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Implementation of State Auditor's Recommendations

Audits Released in January 2009 Through December 2010

Special Report to
Senate Budget and Fiscal Review Subcommittee #2—Resources, Environmental Protection, Energy and Transportation

SPECIAL REPORT

March 2011 Report 2011-406 S2

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March 7, 2011 2011-406 S2

The Honorable Joe Simitian, Chair
Senate Budget and Fiscal Review Subcommittee No. 2
State Capitol
Sacramento, California 95814

Dear Senator Simitian:

The State Auditor's Office presents this special report for the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. The report summarizes the audits and investigations we issued during the previous two years that are within this subcommittee's purview. Additionally, the report includes the major findings and recommendations, along with the corrective actions auditees reportedly have taken to implement our recommendations. To facilitate the use of the report, we have included a table that summarizes the status of each agency's implementation efforts based on its most recent response.

This information is also available in a special report that is organized by policy areas that generally correspond to the Assembly and Senate standing committees. This special policy area report includes a table that identifies monetary values that auditees could realize if they implemented our recommendations, and is available on our Web site at www.bsa.ca.gov. Finally, we notify auditees of the release of these special reports.

Our audit efforts bring the greatest returns when the auditee acts upon our findings and recommendations. This report is one vehicle to ensure that the State's policy makers and managers are aware of the status of corrective action agencies and departments report they have taken. Further, we believe the State's budget process is a good opportunity for the Legislature to explore these issues and, to the extent necessary, reinforce the need for corrective action.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

Contents

Introduction

This report summarizes the major findings and recommendations from audit and investigative reports we issued from January 2009 through December 2010, that relate to agencies and departments under the purview of the Senate Budget and Fiscal Review Subcommittee No. 2—Resources, Environmental Protection, Energy and Transportation. The purpose of this report is to identify what actions, if any, these auditees have taken in response to our findings and recommendations. We have placed this symbol ➲ in the margin of the auditee action to identify areas of concern or issues that we believe an auditee has not adequately addressed.

For this report, we have relied upon periodic written responses prepared by auditees to determine whether corrective action has been taken. The State Auditor's Office (office) policy requests that the auditee provide a written response to the audit findings and recommendations before the audit report is initially issued publicly. As a follow-up, state law requires the auditee to respond at least three times subsequently: at 60 days, six months, and one year after the public release of the audit report. However, we may request an auditee to provide a response beyond one year or we may initiate a follow-up audit if deemed necessary.

We report all instances of substantiated improper governmental activities resulting from our investigative activities to the cognizant state department for corrective action. These departments are required to report the status of their corrective actions every 30 days until all such actions are complete.

Unless otherwise noted, we have not performed any type of review or validation of the corrective actions reported by the auditees. All corrective actions noted in this report were based on responses received by our office as of January 2011. The table below summarizes the number of recommendations along with the status of each agency's implementation efforts based on its most recent response related to audit reports the office issued from January 2009 through December 2010. Because an audit report and subsequent recommendations may cross over several departments, they may be accounted for on this table more than one time. For instance, the Dymally-Alatorre Bilingual Services Act report, 2010-106, is reflected under the Department of Food and Agriculture, the California Highway Patrol, the Department of Motor Vehicles, and the Department of Toxic Substances Control.

Table
Recommendation Status Summary

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Board of Pilot Commissioners									
Operations and Finances Report 2009-043				●	6	5			3
Energy Resources Conservation and Development Commission									
Recovery Act Funds Letter Report 2009-119.1				●		2			15
Fish and Game, Department of									
Investigations Report I2009-1 [I2006-1125]				●		1	1		19
Food and Agriculture, Department of									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●					1	1		23
High-Speed Rail Authority									
Planning and Management Report 2009-106			●		4	1	5		35
Highway Patrol, California									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1		1		23

continued on next page . . .

	FOLLOW-UP RESPONSE				STATUS OF RECOMMENDATION				
	INITIAL RESPONSE	60-DAY	SIX-MONTH	ONE-YEAR	FULLY IMPLEMENTED	PARTIALLY IMPLEMENTED	PENDING	NO ACTION TAKEN	PAGE NUMBERS
Motor Vehicles, Department of									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●				1	1			23
Parks and Recreation, Department of									
Investigations Report I2009-1 [I2008-0606]		●			1				41
Resources Recycling and Recovery, Department of									
Beverage Container Recycling Program Report 2010-101			●			3	2		43
Toxic Substances Control, Department of									
Dymally-Alatorre Bilingual Services Act Report 2010-106	●						2		23

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun

It Needs to Develop Procedures and Controls Over Its Operations and Finances to Ensure That It Complies With Legal Requirements

REPORT NUMBER 2009-043, NOVEMBER 2009

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun's response as of November 2010

The California Harbors and Navigation Code, Section 1159.4, requires the Bureau of State Audits to complete a comprehensive performance audit of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) by January 1, 2010, and a comprehensive financial audit by December 1, 2009. Our report combined both audits. Because state law does not specify the topics these audits should address, we identified and reviewed applicable state laws and regulations related to the form and function of the board and identified five areas on which to focus our review. Specifically, we focused on the licensing of pilots, investigations of incidents involving pilots, pilot training, board structure and administration, and the board's finances.

Finding #1: The board does not consistently adhere to requirements in state law when licensing pilots.

The board did not always ensure that applicants seeking original licensure as pilots completed the application process called for in state law before granting them pilot licenses. The application process requires that applicants seeking an initial pilot's license first receive a physical examination from a board-appointed physician. However, of the seven pilots seeking first-time licenses that we reviewed, the board issued licenses to three before the pilots had undergone the physical examination the law requires. In fact, one of these three piloted vessels 18 times before receiving the required physical examination. According to the board's president, there was a disconnect between the board and board staff regarding the application process and the necessary paperwork to be filed before licensure. He explained that in the past, the board had assumed that board staff were ensuring that all licensing requirements had been addressed before issuing a license. He stated that in the future, board staff will use a checklist to ensure that all application requirements are complete, and indicated that he or the board's vice president will review the checklist and supporting documentation to ensure that all requirements for licensure have been met. To the extent that the board does not adhere to this new process, it risks licensing an individual who does not meet the qualifications for a pilot, including being able to physically perform the job. This may increase the risk of injury to pilots and crews or damage to vessels and the environment.

