20 percent of the prior year's contributions.

3. If the commission fails to implement an action plan it develops to prioritize and resolve its most significant deficiencies by the time frame specified, the Legislature should consider transferring the commission's responsibilities to Consumer Affairs.

   Status: Not implemented.

Background

The commission is one of 40 regulatory boards, committees, and bureaus within Consumer Affairs, and has various responsibilities, including setting standards for amateur and professional boxing, kickboxing, and mixed martial arts, and issuing licenses to promoters, managers, referees, trainers, and athletes. However, its primary duty is to protect the health and safety of athletes by regulating approximately 200 combat events annually.

The commission's revenues are generally derived from taxes, assessments, and fees collected from the events it regulates. However, because the commission has inconsistently adhered to its regulations and processes, it cannot ensure that it has correctly calculated and collected

ticket assessments and other sources of revenue. In several cases, however, we could not determine if the commission collected the correct amount of revenue because commission staff did not obtain or retain the critical information necessary.

For instance, the commission did not collect or retain copies of the broadcast contract for any of the eight events we reviewed where such contracts were applicable. Broadcast contracts are required to state the amount promoters receive for selling, leasing, or transferring the broadcasting and television rights to radio stations or television networks. State law requires the commission to collect 5 percent of the total value of any such broadcast contracts from promoters, up to a maximum of $25,000. Given that these contracts could be for significant amounts, the existing maximum fee may fall far short of reflecting 5 percent of current broadcast contracts. Legislation requiring promoters to submit broadcast contracts and imposing penalties on promoters who refuse to provide the contracts would allow the commission to determine whether the $25,000 fee on broadcast contracts is adequate or needs to be increased.

The commission has also failed to adequately administer its neurological account, which the Legislature established in 1986 to pay for neurological examinations that might detect physical conditions that could place athletes at risk for serious or permanent injury. Although the fund balance in the neurological account reached $712,000 as of June 30, 2012, the commission has not used the account to pay for examinations since at least 1998, stating that it could not do so because of the excessive cost of the examinations. Instead, it has used the neurological account only to pay for state operations, such as a portion of the salary and benefits of the staff person who is responsible for verifying the accuracy of the neurological assessment calculation. The commission is considering requesting legislation that would change its responsibilities related to paying for these examinations. However, until the Legislature makes such a change, the commission is failing to use the funds to fulfill the intent of the law.

Moreover, over the past 10 years, a number of audits and reviews have noted serious deficiencies in the commission's administration, yet the commission has consistently failed to address these issues. This calls into question whether the commission will promptly and adequately address the serious concerns we raise in our report. If the commission, with the assistance of Consumer Affairs, is able to develop and follow a plan to correct the issues we have noted, it may be able to demonstrate that it can operate effectively. However, if the commission is unable to make significant improvements within a specified time frame, we believe the Legislature should consider transferring the commission's responsibilities to Consumer Affairs.

Report

2012-117 *State Athletic Commission: Its Ongoing Administrative Struggles Call Its Future Into Question* (March 2013)

Bureau for Private Postsecondary Education

Improve the State's Ability to Protect the Public Through Effective Regulation of Postsecondary Institutions

Recommendation

To address ongoing issues at the Bureau for Private Postsecondary Education (bureau) and improve the State's ability to protect the public through effective regulation of postsecondary educational institutions (institutions), the Legislature may want to consider the following options for regulating private postsecondary education:

- Continue the bureau in its current form but increase the level of oversight it receives from the California Department of Consumer Affairs (Consumer Affairs) and the Legislature.
- Reduce the bureau's responsibilities by reassigning some of them to other entities in Consumer Affairs.
- Transfer the powers and duties set forth in the California Private Postsecondary Education Act of 2009 (act) from the director of Consumer Affairs to another state entity or entities.

Status: Not implemented.

Note: The following legislation addressing issues related to the audit was enacted during the 2013–14 Regular Legislative Session:

Senate Bill 1247 (Lieu, Chapter 840, Statutes of 2014) requires the bureau, beginning July 1, 2015, to (1) contract with the Office of the Attorney General or other appropriate state agency to establish a process for bureau staff to be trained to investigate complaints filed with the bureau; (2) post specified information on its Web site; (3) establish a task force to identify standards for specified educational and training programs and provide a report to the Legislature regarding its work; and (4) adopt minimum operating standards for an institution that ensure, among other things, that an institution offering a degree is or plans to become accredited. The bill also requires the bureau to submit a report to the Legislature, on or before March 15, 2015, relating to an independent review of its staffing resources needs and requirements.

Background

One of 40 regulatory entities within the Consumer Affairs, the bureau has been responsible for regulating private institutions in California since 2010. The long and troubled past of the entities that previously performed the same functions as the bureau have been well documented in reports by the California State Auditor and others. In fact, the problems these reports identified were so severe that a former governor vetoed a bill that would have extended the sunset date of the immediate predecessor to the bureau—the Bureau for Private and Postsecondary and Vocational Education—in 2007. Unfortunately, during our current

audit of the bureau, we found that many of the problems of the past persist today, four years after the Legislature reestablished the bureau to fill the regulatory void left by the sunset of its predecessor.

As of July 2013 the bureau regulated 1,047 institutions. Although its statutory responsibilities include licensing institutions, conducting inspections, and investigating complaints, it has struggled to meet these and other responsibilities designed to protect the public and students. The bureau has struggled to identify proactively and sanction effectively unlicensed institutions, thereby exposing the public to potential risk from institutions that operate illegally. The bureau has further placed the public at risk because it has performed compliance inspections for far fewer institutions than state law requires and it failed to identify violations during the inspections that it did perform. Moreover, the bureau failed to respond appropriately to complaints against institutions, even when students' safety was allegedly at risk.

Report

2013-045 *Bureau for Private Postsecondary Education: It Has Consistently Failed to Meet Its Responsibility to Protect the Public's Interests* (March 2014)

California Department of Education

Clarify Migrant Education Program State Parent Council Open-Meeting Requirements

Recommendation

To help the state parent council meet the State's open-meeting requirements, the Legislature should consider whether it needs to clarify its intent as to which open-meeting law applies to the state parent council.

Status: Not implemented.

Background

The migrant education program (migrant program) is a federally funded program that provides supplemental education services to California's migrant children. Children can receive migrant program services if they or their parents or guardians are migrant workers in the agriculture or fishing industries and their families have moved in the last three years for the purpose of finding temporary or seasonal employment.

Federal law requires that each state operating a migrant program seek input from migrant parents regarding the content of the State's program. State law also requires the California Department of Education (Education) to take steps to ensure effective parent involvement, including the establishment of a state parent council comprised of members who are knowledgeable of the needs of migrant children. State law requires the council to meet a minimum of six times a year to provide input on issues relating to the operation of the migrant program.

In 2011 Education conducted a review of the state parent council's activities and found that the council frequently violated open-meeting requirements by making changes to posted agendas, failing to follow the agenda during meetings, voting on items that did not appear on the agenda, and failing to make a record of its meetings. Our review of Education's Web site logs showed that for three recent meetings, each of the agendas was posted at least 72 hours in advance of the meeting. This practice complies with one of the State's open-meeting laws—the Greene Act—which Education believes applies to the state parent council.

Our legal counsel has advised that while a strict reading of the law suggests that the Greene Act applies, it is unclear whether the Legislature intended that the Greene Act apply to this statewide body. Our legal counsel further advised that it is reasonable to conclude that the state open-meeting law that applies to the state parent council is the Bagley-Keene Act, which requires all meetings held by a state body to be open and public and noticed on the Internet 10 days in advance of the meeting.