Audit Highlights . . .

Our review of the form, functions, and finances of the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun (board) revealed the following:

- *The board did not consistently adhere to state law when licensing pilots. In one case, it licensed a pilot 28 days before he received a required physical examination; he piloted vessels 18 times during this period.*
- *The board renewed some pilots' licenses even though the pilots had received physical examinations from physicians the board had not appointed and, in one case, renewed a license for a pilot who had not had a physical examination that year.*
- *Of the 24 investigations we reviewed, 17 went beyond the 90-day statutory deadline for completion.*
- *The board did not investigate reports of suspected safety standard violations of pilot boarding equipment, as required by law.*
- *The board failed to ensure that all pilots completed required training within specified time frames.*
- *The board lacked a procedure, required in state law, for access to confidential information, and it released information to the public that included a pilot's home address and Social Security number.*

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- *The board did not ensure that some of its members and investigators filed required statements of economic interests.*
- *The board did not approve several changes to the rates pilots charge for their services, as required by law.*
- *The board paid for business-class airfare for pilots attending training in France, which may constitute a misuse of public funds.*

We also reviewed files of seven pilots whose licenses the board renewed and found that, contrary to state law, the board renewed one pilot's license even though the pilot had not undergone a physical examination that year. In part, this may have occurred because board regulations are inconsistent with state law, as they require less frequent physicals for younger pilots. According to the board's regulations, which have been in place since 1988, a medical examination is required annually only for pilots who are renewing a state license and who will be at least age 50 when the license expires. The regulations require less frequent medical examinations for pilots who are younger than age 50. However, state law changed in 1990 to require annual physicals for all pilots, regardless of age, and the board has not updated its regulations to reflect this change. According to the board's president, although the board was aware of the changes made to state law in 1990, it failed to interpret those changes to mandate that younger pilots must have more frequent physicals than those required under existing board regulations. By not ensuring that pilots receive their annual physical examinations as required by law, the board risks licensing an individual who is not fit to perform the duties of a pilot.

Further, the board could not provide documentation demonstrating that it had followed the law by appointing all the physicians it used to conduct physical examinations of pilots during the period of our review. As a result, the board granted six out of the 14 new licenses or license renewals we reviewed even though it had not appointed the physicians who conducted the physicals. If the board allows physicians that it has not appointed to examine pilots, it is not only out of compliance with its regulations but it also risks that physicians conducting annual physicals will not be familiar with the standards the board has adopted for pilot fitness. These standards outline conditions that would render a pilot permanently or temporarily not fit for duty. For example, suicidal behavior would result in a pilot being permanently excluded from duty, while cataracts would require that a physician reevaluate the condition before a pilot was allowed to return to duty.

We recommended that the board follow its recently established procedure to complete a checklist to verify that trainees and pilots have fulfilled all the requirements for licensure, including the physical examination, before the board issues or renews a license. Also, we recommended that the board establish and implement a procedure for approving and monitoring board-appointed physicians. Finally, we recommended that the board review and update its regulations regarding the frequency of pilot physical examinations to ensure they are consistent with state law.

Board's Action: Partial corrective action taken.

The board has developed a pilot license renewal checklist and stated it has been used in all original and renewal license processes and preserved in the individual licensing files. Further, the board reported that it adopted minimum qualifications for board-appointed physicians in August 2010. However, according to the board, a draft of a study by the University of California at San Francisco Medical Center suggests that substantial changes to board procedures for pilot fitness determination may be part of the

final report. According to the board, administrative rulemaking for implementing board physician operations may start in February 2011, followed by a competitive procurement for board physician services. The board projects this process will be complete by September 30, 2011. Similarly, the board reports it has directed staff to proceed with formal regulatory amendments regarding the frequency of pilot physical examinations; the amended recommendations are currently awaiting public comments. The board projects this process will be complete by December 31, 2010.

Finding #2: The board did not fully comply with state law regarding investigations.

Some of the board's investigations of incidents involving pilots were not timely or failed to follow specified procedures for granting extensions to the 90-day deadline required by state law. The board's Incident Review Committee is responsible for investigating, with the assistance of one or more investigators, navigational incidents, misconduct, and other matters involving pilots and presenting reports on these incidents to the board. We reviewed the 24 incidents reported by the port agent to the board between January 1, 2007, and March 31, 2009, and investigated by the Incident Review Committee, and we noted that 17 required extensions because the Incident Review Committee did not complete its investigation within 90 days. Of these 17, the board did not grant an extension in two cases and granted an extension after the 90-day deadline in another five. After reviewing the seven cases we identified, the board's president stated that beginning in October 2009, the board's agenda for its monthly meetings will include the 90-day deadline to help remind the Incident Review Committee and the board of the need to either present the results or make a timely request for an extension. Without timely investigations, the board risks having additional incidents occur, because pilots are generally allowed to continue working while the board completes its investigation.

Further, the board did not consistently report the reasons for granting extensions for an investigation. We noted that, of the 17 investigations requiring an extension, eight were extended because the investigations were incomplete, while four were extended with no reason or justification given. The board extended the remaining five for other reasons, including an Incident Review Committee member being unavailable and the board asking for additional information. If the board had requested the reasons for the delays from the Incident Review Committee, it would have been better able to assess the cause of the delay and determine how to mitigate such delays in the future.

Also, the board has not yet developed the regulations describing qualifications for its investigators, as required by law. In February 2009 the board approved draft standards for use in contracting with investigators. In August 2009 the board approved a version of the standards and directed staff to begin the rulemaking process to adopt these standards. Until the board adopts and enforces standards for its investigators in accordance with state law, it may risk retaining investigators who are not qualified to conduct thorough and timely investigations.

Finally, the board has not complied with a state law requiring the inspection of pilot boarding equipment, such as pilot ladders or hoists, in response to reports of suspected safety standard violations. The board's president stated that the former executive director—the board's executive director resigned effective October 30, 2009, and thus, we refer to him as the "former executive director"—acknowledged that he had not dispatched investigators to inspect pilot boarding equipment that had been reported to be in violation of safety standards during the period of our review. He explained that the former executive director had instead relied upon information provided by the pilots regarding the reported equipment. The board president explained that as of October 2009, he has requested the chair of the board's Rules and Regulations Committee to study the issue and make recommendations to the board, which may result in the board seeking changes to state law as it relates to investigating suspected violations. Nevertheless, pursuant to the California Constitution, unless or until an appellate court invalidates the law requiring the board to inspect suspected safety standard violations of pilot boarding equipment, the board must comply with the statute.

We recommended that the board implement procedures to track the progress of investigations, including a procedure to identify those investigations that may exceed the 90-day deadline established in law, and ensure that there is proper justification and appraisal for investigations that require more

than 90 days to complete. We also recommended that the board develop and enforce regulations establishing minimum qualifications for its investigators, as state law requires, and investigate reports of safety standard violations regarding pilot boarding equipment.

Board's Action: Partial corrective action taken.

The board stated that it has implemented a system of tracking the progress of open investigations by requiring a monthly report on the status of each open investigation and the expected reporting date and by tracking the expiration of the 90-day period in which investigation reports are to be presented, absent a timely extension for good cause. Further, the board reported that it will review any requests for an extension to determine the reason and whether the underlying cause for the request can be addressed to avoid unnecessary delays in the future. The reasons for the request for an extension will be recorded in the board's minutes. Moreover, in August 2010, the board adopted minimum qualifications for investigators in its regulations and filed those regulations with the Office of Administrative Law for final approval. The board stated it will initiate a competitive process for contracting with investigators upon final approval. The board expects this process to be complete by December 31, 2010. The board is investigating reports of safety standard violations it receives concerning pilot boarding equipment.

Finding #3: The board has not ensured that all pilots completed the required training within specified time frames.

The board's regulations require every pilot to attend a combination course, which must include topics relating to emergency maneuvering, emergency medical response, ship handling in close quarters, and regulatory review, at least every three years. We reviewed the training records of seven pilots whose licenses had been renewed at least three times as of April 30, 2009, and determined that two had last attended the required training in April 2005 and did not attend again until October 2009, more than four years later. According to the board's former executive director, at the time these pilots were originally scheduled for training, the board was pursuing a regulatory change that would have allowed pilots to attend the required training every five years instead of every three. He explained that the board had relied on the proposed change to regulations and delayed the attendance of these two pilots. According to the board's president, changing the requirement to every five years would have been more in line with the training cycles of other pilotage grounds around the country. However, he stated that the board chose not to reduce its training requirements because the change might have been perceived by members of the public as potentially reducing the safety of pilotage on the waters in the board's jurisdiction. Because these regulatory changes were only proposed, the board inappropriately delayed training for these pilots beyond the existing legal deadline.

Additionally, state law mandates that the board require the institutions it selects to provide continuing education for pilots to prepare an evaluation of the pilots' performance and to provide a copy to the Pilot Evaluation Committee (to the board beginning in 2010). We reviewed the contracts between the board and the continuing education institutions but did not identify a requirement for the institutions to provide evaluations of pilot performance to the Pilot Evaluation Committee. The board's president asserted that the Continuing Education Committee will negotiate with the training institutions to develop an appropriate evaluation process. To comply with state law, the board must follow through with its intention to require training institutions to prepare and submit evaluations of pilots' performance. Without these evaluations, the board lacks assurance as to whether a pilot successfully completed the required training program or whether that pilot will need additional training before being allowed to navigate vessels as a licensed pilot.

To ensure that all pilots complete the required training within the specified time frames, we recommended that the board schedule pilots for training within the period specified in state law and board regulations and include in its contracts with institutions providing continuing education for pilots a provision requiring those institutions to prepare an evaluation of pilots' performance in the training.

Board's Action: Partial corrective action taken.

The board implemented a checklist to track each pilot's training cycle and the expiration dates for the three-year and five-year training periods to ensure timely attendance at board-mandated training. The board told us that it directed staff to begin the formal rulemaking process to amend regulations to require all pilots to complete both combination and manned-model training courses once in every five years. The proposed amendments are awaiting public comments. Further, the board states it initiated a contract amendment to include the requirement that pilots receiving manned-model training are evaluated upon completion of the training and that the completed evaluation be forwarded to the board for review. The amended contract is under review by the Department of General Services. The board expects to complete these activities by December 31, 2010.

Finding #4: The board risks not having enough pilot trainees to replace retiring pilots.

To help it forecast the need for additional trainees, the board conducted six surveys between June 2006 and July 2009, asking all pilots to indicate when they intend to retire. Of the 58 pilots who responded to the board's most recent survey, which it conducted in June 2009, three indicated that they plan to retire by January 1, 2010, and an additional five stated that they plan to retire by January 1, 2011. However, because the length of time it takes a trainee to complete the pilot training program is typically much longer than the length of time between a pilot's retirement announcement and the effective date when the pilot may begin receiving a pension, the board runs the risk that the number of licensed pilots will decrease if more pilots choose to retire than the number of trainees completing the training program.

To ensure that it is able to license the number of pilots it has determined it needs, we recommended that the board continue to monitor its need for additional trainees to replace those who retire.

Board's Action: Corrective action taken.

The board stated that it has developed a comprehensive process for evaluating future pilotage needs and will continue to conduct regular retirement surveys of existing pilots. The board also stated that it conducted a trainee selection examination in June 2010 and that 12 applicants qualified for the board's trainee training program. The board contracted with two applicants to begin the training program on January 1, 2011.

Finding #5: The board lacks controls over confidential information.

A state law effective January 1, 2009, requires the board to develop procedures for access to confidential or restricted information to ensure that it is protected. However, as of September 2009, the board had not yet established such procedures. Meanwhile, without such procedures, the board could inadvertently share confidential information with the public. In fact, the board did release confidential information when the board's president requested that board staff fax certain information about one of its pilots to an independent, nonprofit association's counsel. This information included the pilot's home address on one document and Social Security number on another.

Also, until October 2009, board staff, as well as board members, used nonstate e-mail accounts to conduct state business, which could jeopardize the board's ability to respond to requests for public records and to protect confidential information. According to the board's president, board staff used nonstate e-mail accounts beginning in 1994. Additionally, he stated that board members and board staff who had previously used nonstate e-mail accounts have not transferred old data into their new state accounts.