Report

2012-044 *California Department of Education: Despite Some Improvements, Oversight of the Migrant Education Program Remains Inadequate* (February 2013)

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School Safety and Nondiscrimination Laws

Require Education to Report to the Legislature On Appeal Process Improvements and Align State Law With Key Components of Federal Bullying Policies

Recommendations

1. By spring 2014 the Legislature should require the California Department of Education (Education) to report to the Senate and Assembly Budget subcommittees on what actions it has taken to improve its processing of appeals, so that the Legislature can consider redirecting existing resources through the annual budget process or taking other actions necessary to ensure that the review of appeals is prioritized.

   Status: Not implemented.

2. The Legislature should consider amending state law to ensure that it aligns with the key components related to school safety that the United States Department of Education (U.S. DOE) has identified. Specifically, the Legislature should consider amending the Education Code to provide that protected characteristics need not be present for an act to be considered bullying, require a collaborative process for the development of anti-bullying policies, require local education agencies (LEAs) to provide bullying prevention training for all school staff, and require LEAs to report all incidences of bullying annually and the responses taken. If the Legislature adds training requirements to the Education Code, it should consider modeling those requirements on the provisions in Massachusetts law.

   Status: Not implemented.

Note: The following legislation addressing issues related to the audit was enacted during the second year of the 2013–14 Regular Legislative Session:

Assembly Bill 1455 (Campos, Chapter 229, Statutes of 2014) expressly authorizes the superintendent of a school district or the principal of a school to refer a victim of, witness to, or other pupil affected by, an act of bullying committed on or after January 1, 2015, to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management, counseling, and participation in a restorative justice program.

Assembly Bill 1993 (Fox, Chapter 418, Statutes of 2014) requires Education to develop an online training module to assist all school staff, school administrators, parents, pupils, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying.

Background

School safety is a serious problem that has received widespread national attention. Specifically, bullying in schools has become widely viewed as an urgent social, health, and education concern that has moved to the forefront of public debate on school legislation and policy, according to the U.S. DOE.

Under various federal and state laws, public schools have an obligation to provide students equal educational opportunity by combating racism, sexism, and other forms of bias in schools. The California Safe Place to Learn Act (act)—established in 2008 and amended in 2012—reinforced these federal and state protections by requiring Education to assess whether LEAs have adopted policies in compliance with the law to address this act, among other requirements. In a 2011 report, U.S. DOE identified key components of anti-bullying legislation that states can implement. We found that California laws differ from the U.S. DOE examples in several instances; therefore, the State could benefit from including these missing components in law.

We also found that, although most LEAs have implemented policies and programs to comply with recent changes to state law regarding discrimination, harassment, intimidation, and bullying, most do not evaluate the effectiveness of their school safety practices. Additionally, although Education has access to statewide data that it could use to evaluate the effectiveness of LEAs' efforts to prevent and respond to these acts, it does not evaluate those data, citing a lack of funding and staffing. Moreover, our review found that Education needs to better fulfill its leadership responsibilities under California law in the area of school safety.

Report

2012-108 *School Safety and Nondiscrimination Laws: Most Local Educational Agencies Do Not Evaluate the Effectiveness of Their Programs, and the State Should Exercise Stronger Leadership* (August 2013)

Office of the Secretary of State

Modify Drivers License Applications to Conform With Motor Voter Requirements and Ensure That the Office of the Secretary of State Has Statutory Authority to Designate Voter Registration Agencies

Recommendation

To ensure that the Office of the Secretary of State (Office) has the authority to designate voter registration agencies under the National Voter Registration Act of 1993 (NVRA), the Legislature should expressly define who may make such designations.

Status: Not implemented.

Background

The NVRA is commonly referred to as the "Motor Voter" law. A principal component of the NVRA is a provision that voters be able to register to vote at local California Department of Motor Vehicles (DMV) offices. It also requires the State to designate as voter registration agencies all public agencies that provide public assistance, as well as all agencies that provide state-funded programs that primarily assist persons with disabilities. States must also designate additional voter registration entities but have discretion as to which entities to designate. Examples of voter registration agencies include county welfare offices, which accept applications and administer benefits for Medi-Cal; Temporary Assistance for Needy Families; and Women, Infants and Children programs.

Our review of the State's implementation of the NVRA found that a key component of this law is the requirement that an application submitted for a driver's license simultaneously serve as an application to register to vote for an eligible citizen. However, our visits to some DMV offices in Sacramento found that the driver's license application does not act as a simultaneous application for voter registration. Instead, applicants for a driver's license complete a driver's license application form and receive a separate voter registration card.

Additionally, our audit found that although the State may have met the minimum requirements for designating voter registration agencies under the NVRA, it should designate more agencies. For example, as an unemployment compensation office, the California Employment Development Department plays an important service role and could serve as a voter registration agency. Also, the State could designate other state departments and agencies as well as county- and city-based entities that have significant interaction with the public. These additional designations could, in our view, further increase the rates of voter registration in California.

Report

2012-112 *Office of the Secretary of State: It Must Do More to Ensure Funds Provided Under the Federal Help America Vote Act Are Spent Effectively* (August 2013)

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California Department of Toxic Substances Control

Allow the Department to Use a Higher Interest Rate for Late Payments and Require Financial Information From Potentially Responsible Parties

Recommendations

1. To improve the California Department of Toxic Substances Control's (department) efforts to recover its costs promptly, the Legislature should revise state law to allow the department to use a higher interest rate for late payments. For example, the department could be allowed to use an interest rate similar to that used by the Board of Equalization (BOE).

   Status: Not implemented.

2. To improve its ability to more effectively recover costs, the Legislature should give the department the authority to require financial information from potentially responsible parties.

   Status: Not implemented.

Background

State law provides the department with the authority, procedures, and standards to investigate, remove, and remediate contamination at sites; to issue and enforce a removal or remedial action order to any responsible party; and to impose administrative or civil penalties for noncompliance with an order. Federal and state law also authorizes the department to recover costs and expenses it incurs in carrying out these activities.

However, long-standing shortcomings with the department's recovery of costs have resulted in unbilled and billed but uncollected cleanup costs incurred between July 1987 and December 2013. As of March 2014 the department has 1,661 projects totaling almost $194 million in outstanding costs. Nearly $142 million was unbilled and almost $52 million was billed but uncollected.

The department uses various methods to facilitate its recovery of cleanup costs associated with contaminated sites, such as entering into payment plans with the responsible parties or working with the California Office of the Attorney General to pursue litigation. However, the department has not consistently used some of these methods to ensure that it maximizes the recovery of costs from responsible parties. Additionally, state law requires the department to charge interest for invoices not paid within 60 days at a rate equal to the rate of return earned on investments in the State's Surplus Money Investment Fund (SMIF). However, the SMIF interest rate is substantially lower than the interest rate charged for

late payments by other state entities, such as the BOE. Increasing the interest rate charged on billed but delinquent unpaid amounts may improve the timeliness of collections from responsible parties.

The department is also limited in its ability to recover costs effectively because it lacks the authority to require a potentially responsible party to provide information related to the financial ability to pay cleanup costs. Having the authority to compel parties to submit pertinent financial information would allow the department to identify those potentially responsible parties who genuinely lack the ability to pay for cleanup and no longer require the department to first sue these parties to obtain financial information. The ability to require this type of information could better inform the department's decision making about whether to file cost recovery actions because it could better differentiate between parties capable of paying for cleanup costs, thus increasing the department's ability to recover costs effectively.

Report

2013-122 *California Department of Toxic Substances Control: Its Lack of Diligence in Cost Recovery Has Contributed to Millions in Unbilled and Uncollected Costs* (August 2014)

California Department of Resources Recycling and Recovery

Enact Statutory Changes That Increase Revenue and/or Reduce Costs

Recommendation

To better ensure the Beverage Container Recycling Program (beverage program) is financially sustainable, the Legislature should consider enacting statutory changes that increase revenue, reduce costs, or a combination of both.