We recommended that the board create a process, as state law requires, for accessing confidential information, such as board records containing confidential information on board members, board staff, or pilots and that it consistently use state-based e-mail accounts when conducting board business, including transferring old e-mail records to their new accounts.

Board's Action: Corrective action taken.

The board developed a written protocol for access to confidential or restricted information in board records. Further, as of November 2009, board members and staff are using state e-mail accounts. Specifically, after joining the Business, Transportation and Housing Agency, the board started a step-by-step technical infrastructure change. In that process, the board obtained state-based e-mail accounts for all board members and staff.

Finding #6: The board lacks controls over filings of statements of economic interests and required ethics training.

We identified several instances in which the board did not comply with legal requirements regarding the filing of statements of economic interests. We examined the files for the 10 board members and two board staff who served from January 1, 2007, through March 31, 2009, and found four instances in which the board did not comply with this regulation. According to the board's president, the board's staff have not consistently followed up to ensure that all required statements of economic interests have been completed and that board files include a copy. Without complete statements of economic interests, neither the board nor the public has access to information that would reveal whether board members may have conflicts of interest.

Additionally, according to the board's president, the board did not require its investigators to file statements of economic interests. Board regulations require consultants to file statements of economic interests, although the executive director may make a determination in writing that a particular consultant does not meet the regulatory criteria necessary to file a statement. None of the four investigators under contract during all or part of the period we reviewed filed statements of economic interests, nor did the former executive director determine in writing that board investigators are not required to comply with the disclosure requirement. The former executive director explained that he recalled discussing this issue with legal counsel and that they had determined that investigators are not consultants; rather, they are "finders of facts" and therefore do not participate in the Incident Review Committee's decision-making process. Therefore, he explained, they do not need to file statements of economic interests, and no written exemption is required. However, the board's regulations require a written exemption from the executive director if consultants, such as investigators under contract to the board, are not required to file statements of economic interests. According to the board's president, the board did not seek formal advice on this determination from the Fair Political Practices Commission, the state authority in this area.

Until recently some board members and staff had not received training in state ethics laws and regulations, as required by law. However, according to the board's president, not all board members or board staff had received such training prior to 2009. He stated that the board members were not aware of the requirement. Subsequent to our inquiry, all of the board members and staff received ethics training by August 2009.

We recommended that the board establish a formal procedure to complete and maintain copies of required statements of economic interests and complete the process of ensuring that investigators complete statements of economic interests. When there are questions as to whether other consultants should file such statements, the board should seek advice from the Fair Political Practices Commission. Finally, the board should develop procedures to ensure that board members and designated staff continue to receive required training, such as training in state ethics rules.

Board's Action: Corrective action taken.

The board developed a checklist to ensure that annual, as well as assuming and leaving office, statements of economic interest are filed and that copies are maintained in office files in accordance with the state's political reform laws and the conflict-of-interest code provisions. The board also requires investigators to file statements of economic interests and developed an ethics orientation program for those required to file such statements.

Finding #7: The board did not adhere to some requirements regarding administrative processes.

We observed that the board did not properly provide notice on its Web site of two recent meetings at least 10 days in advance, as the Bagley-Keene Open Meeting Act (act) requires. On June 16, 2009, the board's Web site indicated that the next board meeting would be held on June 25—nine days later—but the agenda posted to the board's Web site was for the prior month's meeting on May 28. Subsequently, on July 15, 2009, the board's Web site announced the board meeting held in June, even though a July meeting was scheduled for July 23, 2009—less than 10 days from the date we reviewed the Web site. The board has a contract with the Association of Bay Area Governments to maintain, in part, the board's Web site. However, one provision of the contract enables board staff to update meeting information on the board's home page and to post agendas, minutes, and news items through an administrative page. According to the board's assistant director, the board had been using the administrative page until a staffing change in March 2009. Subsequently, the board requested that the Association of Bay Area Governments update the board's meeting and agenda notices on the Web site. However, in both June and July, board staff made this request on the last day the board would have been in compliance with state law. The assistant director stated that in October 2009, board staff received training in how to update the Web site using the administrative page, and she explained that the board intends to reinstate its previous practice of having board staff, rather than a contractor, update meeting information on the Web site. Without proper notice, members of the public may not be aware of upcoming board meetings or of the topics the board will discuss at those meetings.

Further, until recently the board had not complied with state law requiring it to formally review the executive director with respect to his or her performance on the Incident Review Committee at least once each year. According to the board's president, the evaluation covering the former executive director's performance on the committee during July 1, 2007, through June 30, 2008, was the first the board had conducted, yet the board had employed the former executive director since 1993. Subsequent to the first evaluation, the board conducted two additional evaluations of the former executive director for the periods covering July 1, 2008, through December 31, 2008, and January 1, 2009, through June 30, 2009. The board's president explained that the board has not formalized its process for reviewing the performance of the executive director, but he expects the board to settle on a formal process and document it appropriately within six months after hiring a new executive director. If the board does not have a process in place when it hires a new executive director, it will not have the mechanism to provide formal feedback on his or her performance on the Incident Review Committee.

We recommended that the board establish processes to ensure that its Web site contains timely and accurate information about its meetings, as required by law, and that it formalize a procedure for evaluating the executive director's performance on an annual basis.

Board's Action: Corrective action taken.

The board stated that it has implemented training of its staff in the update and maintenance of the board's Web page displaying notices of its meetings. Further, the board stated it has provided direct access to update meeting information on its Web site. Finally, the board adopted a procedure to evaluate the executive director on an annual basis.

Finding #8: The board's recordkeeping needs improvement.

The board does not always maintain adequate records to demonstrate that it complies with state law. During the period of our review, January 1, 2007, through March 31, 2009, there were 24 reported incidents. Of the 24 incidents, we judgmentally selected four to determine whether their respective files contained the required information and noted that one did not contain the Incident Review Committee's opinions and recommendations or the board's actions based on these recommendations.

Additionally, we determined that the board is inconsistent in announcing pilots whose licenses the board renewed. Further, board staff did not maintain copies of licenses issued after 2000 in the pilots' files. We found that the board reported license renewals in its minutes for meetings held in February and April of 2007 and 2008 but did not report any renewals in board minutes for February or April 2009. Nevertheless, several pilots had licenses up for renewal in those months. According to the board's president, the board generally announces renewals at board meetings and stated that the two instances we found in which such announcements were not recorded in meeting minutes were due to an inexperienced staff person not reporting such announcements in the minutes. Without a proper record in the board's minutes or copies of each pilot's annual license renewal in the files, however, the board may not be able to demonstrate that a pilot held an active license during a given year.

We recommended that the board establish formal procedures related to document retention in files regarding investigations, determine and document what it needs to include in minutes of the board's meetings, and ensure that copies of license renewals are placed in the pilots' files.

Board's Action: Corrective action taken.

The board stated that, beginning in October 2009, the Incident Review Committee reports contain all the data elements required by statute. Further, the board has put into service checklists for board meeting agendas and minutes of board meetings. The board stated it directed staff to compare draft agendas and meeting minutes with the checklists during document preparation. Finally, the board developed a pilot license renewal checklist.

Finding #9: The board lacks internal policies and controls over pilotage rates and its revenues.

State law sets the rates vessels must pay for pilotage service in San Francisco, San Pablo, Suisun, and Monterey bays, but allows a portion of the rate, called the "mill rate," to change each quarter, based on the number of pilots licensed by the board. According to the Bar Pilots' rate sheet, the mill rate changed five times between January 2007 and June 2009. We expected to find that the board had authorized the changes to this rate; however, the board's minutes do not reflect any such activity. Instead, according to the board's president, the board receives a copy of the Bar Pilots' rate letter each quarter, and these rates reflect changes to the mill rate. The board's president stated that the law does not require the board to take action to approve these rate changes. However, we disagree, as the law clearly states that rate adjustments will take effect quarterly "as directed by the board." By not reviewing and approving such adjustments, the board is not in compliance with the law and risks that the Bar Pilots may miscalculate the rate.

The board also does not consistently ensure that an independent audit of the pilot pension surcharge is conducted, and there is no audit in place for the pilot boat surcharge. Although an independent auditor completed an audit of the pilot pension surcharge for 2007, it did not complete an audit of the pilot pension surcharge for 2008, according to the board's president, due to the auditor's staffing changes and to a lack of communication between the board and the independent auditor. Further, the board's president explained that the board had not considered having a similar audit conducted of the pilot boat surcharge, which state law established to recover the costs of obtaining new pilot boats or extending the service life of existing pilot boats. Without such annual audits, the board lacks assurance that the Bar Pilots are collecting and spending funds from these surcharges in accordance with state law.

The board also lacks a process to verify the accuracy of the surcharge amounts the Bar Pilots collect and remit to the board on a monthly basis. State law requires pilots to submit to the board, and the board to maintain, a record of accounts that includes the name of each vessel piloted and the amount charged to or collected for each vessel. Each month, the Bar Pilots remit the total amount of the board operations, continuing education, and training surcharges collected and include a report detailing all of the pilotage fees and surcharges billed and collected. We reviewed eight monthly reports and determined that they did not contain all information required by law and, in one case, the report was missing pages. The board's president explained that a review of the monthly reports was not done in the past because the board had limited staff to conduct such reviews. However, given that the board is required to maintain complete records of accounts, we believe it needs to take the steps necessary to ensure that the Bar Pilots' reports contain the required information, such as information pertaining to the three surcharges the Bar Pilots collect and remit to the board.

Additionally, the board did not receive all revenues for the surcharge to fund training new pilots (training surcharge), as required by law. We determined that the inland pilot, the one pilot who is not a member of the Bar Pilots and who guides vessels between the bays and the ports of West Sacramento and Stockton, was not collecting the training surcharge on the vessels he piloted. According to the board's president, it was both the inland pilot's and the board staff's understanding that the training surcharge does not pay for the training of future inland pilots. However, state law requires the training surcharge to be applied to each movement of a vessel using pilot services, and therefore the inland pilot should collect this surcharge.

We recommended that the board review and approve any quarterly changes made to that portion of the pilot fee based on the mill rate. Further, the board should establish a requirement for an annual, independent audit of the pilot boat and pilot pension surcharges and establish a monthly review of the revenue reports it receives from the Bar Pilots. Additionally, we recommended that the board instruct the inland pilot to collect and remit the training surcharge and report these collections to the board.

Board's Action: Corrective action taken.

The board stated it developed a process involving approval of mill rate changes involving a recommendation to the board by the Finance Committee and then formal board approval. The board processed the 2010 mill rate at its December 2009 meeting. Further, the board has contracted with a certified public accounting firm to conduct a comprehensive audit of all surcharges for 2009, 2010, and 2011. Additionally, the board developed verification worksheets to compare San Francisco Bar Pilots' monthly actual cash collections with remittances of surcharge moneys due to the board. Moreover, the board demonstrated that it instructed the inland pilot to begin collecting and remitting the pilot trainee training surcharge and the inland pilot is doing so. The inland pilot has acknowledged the instruction and will commence collection of the surcharge beginning with his next trip.

Finding #10: The board lacks internal policies and controls over its expenditures.

We determined that the board does not track its expenditures in a manner that is consistent with state law. In its financial statements, the board tracks expenditures in only two categories—operations and training—combining expenditures for the training program and for pilots' continuing education. However, state law requires that the board spend the money collected from the continuing education and training surcharges only on expenses directly related to each respective program. Additionally, the board maintains a reserve balance, but its financial statements do not specify the amounts of this balance that relate to its operations, training, and continuing education surcharges. According to the board's president, for many years the board wanted to establish different categories in its formal accounting records in order to track the expenditures related to each surcharge independently. However, he added that neither the Department of Consumer Affairs nor the Department of

Finance tracked the expenditures as the board desired and thus, in order to generate the information necessary to comply with statutory requirements, the board maintained its own internal accounting of expenditures within each surcharge. He stated that this internal recordkeeping system is not reconciled to state reports. Unless it tracks expenditures relevant to each surcharge separately in its formal financial reports, the board cannot demonstrate that it is complying with the law and risks miscalculating the rate of the surcharges in the future.