Status: Not implemented.

Background

The beverage program, created in 1986 by the California Beverage Container Recycling and Litter Reduction Act (act), is intended to encourage and increase consumer recycling: it has a goal of recycling 80 percent of the qualified beverage containers sold in California. Beverage distributors are required to make a redemption payment to the Beverage Container Recycling Fund for every qualified beverage container sold or offered for sale in the State. The California Department of Resources Recycling and Recovery (CalRecycle) is responsible for enforcing and administering the act. Because not all beverage containers are recycled—CalRecycle reported that 85 percent of the containers sold in the State were recycled in 2013—funds not used to ultimately pay consumers are used instead to support the beverage program's operational costs as well as other expenses mandated in state law.

The principal source of revenue comes into the beverage program through redemption payments beverage distributors make based on the number of beverages sold or offered for sale in the State. The beverage program can become financially unstable once recycling rates become too high and required recycling refund payments—those paid to consumers when they recycle their empty beverage containers—and other statutorily mandated payments cannot both be satisfied. In 2013 CalRecycle reported recycling rates were at 85 percent and had increased beyond what it calls its "break-even" point—currently a 75 percent recycling rate; based on that recycling rate, the revenue collected from beverage distributors is no longer adequate to cover the recycling refund payments and other mandated spending. Based on the recent financial condition of the beverage program—where combined expenditures exceeded combined revenues by $100 million in three of the last four fiscal years—immediate action is needed to ensure the continued viability of the beverage program. A variety of revenue enhancements and expenditure reductions are available that the Legislature may want to consider.

Report

2014-110 *California Department of Resources Recycling and Recovery: The Beverage Container Recycling Program Continues to Face Deficits and Requires Changes to Become Financially Sustainable* (November 2014)

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Accounts Outside the State's Centralized Treasury System

Expand Information in Controller's Reports on Outside Accounts and Specify Appropriate Use of Cost Recovery Revenues

Recommendations

1. For the State to better monitor outside accounts, the Legislature should consider requiring the California State Controller (state controller) to expand its reporting on bank accounts outside the Centralized Treasury System (treasury system) to include information on accounts opened during the last fiscal year. Reported details should include the authority, name, and balance of the new outside accounts.

   Status: Implemented. Assembly Bill 1583 (Allen, Chapter 230, Statutes of 2014) requires the state controller to include the following information on bank accounts and savings and loan association accounts outside the treasury system in the budgetary-legal basis annual report, submitted pursuant to existing statute: (1) the name of the account, (2) the source of authorization for establishing the account, and (3) the account balance. The bill also requires a state agency that receives revenues for state costs under a cost recovery statute to account for those revenues to the state controller for deposit into the State Treasury.

2. To ensure that state agencies do not misdirect cost recovery revenues in the future, the Legislature should specify that these revenues include any money received as a result of cost recovery efforts, and should require that these revenues be deposited in the state treasury.

   Status: Partially implemented. Senate Bill 1075 (Knight, Chapter 250, Statutes of 2014) requires any moneys recovered by the California Department of Forestry and Fire Protection (Cal Fire) for fire suppression costs incurred in fighting a fire to be deposited by Cal Fire into the Treasury. The bill also requires Cal Fire to make an annual report to the Legislature regarding any fire suppression moneys recovered in a civil action, and requires all moneys in the Civil Cost Recovery Investigation Support Account to be immediately transferred to the State's General Fund.

Background

Money in the possession or control of the State is held either in accounts in banks that have an agreement with the Office of the State Treasurer (state treasurer) to participate in the treasury system or in bank accounts outside the treasury system (outside accounts). The California Department of Finance (Finance), the state controller, and the state treasurer make up the organizations with statewide oversight responsibilities affecting money in the treasury system and contribute to safeguarding the State's assets by performing a variety of activities, including overseeing revenue and disbursement cycles for funds in the treasury system.

The state controller's responsibilities include accounting for state funds, ensuring the accuracy and legitimacy of disbursements from the treasury system, and reporting on the State's financial condition. California law requires the state controller to submit a report to the governor, called the *Budgetary/Legal Basis Annual Report*, which contains a statement of the funds of the State, state revenues, and public expenditures of the preceding fiscal year. This report also includes a schedule listing those accounts held outside the treasury system.

Funds in outside accounts generally serve valid purposes, such as safeguarding money held in trust and most of the money in outside accounts is held by agencies that have express statutory authority or are authorized by Finance to do so. Additionally, statutory authority allows state agencies to seek approval from Finance to open outside accounts that have benefits and efficiencies not available through the treasury system, such as the ability to process credit card receipts.

Fortunately, state agencies have generally complied with state requirements for establishing outside accounts. However, although the state agencies we tested during our audit generally have adequate controls over outside accounts, an agency may still bypass state rules as well as its own policies. For instance, Cal Fire had $3.7 million in settlement payments for the cost of fire suppression and investigation (cost recovery revenues) deposited into an outside account—the Wildland Fire and Investigation Training and Equipment Fund (Wildland Fire Fund)—that was neither authorized by statute nor approved by Finance. Further, it did not subject the money in this outside account to its own internal controls, nor did it track or monitor the account's revenues adequately.

California law allows public agencies, such as Cal Fire, to recover the costs they incur, such as costs related to suppression of a fire resulting from negligence or a violation of law. In May 2005 the deputy chief of Cal Fire's law enforcement unit executed a memorandum of agreement with the California District Attorneys Association requiring the association to establish and manage the Wildland Fire Fund, and receive administrative fees amounting to 3 percent of all cost recovery revenues deposited into the fund and 15 percent of all disbursements made from the fund. In executing this agreement, Cal Fire's law enforcement unit circumvented accounting and budgeting processes for establishing accounts and obtaining program funding. As a result, expenditures of cost recovery revenues that Cal Fire directed into the Wildland Fire Fund were not subject to essential state fiscal controls and legislative oversight.

Report

2013-107 *Accounts Outside the State's Centralized Treasury System: Processes Exist to Safeguard Money, but Controls for These Accounts Need Strengthening* (October 2013)

High Risk Update

Clarify the Statute of Limitations for Recovering the Overpayment of Leave Credits

Recommendation

The Legislature should amend state law to clarify the statute of limitations for recovering the overpayment of leave credits. For example, it could require state agencies to provide notice to the employee that he or she was inappropriately credited leave hours within three years from the date the employee was credited the hours or three years from the date the employee separated from state service and, in instances of fraud, three years from the date the State discovered the fraud.

Status: Not implemented.

Background

State agencies have credited their employees with millions of dollars worth of unearned leave because the State has weak controls over its accounting of employees' leave records. The California State Auditor performed a statewide electronic analysis of the leave accounting system maintained by the State Controller's Office and found that state agencies credited employees with roughly 197,000 hours of unearned leave between January 2008 and December 2012. As of December 2013 the value of these erroneous leave hours was nearly $6.4 million, an amount that will likely increase over time as employees receive raises or promotions. These errors also include nearly 16,000 hours of sick leave, which state employees can convert to state service credit when they retire, ultimately increasing the State's pension payments.

Additionally, unclear guidance in state law puts the State at risk of additional costs. Specifically, state agencies must initiate collection efforts on overpayments within three years from the date of overpayment. However, state law does not explicitly define when an overpayment occurs. Because of the absence of clear statutory language, in the event of litigation the State is at risk of not recovering the funds that represent inappropriately credited leave hours.