In addition, the board does not have written contracts with the physicians it has appointed to conduct physical examinations of pilots. Written contracts between the board and its appointed physicians would outline the duties of the physicians under contract and ensure consistency in the physical examinations of pilots. Additionally, because these contracts would be subject to competitive bidding as described in state law, the board would have to solicit bids for these contracts. For example, we reviewed board payments to one medical clinic and determined that they totaled more than $14,000 and $26,000 in fiscal years 2007–08 and 2008–09, respectively, amounts equal to or greater than the $5,000 that is exempt from competitive bidding under state law. According to the board's president, the board has not contracted with the physicians; however, as of October 2009, he stated that the board is defining criteria for the approval of physicians and for use in the contracting process in the future. He added that the board's Pilot Fitness Committee began to address this issue in April 2009 and hopes to be able to recommend criteria to the board by the end of 2009.

We recommended that the board develop procedures to separately track expenditures relevant to the operations, training, and continuing education surcharges. Additionally, we recommended that the board competitively bid contracts with physicians who perform physical examinations of pilots.

Board's Action: Partial corrective action taken.

The board reported that a new accounting system is in place. Representatives of the California Highway Patrol—who provide administrative services to the board—addressed the board in September 2010 and confirmed the new system was in place and would reliably track transactions involving the board's operations, trainee training, and continuing education surcharges. Further, the board stated that, while it has adopted minimum qualifications for board-appointed physicians, the competitive bidding process for board physician services will follow promulgation of regulations concerning criteria for selection of board physicians. The board plans to complete this process by September 2011.

Finding #11: The board made some expenditures that could constitute a misuse of state resources.

According to state law, state agencies cannot use state funds to pay for expenses used for personal purposes. However, in a contract between the board and the Bar Pilots covering July 1, 2006, through June 30, 2011, the board requires that the Bar Pilots purchase round-trip, business-class airline tickets for pilots attending training in Baltimore, Maryland, and at the Centre de Port Revel in France, and it requires that the board reimburse the Bar Pilots for these expenses. Business-class air travel provides the same basic service as economy class, but with added amenities of value to the traveler. We reviewed one invoice from the Bar Pilots requesting reimbursement for travel to the Centre de Port Revel in France and noted that business-class airfare cost an average of $6,200 for each pilot in August 2007. Using similar travel dates in August 2009, including the airline used by the pilots, we determined that, on average, purchasing economy-class tickets offered by three airlines to Lyon, France—the airport five of the six pilots in our sample used—could reduce costs by roughly 40 percent. According to the board's president, it is private industry practice to fly a mariner first class—which offers amenities beyond business class—when he or she must travel internationally to transfer onto another vessel. For example, a mariner leaving a vessel in Hong Kong to join a vessel in San Francisco would fly first class. However, the board is a regulatory agency and not a private shipping company. Such an expense, when an equivalent and less expensive alternative is available, is not appropriate and may constitute a misuse of state resources, which the state Constitution prohibits.

Also, the board's provision of free parking to current employees raises questions as to whether the parking expenditures, which are primarily for private benefit, constitute a misuse of state resources.

We recommended that the board cease reimbursing pilots for business-class airfare when they fly for training and amend its contract with the Bar Pilots accordingly; and cancel its lease for parking spaces or require its staff to reimburse the board for their use of the parking spaces.

Board's Action: Partial corrective action taken.

The board states that it has initiated an amendment to the contract with the San Francisco Bar Pilots to specify that the board would reimburse the cost of travel not to exceed the cost of the most economical refundable travel. The amended contract is under review at the California Highway Patrol and the board expects the process to be complete in December 2010. Further, the board reports that its office lease has been cancelled. Establishment of a new lease for board offices and other facility services will be implemented by the Department of General Services pursuant to state facilities rules and requirements. The Department of General Services is now seeking for the board a new facility not owned by the Port of San Francisco. The board anticipates completion by March 2011.

California Energy Resources Conservation and Development Commission

It Is Not Fully Prepared to Award and Monitor Millions in Recovery Act Funds and Lacks Controls to Prevent Their Misuse

LETTER REPORT NUMBER 2009-119.1, DECEMBER 2009

California Energy Resources Conservation and Development Commission's response as of December 2010

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a review of the preparedness of the California Energy Resources Conservation and Development Commission (Energy Commission) to receive and administer federal American Recovery and Reinvestment Act of 2009 (Recovery Act) funds awarded by the U.S. Department of Energy for its State Energy Program (Energy Program). The federal government enacted the Recovery Act for purposes that include preserving and creating jobs; promoting economic recovery; assisting those most affected by the recession; investing in transportation, environmental protection, and other infrastructure; and stabilizing state and local government budgets.

Finding #1: Because the Energy Commission is not yet prepared to administer Recovery Act funds, the State is at risk of losing millions.

As of November 16, 2009, the Energy Commission had entered into contracts totaling only $40 million despite having access to $113 million of the $226 million in Recovery Act funds it had been awarded for the Energy Program—the Energy Commission is not authorized to spend the remaining $113 million until January 1, 2010. Although these funds have been available to the Energy Commission since July 2009, it has approved the use of only $51 million for Energy Program services, and of this amount has entered into two contracts totaling $40 million with subrecipients for only two of the eight subprograms it intends to finance with Recovery Act funds. The funds from these two contracts, which were awarded to the Department of General Services and the Employment Development Department, will be used to issue loans, grants, or contracts to state departments and agencies to retrofit state buildings to make them more energy efficient and to provide job skills training for workers in the areas of energy efficiency, water efficiency, and renewable energy. However, none of the $40 million has been spent. Therefore, except for the $71,000 that the Energy Commission has used for its own administrative costs, no Recovery Act funds have been infused into California's economy. Additionally, the Energy Commission has been slow in implementing the internal controls needed to administer the Energy Program. Furthermore, based on the time frames provided by the Energy Commission, the Recovery Act funds will likely not be awarded to subrecipients until at least April 2010 to July 2010.

The Energy Commission still needs to complete several critical tasks before it can begin implementing the Energy Program and award Recovery Act funds to subrecipients to be spent for various projects. For example, the Energy Commission has not completed guidelines for subrecipients to follow when providing services under some of the new subprograms, or completed and released solicitations to potential subrecipients who will provide program services.