Report

2012-603 *High Risk Update: State Agencies Credited Their Employees With Millions of Dollars Worth of Unearned Leave* (August 2014)

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California State University's Extended Education

Clarify Statutory Definition of Supplanting and Require Each CSU Campus to Measure Whether Supplanting Is Occurring

Recommendation

To provide sufficient direction to the California State University (CSU) Office of the Chancellor (Chancellor's Office) and CSU campuses regarding the supplanting of state-supported courses or programs by self-supported courses or programs, the Legislature should enact clarifying statutory language during the 2014 legislative session that includes a definition of the term *supplant* and a description of how CSU should measure whether supplanting is occurring. The clarifying language should also require each CSU campus to take all reasonable steps to ensure that when it makes course or program offering decisions, those decisions do not force students who are attempting to earn a degree to take self-supported courses that are required as a condition of degree completion.

Status: Not implemented.

Background

The CSU is a system of 23 campuses located throughout California. The State appropriates money in the annual budget from the State's General Fund to the CSU to provide higher education. CSU in turn allocates that money to the campuses to provide state-supported courses and programs, which make up the majority of courses and programs CSU offers. In addition, CSU campuses offer extended education courses and programs that must be self-supported; students or third parties, such as employers, typically pay for these courses and programs. Although CSU does not have an explicit definition of *extended education*, according to a 2002 executive order issued by the Chancellor's Office, extended education programs include all self-supported instructional programs designed and used to provide increased access to the educational resources of the system and to otherwise facilitate use of those resources.

The California Education Code and executive orders issued by the Chancellor's Office prohibit CSU campuses from "supplanting" state-supported courses offered during the regular academic year with self-supported courses. One apparent purpose of this prohibition is to ensure that CSU campuses do not reclassify state-supported courses as self-supported courses to increase the fees they charge to students. However, state law and Chancellor's Office policy do not define the word *supplant*, and the term can be interpreted in more than one way. Until the Legislature and CSU define *supplanting* and direct all CSU campuses to establish a method for tracking and evaluating the movement between state-supported and self-supported courses and course sections, any instances of supplanting will remain unclear.

Report

2012-113 *California State University's Extended Education: It Is Unclear Whether Supplanting Occurred, and Campuses Did Not Always Document Their Adherence to Laws, Policies, and Procedures* (December 2013)

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Sexual Harassment and Sexual Violence

Require Universities to Annually Train Employees on and Provide Information to Students About Sexual Harassment and Sexual Violence Prevention

Recommendations

1. To ensure that all universities provide sufficient training, the Legislature should amend state law to require universities to train all of their employees annually, consistent with their role, on their obligations in responding to and reporting incidents of sexual harassment and sexual violence involving students.

   Status: Not implemented.

2. To ensure that students are provided the education at the most ideal time, the Legislature should amend state law to expressly require that incoming students be provided education on sexual harassment and sexual violence as close as possible to when they arrive on campus but no later than the first few weeks of their first semester or quarter.

   Status: Not implemented.

3. To ensure that all students are reminded of and know how to access their university's sexual harassment policies, the Legislature should amend state law to require universities to provide this information in additional prominent locations frequented by students, such as residence halls and other university housing and athletic facilities. Further, to reflect evolving technology, the Legislature should consider the most effective means of providing this information to students and that it may not be effective to post the policy in its entirety. An alternative would be to post summary information that explains how students can access the full policy.

   Status: Not implemented.

Note: The following legislation addressing issues related to the audit was enacted during the 2013–14 Regular Legislative Session:

Assembly Bill 1433 (Gatto, Chapter 798, Statutes of 2014) requires any report of specified violent crimes, sexual assault, or hate crimes received by a campus law enforcement agency to be immediately reported to the appropriate local law enforcement agency without identifying the victim unless the victim consents. This bill also requires, as a condition for participation in the Cal Grant Program, the governing board of each community college district, the Trustees of the California State University (CSU Trustees), the Regents of the University of California (UC Regents), and the governing board of each private and independent postsecondary institution, on or before July 1, 2015, to adopt and implement written policies and procedures to ensure that any report of specified violent crimes, sexual assault, or hate crimes, committed on or off campus, received by any employee and made by the victim, is immediately forwarded to the appropriate law enforcement agency.

Senate Bill 967 (DeLeón, Chapter 748, Statutes of 2014) requires, as a condition for receiving state funds for student financial assistance, the governing boards of each community college district, CSU Trustees, and the UC Regents to adopt policies concerning sexual assault, domestic violence, dating violence and stalking, including an affirmative consent standard in the determination of whether consent was given by a complainant.

Background

Sexual harassment and sexual violence are forms of discrimination prohibited by Title IX of the Education Amendments of 1972 (Title IX). The issue of sexual violence was highlighted in January 2014 when the president of the United States announced the creation of a White House task force to develop a coordinated federal response to campus rape and sexual assault. The task force issued its initial report in April 2014. In May 2014 the U.S. Department of Education published a list of 55 universities, including the University of California, Berkeley (UC Berkeley), that it is investigating for their handling of sexual violence complaints.

The California State Auditor (state auditor) reviewed four universities—UC Berkeley; University of California, Los Angeles; California State University, Chico; and San Diego State University—and found that they do not ensure that all faculty and staff are sufficiently trained on responding to and reporting student incidents of sexual harassment and sexual violence to appropriate officials. In addition, although the Title IX coordinators and staff involved in key roles of the incident-reporting process receive adequate training, certain other university employees who are likely to be the first point of contact, such as resident advisors and athletic coaches, are not sufficiently trained on responding to and reporting these incidents. By not ensuring that all university employees are adequately and routinely trained on responding to and reporting incidents of sexual harassment and sexual violence, and by not providing practical information on how to identify incidents, universities risk having their employees mishandle student reports of the incidents. Further, when they are not sufficiently trained, employees may not know how to interact appropriately with students in these situations and may do something that would discourage students from engaging in the reporting process.

In addition, the universities must do more to appropriately educate students on sexual harassment and sexual violence. State law requires universities within the CSU system and requests those within the UC system to provide educational and preventive information about sexual violence to all incoming students as part of established campus orientations, although it does not specify exactly when new student orientations must occur. The state auditor believes that the universities should provide this education to incoming students near the time that they arrive on campus, as they may be the most vulnerable to experiencing an incident of sexual harassment or sexual violence in their first weeks on campus. Additionally, universities should ensure that all continuing students receive periodic refresher training, at least annually, on this subject. The audit also noted that the content of the education did not always cover the topics outlined in statute. Finally, the universities did not post relevant policies in certain places on campus where they might be seen by large numbers of students.

Report

2013-124 *Sexual Harassment and Sexual Violence: California Universities Must Better Protect Students by Doing More to Prevent, Respond to, and Resolve Incidents* (June 2014)

Employment Development Department

Authorize the Department to Share Database Information With Law Enforcement

Recommendation

To help protect the State's citizens from identity theft, the Legislature should expressly authorize the Employment Development Department (department), on its own initiative, to share information from the Base Wage File with appropriate law enforcement officials when evidence exists of the potential misuse of Social Security numbers. If the department receives such legal authority, it should, at least annually, review the Base Wage File for associations of multiple names with a single Social Security number. The department should also establish a reasonable threshold for the number of associated names that will trigger further scrutiny from the department or referral to law enforcement.

Status: Not implemented.

Background

The department's Workforce Services Branch assists Californians, including veterans, with finding employment. Funding for this work comes from the U.S. Department of Labor (Labor) via the Workforce Investment Act of 1998 (WIA) and the Wagner-Peyser Act of 1933 (Wagner-Peyser). Additionally, the Jobs for Veterans State Grant (veterans grant) provides funding for specialized staff to assist veterans in finding work and to conduct outreach to employers on behalf of veterans. Although all veterans receive priority for workforce services offered through the WIA and Wagner-Peyser, the veterans grant focuses on providing services to disabled and economically disadvantaged veterans.

Our audit found that the poor quality of the data California uses to report information to Labor on participants in its workforce development system, and the methodology the department uses to collate those data, call into question the validity of California's performance statistics. California provides information to Labor from its Base Wage File—which tracks total wages paid to individuals in California—which Labor uses to assess the workforce development system. However, we noted more than 1,400 instances in the Base Wage File where a single Social Security number was associated with 10 or more different names in a single quarter, which could be a possible indicator of identity theft.

The department asserts that state law prohibits it from sharing this information with other entities, such as law enforcement, that might investigate such cases unless the department receives a request from the affected entity. However, federal regulations state that disclosure of this information to a public official for use in the performance of his or her duties is permissible under certain circumstances. The department, as a state government entity, has a responsibility to the State's citizens to provide information to law enforcement when the department reasonably suspects that individuals are reporting or otherwise using

Social Security numbers inappropriately. Unless it periodically reviews data in the Base Wage File and reports suspicious activity to the appropriate authorities, the department is missing an opportunity to thwart potential identity theft.

Report

2013-102 *Employment Development Department: It Needs to Address Data Issues to Better Evaluate and Improve the Performance of Its Employment Programs for Veterans* (October 2013)

Indian Gaming Special Distribution Fund

Designate an Agency to Provide Oversight and Technical Assistance to the Benefit Committees

Recommendation

To improve compliance with state laws and provide technical assistance in administering the mitigation grant program, the Legislature should consider designating an agency such as the California Gambling Control Commission (gambling commission) or the Department of Justice (Justice) to provide oversight and technical assistance to the Indian gaming local community benefit committees (benefit committees).

Status: Not implemented.

Background

In its third examination of the allocation and expenditure of grants from the Indian Gaming Special Distribution Fund (distribution fund), the California State Auditor (state auditor) found that the benefit committees responsible for distributing these funds did not always comply with state laws for the distribution fund grants they awarded. The distribution fund uses money that some tribal casinos contribute under agreements known as *gaming compacts* between the tribes and the State to mitigate the impact of tribal gaming on local governments. State law requires that the benefit committees award mitigation grant funds for priorities such as law enforcement and fire protection, public health, and roads. In addition, it requires that if a project provides other benefits to the local jurisdiction, the mitigation grant funds pay only for the proportionate share of the project that mitigates the casino's impact on that local jurisdiction.

However, the state auditor's review of 12 grants that four counties—Butte, Lake, Riverside, and San Diego—awarded in fiscal years 2010–11 through 2012–13 found that benefit committees awarded nearly $1.7 million in funds for seven of these grants without sufficient documentation from the grant applicants. Specifically, either the applicants did not sufficiently demonstrate that their project mitigated the effect of Indian gaming or the requested funding did not represent a proportionate share of the costs attributable to casino impacts.

State law does not identify any agency responsible for conducting oversight of or providing technical assistance to the benefit committees. Instead, state law places responsibility for selecting grants with the benefit committees, and makes the counties responsible for administering grants. However, the benefit committees and counties lack definitive guidance and technical assistance, especially on issues where state law is silent. State oversight and technical assistance from an agency such as the gambling commission or Justice could improve benefit committees' compliance with state laws for administering the mitigation grant program.

Report

2013-036 *Indian Gaming Special Distribution Fund: Counties' Benefit Committees Did Not Always Comply With State Laws for Distribution Fund Grants* (March 2014)

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Salton Sea Restoration Fund

Ensure That the Salton Sea Restoration Fund Feasibility Study Will Provide Meaningful and Timely Information

Recommendations

1. To ensure that the feasibility study it recently funded will provide it with meaningful and timely information, the Legislature should enact legislation that does the following:

   - Contains specific guidance to the California Natural Resources Agency (Resources Agency) regarding the Legislature's priorities for restoring the Salton Sea so that the Resources Agency can address those priorities when developing the feasibility study.
   - Provides a deadline for the completion of the feasibility study and submission of a restoration plan.
   - Requires the feasibility study to analyze and include the extent to which restoration activities could lessen the State's future financial obligations for mitigation under the Quantification Settlement Agreement (QSA).
   - Once the Legislature has approved a restoration plan, it should hold a budget hearing to consider the appropriate funding mechanism.

   Status: Not implemented.

2. The Legislature should designate the Resources Agency as the implementing entity responsible for coordinating the efforts of all entities involved in the restoration and mitigation activities for the Salton Sea.

   Status: Not implemented.

Background

The Salton Sea, located in Riverside and Imperial counties in Southern California, is the State's largest inland lake. The Salton Sea was formed in 1905 when Colorado River floodwater breached an irrigation canal being constructed in the Imperial Valley; it has since been primarily fed by agricultural drain water. Beginning in 2003, a series of agreements known collectively as the QSA, between the State, local water agencies, and other entities have required, among other things, a water transfer that has reduced the amount of water that flows into the Salton Sea.

Legislation enacted in 2003 to facilitate the implementation of the QSA requires the secretary of the Resources Agency, in consultation with other entities, to undertake an ecosystem restoration study to determine a preferred alternative for restoring the Salton Sea ecosystem and permanently protecting the wildlife dependent on it. This legislation details the financial responsibility the State assumes with respect to mitigation, and requires the formation of a joint powers authority consisting of the California Department of Fish and Wildlife (Fish

and Wildlife), the Coachella Valley Water District (Coachella), Imperial Irrigation District (Imperial), and the San Diego County Water Authority (San Diego), to implement and allocate mitigation responsibilities between local water agencies and the State.

The QSA and related implementing legislation also require Imperial, Coachella, and San Diego to contribute a total of $30 million (in 2003 dollars) to the State for the restoration of the Salton Sea. The QSA and related implementing legislation refer to these contributions as the Salton Sea Restoration Limit. Restoration differs from mitigation in that it refers to actions intended to bring back something that previously existed, such as bird habitat, rather than actions intended to reduce or rectify a negative effect.

Although the QSA and its implementing legislation establish the Salton Sea Restoration Limit, neither imposes any specific requirements on the State to restore the Salton Sea. However, the Legislature's 2003 legislative package established the State's broad goals for restoration. To achieve these objectives, the legislation enacted the Salton Sea Restoration Act, created the Salton Sea Restoration Fund (Restoration Fund), and established several funding sources.

In fiscal year 2013–14, the Legislature appropriated $2 million from the Restoration Fund for the Resources Agency to use in completing a feasibility study with the assistance of the Salton Sea Authority. The fiscal year 2013–14 Enacted Budget Summary states that under the direction of the Resources Agency, the authority will collaborate with state, federal, and local stakeholders to, among other things, develop feasible alternatives for inclusion in a comprehensive plan and options to achieve restoration goals. In addition to the fiscal year 2013–14 budget appropriation, recently enacted legislation specifies certain aspects of the feasibility study. However, we are concerned that this legislation does not provide adequate, specific direction to the Resources Agency and the authority to ensure that they complete the study in a timely manner and that the study's content meets the needs of the Legislature.

Report

2013-101 *Salton Sea Restoration Fund: The State Has Not Fully Funded a Restoration Plan and the State's Future Mitigation Costs Are Uncertain* (November 2013)

Antelope Valley Water Rates

Clarify the Level of Detail Contained in the Rate Increase Notice Required by Proposition 218

Recommendation

To provide guidance to local public agencies in implementing the Proposition 218 notice requirements, the Legislature should enact a statute that specifies the level of detail required to satisfy the requirement that the notice specify the basis upon which the amount of the proposed fee or charge was calculated.

Status: Not implemented.

Background

The Antelope Valley region occupies northeastern Los Angeles, southeastern Kern, and western San Bernardino counties, and its water customers are served, depending on location, by four main water utilities: Los Angeles County Waterworks, District 40, Palmdale Water District, Quartz Hill Water District (Quartz Hill), and California Water Service Company (Cal Water), and by several smaller utilities. Water rates differ considerably among these four water utilities. Although there are legal and other differences among the four water utilities, the primary explanation for the differences in rates and rate increases is the difference in the costs paid by each water utility.