If the Energy Commission continues its slow pace in implementing the necessary processes to obligate the Recovery Act funds, the State is at risk of either having the funds redirected by the U.S. Department of Energy or awarding them in a compressed period of time without first establishing an adequate system of internal controls, which increases the risk that Recovery Act funds will be misused.

According to the Energy Commission's administrator for the Economic Recovery Program (program administrator), several factors have contributed to the delay in spending the Energy Program's Recovery Act funds. He stated that seven of the eight subprograms being funded by the Recovery Act funds

are new, and therefore it was necessary to develop program guidelines. He indicated that the Energy Commission had to wait until a bill was signed on July 28, 2009, giving it the statutory authority to develop and implement the guidelines and to spend the federal Recovery Act funds.

We recommended that the Energy Commission promptly solicit proposals from entities that could provide the services allowable under the Recovery Act and execute contracts, grants, or loan agreements with these entities.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission reported it has made significant progress implementing newly created programs and awarding Recovery Act funds. It stated that it has allocated its Energy Program funds in the following manner:

- $25 million to the Energy Efficient State Property Revolving Loan Program managed by the Department of General Services. The Energy Commission stated that as of December 21, 2010, retrofit work has begun at 62 state-owned facilities and five parking lots and more than $6.5 million has been disbursed by the Department of General Services.

- $25 million to the One Percent Energy Efficiency Loans program. The Energy Commission reported that initially the program was fully committed to 25 loans, however, four of the original loan recipients cancelled their projects and the Energy Commission is working to find replacements projects. It reported that one of the original projects is completed and the borrower will begin repayment in December 2010.

- $20 million to the Clean Energy Workforce Training Program managed by the Employment Development Department (EDD) and the Employment Training Panel (ETP). The Energy Commission asserts that as of October 31, 2010, EDD had awarded $14.5 million in grants to 28 regional partnerships and trained 2,909 people, and ETP had awarded $4.5 million to 14 entities and trained 482 people.

- $30.6 million to the Clean Energy Business Financing Program, administered by the California Business, Transportation and Housing Agency under a $1.6 million interagency agreement. The Energy Commission reported that six loans have been approved, totaling $23,999,000. The first loan for $5 million was executed on December 3, 2010, with five more anticipated to be executed by January 28, 2011. A seventh loan may be awarded through a forthcoming notice of proposed awards.

- $79.8 million to the Energy Efficiency Program. The Energy Commission states that it has awarded seven contracts, and has approved and executed six of them.

- $33.2 million to the Energy Upgrade California program. The Energy Commission reported that on October 21, 2010, it executed an agreement with the Local Government Commission to support the program. The Energy Commission describes the program as the statewide energy and water efficiency and renewable energy generation retrofit program for single and multiple family residential and commercial buildings. The program will provide a web portal that will be a one-stop energy upgrade resource center for building upgrades, financing and incentives, finding a qualified contractor, workforce training, and home energy ratings. Implementation of the web portal is planned for three phases and the Energy Commission anticipates implementation will begin in January 2011 and last through December 2011.

- $12.4 million to the Energy Commission to administer the Recovery Act funds.

Finding #2: The Energy Commission's current control structure is not sufficient to ensure proper use of Recovery Act funds.

The Energy Commission has not yet established the internal control structure it needs to adequately address the risks of administering Recovery Act funds. The Energy Commission is in the process of seeking help in establishing such a control structure, but as of November 16, 2009, had not issued a request for proposal (RFP) from potential contractors. The Energy Commission's contract manager estimates that it takes three to five months from the time the commission releases an RFP until the contract is executed. Added to the three to five months estimated to execute a contract will be whatever time the contractor needs to render the services it is hired to perform. Further delay increases the risk of delays in implementing the subprograms, possibly inhibiting the Energy Commission's ability to obligate Recovery Act funds before the September 30 deadline. Alternatively, the Energy Commission might try to award the funds to subrecipients without first establishing an adequate system of internal controls, increasing the possibility that Recovery Act funds will not be used appropriately and heightening the risk of fraud, waste, and abuse.

Our assessment of the Energy Commission's preparedness to administer the Recovery Act funds it received for the Energy Program showed that in some areas it appeared to be ready or almost ready, but we identified several areas in which the Energy Commission's controls are not adequate. For example, despite its assertions that its present internal control structure will enable it to properly administer the Recovery Act funds, the Energy Commission could not provide documentation to demonstrate that its existing controls are sufficient to mitigate and minimize the risks of fraud, waste, and abuse. In addition, the Energy Commission could not show it has a process in place to effectively monitor subrecipients' use of the Recovery Act funds and noted that it did not have reporting mechanisms in place to collect and review the data required to meet the Recovery Act transparency requirements.

We recommended that the Energy Commission, as expeditiously as possible, take the necessary steps to implement a system of internal controls adequate to provide assurance that Recovery Act funds will be used to meet the purposes of the Recovery Act. These controls should include those necessary to mitigate the potential for fraud, waste, and abuse. Such steps should include quickly performing the actions already planned, such as assessing the Energy Commission's controls and the capacity of its existing resources and systems, and promptly implementing all needed improvements.

Energy Commission's Action: Partial corrective action taken.

The Energy Commission reported that it has been addressing our recommendation through two contracting efforts. The first contract is for an audit support services contract to provide a commission-wide review of processes and procedures, including recommendations in areas where controls can be improved or strengthened. The contractor will also conduct risk assessments and audits of funding recipients. The second contract is for monitoring, evaluating, verifying, and reporting services to provide programmatic and performance reviews. The contractor will also validate data collected from or reported by funding recipients.

According to the commission, since the execution of the first contract on May 13, 2010, the contractor has completed a preliminary assessment of the Energy Commission's operations and expects to complete the final assessment in December 2010. The commission reports that a training series for commission project managers covering financial accountability is underway, and a second training module, scheduled for January 2011, will cover on-site monitoring. Further, a risk analysis tool has been sent to subrecipients so its controls can be assessed. This will allow the contractor to determine higher risk entities so it can focus their early auditing efforts. The commission believes that these activities taken as a whole will serve to further protect against fraud, waste, and abuse.