Processes are in place to protect consumers from unreasonable rate increases, and each of the water utilities generally followed these processes. The investor utility reviewed by the California State Auditor, Cal Water, must file a general rate case every three years with the California Public Utilities Commission for review and approval before adjusting rates. Additionally, the three public utilities reviewed also must adhere to an approval process. Specifically, Proposition 218, a constitutional provision that limits the authority of local government agencies to impose property-related assessments, fees, and charges, requires public utilities to provide parcel owners with written notice of any proposed rate increase at least 45 days in advance of a public hearing, and to explain the purpose for any increase.

However, although Quartz Hill included the basis for calculating its rate increase in this notice, we believe it could have included more detail for the basis of its fee methodology. The audit noted that the requirements for the level of detail contained in the notice could be clarified by the Legislature to provide further guidance to public utilities.

Report

2013-126 *Antelope Valley Water Rates: Various Factors Contribute to Differences Among Water Utilities* (July 2014)

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Sexual Assault Evidence Kits

Direct Law Enforcement Agencies to Report the Number of Sexual Assault Evidence Kits Collected and Tested and Require Testing of Sexual Assault Evidence Kits in All Cases Where the Assailant's Identity Is Unknown

Recommendations

1. The Legislature should direct law enforcement agencies (agencies) to report to the Department of Justice (Justice) annually how many sexual assault evidence kits they collect and the number of kits they analyze each year. The Legislature should also direct agencies to report annually to Justice their reasons for not analyzing sexual assault evidence kits. The Legislature should require an annual report from Justice that details this information.

   Status: Not implemented.

2. To ensure that agencies preserve the option to extend the statute of limitations in unknown assailant cases, the Legislature should require law enforcement agencies to submit sexual assault evidence kits to a crime lab for analysis in all cases where the identity of the assailant is unknown, and it should require the labs to complete analysis of those sexual assault evidence kits within two years of the date of the associated offense. The Legislature should exempt from this requirement all cases where victims specifically request that law enforcement not analyze their kit, as well as cases where investigators determine that no crime occurred.

   Status: Not implemented.

Note: The following legislation addressing issues related to the audit was enacted during the 2013–14 Regular Legislative Session:

Assembly Bill 1517 (Skinner, Chapter 874, Statutes of 2014) encourages a law enforcement agency in whose jurisdiction a sexual assault offense occurred to submit sexual assault forensic evidence received by the agency on or after January 1, 2016, to the crime lab within 20 days of the date it is booked into evidence, or ensure that a rapid turnaround DNA program is in place to submit sexual assault forensic evidence collected to the crime lab within five days after the evidence is obtained from the victim. The bill also encourages the crime lab to process that evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System (CODIS) as soon as practically possible, but no later than 120 days after initially receiving the evidence, or to transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence.

Background

Victims of sexual assault can choose to provide the law enforcement agencies investigating their cases with biological evidence by undergoing a sexual assault examination. The evidence collected during this exam is stored in a sexual assault evidence kit, and local law enforcement keeps the kit as evidence in the investigation. The local law enforcement investigator (investigator) may request that a crime lab analyze the sexual assault evidence kit in hopes of finding the DNA profile for a suspect in the investigation. The lab can then upload the profile to the CODIS, a network of local, state, and federal databases that allows agencies to match DNA profiles against one another. Through this process, labs will sometimes obtain the name of a previously unknown suspect or match multiple cases where the suspect remains unknown. However, there is no state or federal law that requires agencies to request analysis of every sexual assault evidence kit.

The California State Auditor reviewed three agencies—the Oakland Police Department, the San Diego Police Department, and the Sacramento County Sheriff's Department—and found that these agencies and their associated crime labs analyzed varied proportions of the sexual assault evidence kits they collected from 2011 through 2013, the period reviewed for this audit. The audit found that investigators at these agencies base their decisions about whether to request a kit analysis on the specific circumstances of an individual case, and reviewed 45 cases in which investigators did not request analysis. The audit did not identify any negative effects on the investigation of those cases that resulted from the decisions not to request analyses. However, the audit noted that investigators rarely documented the reasons they decided not to request an analysis. With documented reasons for the decisions, agencies would be able to clearly demonstrate to victims, policy makers, and other interested parties why they did not request such analyses.

A state-run program has existed since 2011 that could provide more information about the benefits of analyzing all sexual assault evidence kits. According to the chief of Justice's Bureau of Forensic Services, Justice's Rapid DNA Service program tests every sexual assault evidence kit that hospitals collect in the nine counties that the program serves. However, Justice does not currently know the investigative outcomes for the cases associated with those kits such as the number of arrests or convictions. Such information would be valuable as the Legislature considers whether to require an increase in the number of sexual assault evidence kits analyzed in California. Additionally, no comprehensive information is currently available about the number of sexual assault evidence kits that local law enforcement agencies collect annually or how many of those kits are analyzed. Further, no comprehensive data exist about the reasons some sexual assault evidence kits in California are not analyzed. This information would also assist policy makers as they consider whether law enforcement agencies' current approaches in this area need to change.

Report

2014-109 *Sexual Assault Evidence Kits: Although Testing All Kits Could Benefit Sexual Assault Investigations, the Extent of the Benefit Is Unknown* (October 2014)

Armed Persons With Mental Illness

Seek Legislation Regarding Appropriateness of Firearm Records Review Time Frame and Specify That All Mental Health-Related Prohibiting Events Be Reported Within 24 Hours

Recommendations

1. The Legislature should amend state law to specify that all mental health-related prohibiting events must be reported to the Department of Justice (Justice) within 24 hours regardless of the entity required to report.

   Status: Partially implemented. Assembly Bill 1591 (Achadjian/Gray, Chapter 141, Statutes of 2014) requires a court to notify Justice of a court order finding a person to be a danger to others as a result of a mental disorder or illness, or adjudicated to be a mentally disordered sex offender as soon as possible, but not later than one court day after issuing the order.

2. To ensure that its implementation of reviews of armed prohibited persons is consistent with state law, Justice should seek legislative change to confirm whether its practice of reviewing firearm records only back to 1996 is appropriate.

   Status: Implemented. Assembly Bill 2300 (Ridley-Thomas, Chapter 182, Statutes of 2014) requires that the Prohibited Armed Persons File include persons who have ownership or possession of a firearm on or after January 1, 1996.

Background

Justice manages California's effort to identify firearm owners in the State who are prohibited from owning or possessing a firearm because of a mental health-related event in their life. Justice refers to these individuals as armed prohibited persons. State law, enacted in 2001 and subject to appropriation of funds, mandated Justice to create a database to match information related to prohibited persons to its records of firearm owners to determine whether these individuals are prohibited from owning their firearms. This database, commonly known as the Armed Prohibited Persons System (APPS database), was implemented in November 2006 to allow Justice to cross-reference all persons in California who are firearm owners and who are unlawfully in possession of a firearm because of a qualifying event in their life that prohibits them from owning a firearm.

In our review we noted a limitation in what the APPS database is identifying—one that does not appear to be fully consistent with state law. Justice is generally only reviewing firearm records from 1996 through the present, although the state law that establishes the APPS database requires Justice to identify armed prohibited persons in its Consolidated Firearms Information System (CFIS) going back to January 1991. According to Justice, because CFIS was not implemented until 1996, CFIS does not contain firearm records going back to 1991.

However, Justice does have firearm records that pre-date 1996, but it considers these records less reliable for the purpose of identifying prohibited persons and thus for conducting prohibition reviews.

Additionally, the audit found that the reports the courts made regarding their required mental health determinations were not always submitted to Justice in a timely manner. At the time we issued our report, state law required courts to immediately report certain mental health determinations to Justice. However, the law does not define *immediately*. Consequently, courts we visited had differing interpretations of what the law meant by that. Effective January 1, 2014, state law now requires the courts to report to Justice as soon as possible but not later than two court days after the prohibiting determination. However, the new requirement for mental health facilities to report to Justice will be a shorter period of time: within 24 hours of a prohibiting event. In effect, this change to the law will place less urgency on prohibition reports from courts than on those from mental health facilities.

Report

2013-103 *Armed Persons With Mental Illness: Insufficient Outreach From the Department of Justice and Poor Reporting From Superior Courts Limit the Identification of Armed Persons With Mental Illness* (October 2013)

California Public Utilities Commission

Require the Commission to Develop a Risk-Based Approach for Reviewing Balancing Accounts and Remove the Requirement That the Commission Provide Audit Reports to the Board of Equalization

Recommendations

1. To ensure proper oversight of balancing accounts to protect ratepayers from unfair rate increases, the Legislature should amend California Public Utilities Code, Section 792.5, to require the California Public Utilities Commission (commission) to develop a risk-based approach for reviewing all balancing accounts periodically to ensure that the transactions recorded in the balancing accounts are for allowable purposes and are supported by appropriate documentation, such as invoices.

   Status: Not implemented.

2. The Legislature should amend California Public Utilities Code, Section 314.5, to remove the requirement that the commission provide audit reports to the California State Board of Equalization (Equalization).

   Status: Not implemented.

Background

The commission has broad authority, including the authority to inspect and audit the records of regulated utilities. As such, it regulates the six electric, seven natural gas, and 116 water investor-owned utilities in California, and it is responsible for authorizing the rates these utilities may charge ratepayers. Because the rates are derived from projected costs and projected consumption of service, state law directs the commission to require utilities to establish *balancing accounts* to track the actual costs and the related revenues the utilities collect from ratepayers for certain activities. The purpose of a balancing account is to allow the utilities to recoup the costs the commission has authorized, while ensuring that ratepayers do not pay more than they should. The California State Auditor noted, however, that the commission lacks adequate processes to provide sufficient oversight of balancing accounts to protect ratepayers from unfair rate increases. Additionally, the commission does not have a systematic process for selecting balancing accounts to review and does not periodically audit the accounting records of the utilities it regulates according to a schedule prescribed in law.

Finally, Equalization believes that state law requiring the commission to provide its audit reports on utilities' accounting records to Equalization for use in assessing taxes on those utilities is out of date. Equalization stated that the commission's general rate cases do not focus on the same components of a utility's operations and finances as assessment of taxes requires. Equalization has established its own process to audit all companies, including utilities, in the State and believes that it is in a better position to carry out this function than the commission. Further, Equalization believes that requiring the commission to do the work necessary to allow Equalization to assess taxes on utilities may not be cost-effective for the State.

Report

2013-109 *California Public Utilities Commission: Improved Monitoring of Balancing Accounts Would Better Ensure That Utility Rates Are Fair and Reasonable* (March 2014)

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Disabled Veteran Business Enterprise Program

Revise Program Reporting Requirements or Require Awarding Departments to Maintain Detailed Support for Program Activities and Increase the Number of Disabled Veteran Enterprises That Contract With the State

Recommendations

1. To provide a more meaningful measure of how well disabled veteran-owned businesses benefit financially from the Disabled Veteran Business Enterprise (DVBE) program, the Legislature should amend the DVBE reporting requirements in the Public Contract Code to require that all awarding departments take the following steps to report DVBE participation and ensure that data can be corroborated:

   - For DVBE firms that contract directly with the State (prime contractors), require awarding departments to report on an annual basis DVBE participation based on amounts they paid the DVBE firms.

   - For DVBE firms that work as a subcontractor (that do not directly contract with the awarding department), require the awarding departments to track and report on an annual basis DVBE participation based on amounts the subcontracting DVBE firms received, as certified by the subcontractors.

   - Require awarding departments to maintain accounting records and certifications from DVBE subcontractors, as applicable, that support the DVBE participation data reported.

   Status: Not implemented.

2. If the Legislature chooses not to amend the DVBE reporting requirements in the Public Contract Code—to require awarding departments to report DVBE participation annually based on amounts paid, not amounts awarded—the Legislature should amend the Public Contract Code to do the following:

   - Require awarding departments to maintain detailed support for their DVBE activity and to establish review procedures to ensure the accuracy and completeness of the award amounts reported.

   - Include specific instructions to awarding departments on how they should report multiyear contracts, either at the time of award or by an equal distribution of the award over the life of the contract.

   Status: Not implemented.

3. For the DVBE program to benefit a broad base of disabled veteran-owned businesses financially, the Legislature should enact legislation aimed at increasing the number of DVBEs that contract with the State, including increasing the amount of the DVBE

incentive that awarding departments can apply when considering bids on state contracts. Such an incentive could include additional preference points to certain bids when the bidder is a DVBE firm that the department has not previously used, and when the DVBE firm is the prime contractor.

Status: Not implemented.

Background

The DVBE program directs state governmental entities, such as state agencies and departments, to procure goods and services from DVBE firms that the California Department of General Services (General Services) has determined have met the eligibility criteria required by law to be a certified DVBE firm. The DVBE program requires that, collectively, state governmental entities that award contracts for goods and services (awarding departments) *expend* not less than 3 percent of the value of all their contracts on firms that are owned by disabled veterans. However, the performance reporting requirements established in the Public Contract Code require awarding departments to report their levels of DVBE participation based on the amount of the contracts *awarded* to DVBE firms. The use of the different terms *expended* and *awarded* raises significant questions as to whether the State is measuring the program's performance in a manner consistent with legislative intent.

The legislative intent of the DVBE program is to target DVBE firms and have them benefit financially from doing business with the State. DVBEs benefit financially when they are paid for their services. However, based on the performance reporting requirements specified in the Public Contract Code, the State currently measures the success of the DVBE program by the value of the contracts that state departments and agencies have awarded—and not necessarily the amount ultimately paid—to DVBE firms. This performance measure may distort an assessment of whether the program is meeting the legislative intent, because awarding departments can subsequently amend or cancel their contracts with a DVBE if their procurement needs change.

In addition to lacking a true measure for the extent to which DVBE firms benefit financially from the program, the data in the State Contract and Procurement Registrations System maintained by General Services provide a strong indicator that only a relatively small subset of DVBE firms enjoy the major part of the State's business. Specifically, the audit noted that during fiscal year 2012–13, 83 percent of the DVBE contract award amounts went to only 30 DVBE firms. Therefore, the California State Auditor believes that the Legislature should enact additional legislation that promotes the use of more DVBE firms in state contracting. For example, the Legislature could expand on existing laws designed to increase the likelihood of contracting with a DVBE firm.

Report

2013-115 *Disabled Veteran Business Enterprise Program: Meaningful Performance Standards and Better Guidance by the California Departments of General Services and Veterans Affairs Would Strengthen the Program* (February 2014)

Appendix

Legislation Chaptered or Vetoed During the Second Year of the 2013–14 Regular Legislative Session

The table below briefly describes bills that were chaptered or vetoed during the second year of the 2013–14 Regular Legislative Session and relate to the subject of a California State Auditor's (state auditor) report, were based in part on recommendations in a state auditor's report, or the analysis of the bill relied in part on a state auditor's report.

Table A
Legislation Chaptered or Vetoed in the 2013–14 Regular Legislative Session

BILL NUMBER/CHAPTER	REPORT (ABBREVIATED TITLE)	LEGISLATION CHAPTERED OR VETOED
Business and Professions		
SB 1247 Ch. 840, Stats 2014	2013-045 *Bureau for Private Postsecondary Education* (March 2014)	Extends the Bureau for Private Postsecondary Education's (bureau) existence for two years. Among other provisions, requires the bureau, beginning July 1, 2015, to (1) contract with the Office of the Attorney General or other appropriate state agency to establish a process for bureau staff to be trained to investigate complaints filed with the bureau, (2) post specified information on its Web site, (3) establish a task force to identify standards for specified educational and training programs and provide a report to the Legislature regarding its work, and (4) adopt minimum operating standards for an institution that ensure, among other things, that an institution offering a degree is or plans to become accredited. Requires the bureau to submit to the Legislature, on or before March 15, 2015, a copy of an independent review of its staffing resources needs and requirements.
Education		
AB 1455 Ch. 229, Stats 2014	2012-108 *School Safety and Nondiscrimination Laws* (August 2013)	Explicitly authorizes the superintendent of a school district or the principal of a school to refer a victim of, witness to, or other pupil affected by, an act of bullying committed on or after January 1, 2015, to the school counselor, psychologist, social worker, child welfare attendance personnel, or other school support service personnel for case management, counseling, and participation in a restorative justice program.
AB 1993 Ch. 48, Stats 2014	2012-108 *School Safety and Nondiscrimination Laws* (August 2013)	Requires the Department of Education to develop an online training module to assist all school staff, school administrators, parents, pupils, and community members in increasing their knowledge of the dynamics of bullying and cyberbullying.
Governmental Organization		
AB 1656 Ch. 451, Stats 2014	2014-108 *Board of Equalization Cost of Facility Repairs* (September 2014)	Requires the Department of General Services, by July 1, 2015, to complete a long-range planning study of the state-controlled and owned office buildings in the county of Sacramento and the city of West Sacramento, including the Board of Equalization's headquarters, for the management of the State's space needs in the Sacramento region.
AB 1583 Ch. 230, Stats 2014	2013-107 *Accounts Outside the State Treasury* (October 2013)	Requires the Controller to include the following information on bank accounts and savings and loan association accounts outside the State Treasury System (treasury system) in the budgetary-legal basis annual report, submitted pursuant to existing statute: (1) the name of the account, (2) the source of authorization for establishing the account, and, (3) the account balance. Requires a state agency that receives revenues for state costs under a cost recovery statute to account for those revenues to the Controller for deposit into the State Treasury.

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BILL NUMBER/CHAPTER	REPORT (ABBREVIATED TITLE)	LEGISLATION CHAPTERED OR VETOED
SB 898 Ch. 393, Stats 2014	2013-107 *Accounts Outside the State Treasury* (October 2013)	Requires each state agency, department, and entity to provide the Treasurer with its employer identification number, and authorizes the Treasurer to use those numbers to monitor state money outside the treasury system. Requires a bank or financial institution to provide, upon request from the Treasurer, specified account information relating to these employer identification numbers to assist the Treasurer in monitoring accounts and state money deposited outside of the centralized treasury system.
SB 1074 Ch. 221, Stats 2014	2013-107 *Accounts Outside the State Treasury* (October 2013)	Provides that it is a misdemeanor for a state employee to transfer or use state money outside of the treasury system, except as authorized by statute.
SB 1075 Ch. 250, Stats 2014	2013-107 *Accounts Outside the State Treasury* (October 2013)	Requires any moneys recovered by the Department of Forestry and Fire Protection for fire suppression costs incurred in fighting a fire to be deposited by the department into the treasury system. Requires the department to make an annual report to the Legislature regarding any fire suppression moneys recovered in a civil action, and requires all moneys in the Civil Cost Recovery Investigation Support Account to be immediately be transferred to the State's General Fund.
Health and Human Services		
SB 1135 Ch. 558, Stats 2014	2013-120 *Female Inmate Sterilization* (June 2014)	Among other provisions, prohibits any means of sterilization of an individual under the control of the California Department of Corrections and Rehabilitation (CDCR) or a county correctional facility, except when required for the immediate preservation of life in an emergency medical situation or when medically necessary to treat a diagnosed condition. Requires CDCR, a couty jail, or any other institution of confinement to notify all individuals under their custody, as well as all employees involved in providing health care services, of their rights and responsibilities regarding sterilization, and provides protection for any employee who reports a violation of these provisions.
Higher Education		
AB 1433 Ch. 798, Stats 2014	2013-124 *Postsecondary Education Sexual Violence* (June 2014)	As a condition for participation in the Cal Grant Program, requires any report of specified violent crimes, including rape and other sex crimes, received by a campus security authority and made by the victim for purposes of notifying the institution or law enforcement to be immediately reported, or as soon as practicably possible, to the appropriate local law enforcement agency without identifying the victim unless the victim consents to being identified. Requires the governing board of each community college district, the CSU Trustees, the UC Regents, and the governing board of each private and independent postsecondary institution, on or before July 1, 2015, to adopt and implement written policies and procedures to ensure that any report of specified violent crimes, sexual assault, or hate crimes, committed on or off campus, received by any campus security authority and made by the victim for the purposes of notifying law enforcement of the institution, is immediately, or as soon as practicably possible, forwarded to the appropriate law enforcement agency.
AB 1942 Ch. 382, Stats 2014	2013-123 *Community College Accreditation* (June 2014)	Requires the Board of Governors of the California Community Colleges, in determining whether a community college district satisfies specified minimum conditions, to review the accreditation status of the community colleges within that district. Requires the accrediting agency to report to the appropriate subcommittees of the Legislature upon the agency's issuance of a decision that affects the accreditation status of a community college and, on a biannual basis, any accreditation policy changes that affect the accreditation process or status for a community college.

BILL NUMBER/CHAPTER	REPORT (ABBREVIATED TITLE)	LEGISLATION CHAPTERED OR VETOED
SB 967 Ch. 748, Stats 2014	2013-124 *Postsecondary Education Sexual Violence* (June 2014)	As a condition of receiving state funding for student financial assistance, requires the governing board of each community college district, the Trustees of the California State University, the Regents of the University of California, and independent postsecondary institutions to adopt policies concerning sexual assault, domestic violence, dating violence and stalking, including an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity.
Public Safety		
AB 1517 Ch. 874, Stats 2014	2014-109 *Untested Rape Kit Backlog* (October 2014)	Encourages a law enforcement agency in whose jurisdiction a sexual assault offense occurred to submit sexual assault forensic evidence received by the agency on or after January 1, 2016, to the crime lab within 20 days of the date it is booked into evidence, or ensure that a rapid turnaround DNA program is in place to submit sexual assault forensic evidence collected to the crime lab within five days after the evidence is obtained from the victim. Encourages the crime lab to process that evidence, create DNA profiles when able, and upload qualifying DNA profiles into the Combined DNA Index System as soon as practically possible, but no later than 120 days after initially receiving the evidence, or to transmit the sexual assault forensic evidence to another crime lab as soon as practically possible, but no later than 30 days after initially receiving the evidence.
AB 1591 Ch. 141, Stats 2014	2013-103 *Armed Prohibited Persons System* (October 2013)	Requires a court to notify the Department of Justice of a court order finding a person to be a danger to others as the result of a mental disorder or illness or to be a mentally disordered sex offender as soon as possible, but not later than one court day after issuing the order.
AB 2300 Ch. 182, Stats 2014	2013-103 *Armed Prohibited Persons System* (October 2013)	Requires that the Prohibited Armed Persons File include persons who have ownership or possession of a firearm on or after January 1, 1996.
Veterans Affairs		
AB 585 Ch. 641, Stats 2014	2012-119 *Department of Veterans Affairs* (May 2013)	Requires the California Department of Veterans Affairs to create a prioritized list of unused or underutilized nonresidential real property owned by the department and propose potential uses that will benefit state veterans, as well as consider its inventory of properties as an integrated system and address how such uses could complement each other. Specifies that further study and evaluation may be necessary to determine the feasibility of a use option and take steps toward implementation.