According to the commission, its second contract is for monitoring, evaluating, verifying, and reporting services. Since the commission executed the contract on April 28, 2010, the contractor has developed a database of planned projects and conducted some desk reviews and field visits to review installations. In addition, the contractor is developing a checklist tool to assist contract managers when they conduct on-site verification visits. The commission further reports that the contractor is developing monitoring and evaluation plans for projects funded with federal stimulus funds, and, as guided by the U.S. Department of Energy, will focus on job creation and retention, energy and demand savings, renewable energy capacity and generation, and carbon emission reductions.

Department of Fish and Game, Office of Spill Prevention and Response

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2006-1125 (REPORT NUMBER I2009-1), APRIL 2009

Department of Fish and Game's response as of April 2010

A high-level official formerly with the Office of Spill Prevention and Response (spill office) of the Department of Fish and Game (Fish and Game), incurred $71,747 in improper travel expenses she was not entitled to receive.

Finding #1: The official routinely claimed expenses to which she was not entitled, and other spill office officials allowed the official to receive reimbursements for travel expenses that violated state regulations.

From October 2003 through March 2008, Official A, a high-level official who subsequently left the spill office, improperly claimed $71,747 for commute and other expenses incurred near her home and headquarters. Specifically, for more than four years, Official A improperly claimed expenses associated with commuting between her residence and her headquarters, in violation of state regulations that disallow such expenses. Throughout the period we investigated, Official A resided in Southern California. Documents from Official A's personnel files and records from the State Controller's Office indicate that her official headquarters was in Sacramento. In addition, Official A was assigned office space in Sacramento and a state-issued cell phone with a Sacramento area code, and she regularly worked in the Sacramento spill office. However, Official A also claimed she worked from her residence—a practice that spill office officials apparently allowed—in an effort to legitimize expenses that otherwise she was not entitled to incur. Despite her claims, we found no legitimate business reason that required Official A to work from her home. The table summarizes the improper expenses that Official A claimed.

Table

Improper Travel Expenses Official A Claimed From October 2003 Through March 2008

TYPE OF IMPROPER EXPENSE	AMOUNT
Commute expenses for trips between residence and headquarters	$45,233
Commute-related parking and other expenses	7,608
Lodging within 50 miles of headquarters	10,286
Meals and incidentals incurred within 50 miles of headquarters	6,970
Lodging within 50 miles of residence	486
Meals and incidentals incurred within 50 miles of residence	236
Other improper expenses	928
Total	**$71,747**

Source: Bureau of State Audits' analysis of Official A's travel expense claims, vehicle logs, and flight records.

Investigative Highlights . . .

An official with the Department of Fish and Game (Fish and Game) claimed travel expenses to which she was not entitled:

- *The official improperly claimed travel expenses associated with commuting between her residence and headquarters for more than four years.*
- *The official contended that as a condition of her employment, another former high level official with the Office of Spill Prevention and Response allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento.*
- *Fish and Game staff never questioned the official about the actual location of her headquarters even though for the vast majority of the travel expense claims submitted, the official listed her residential address and wrote "same" for her headquarters address.*

We determined that Official A improperly claimed $52,841 for expenses related to traveling between her home and headquarters (commute expenses). These expenses consisted of $45,233 for flights between Sacramento and Southern California, $6,922 in parking expenses, and $686 for other commute-related expenses.

State travel regulations allow employees to seek reimbursement for parking expenses when going on travel assignments as part of their state duties; however, the trips we identified were part of Official A's commute. In addition, violating prohibitions in a state regulation, Official A improperly claimed $17,978 in lodging and meal expenses incurred within 50 miles of her home or headquarters. Furthermore, for 21 months during the period we reviewed, Official A improperly claimed $928 for Internet services at her residence.

Official A contended that as a condition of her employment, a former high-level official with the spill office, Official B, allowed her to work from her home, identify it as her headquarters, and claim expenses when traveling to Sacramento. She therefore asserted that she was allowed to use state vehicles or state funded flights for commutes between her Southern California home and her Sacramento headquarters. In addition, Official A stated that she was allowed to claim lodging and per diem expenses in Sacramento, her official headquarters location. After Official B left state employment in 2003, other spill office officials, including officials C and D, approved Official A's travel claims. Officials C and D also allowed her to continue to commute at the State's expense and to receive reimbursements for expenses incurred near her official headquarters.

When we spoke with officials C and D, they indicated that they were aware that officials A and B had some form of informal agreement that allowed Official A to receive reimbursements for expenses incurred near her Sacramento headquarters. However, it appears that officials A and B never documented this arrangement. Even if the agreement had been formally documented, these actions violated state regulations, which do not allow state employees to receive payments for travel expenses incurred near their headquarters or for their commute between home and headquarters. We were unable to contact Official B to confirm his arrangement with Official A, but we believe that such an informal agreement likely existed. Nevertheless, Official B lacked the authority to make such an arrangement.

We recommended Fish and Game seek to recover the amount it reimbursed Official A for her improper travel expenses. If it is unable to recover all of the reimbursement, Fish and Game should explain and document its reasons for not seeking recovery.

Fish and Game's Action: Pending.

Fish and Game responded that it is investigating the activities related to this case and determining the appropriate legal and administrative actions warranted, including taking necessary corrective measures or disciplinary actions. In addition, after we provided Fish and Game with a draft copy of this report in April 2009, it produced a document signed by Official B in 2002 that requested Official A's position to be moved from Sacramento to a regional spill office location in Southern California. Fish and Game personnel approved this request; however, it appears this document was not forwarded to the Department of Personnel Administration (Personnel Administration) as required for approval. Thus, the position change was never properly formalized. Further, Official B lacked the authority to allow Official A to receive payments for travel expenses incurred near her official headquarters in Sacramento or for her commute between home and headquarters. In January 2010 Fish and Game notified us that it had completed a review of Official A's expenses. However, as of April 2010, it had yet to determine if it would seek to recover reimbursement from Official A for the improper commute and travel expenses.

Finding #2: Fish and Game should have been aware that Official A's travel expenses were improper.

Our investigation determined that Fish and Game should have been aware that Official A's travel expenses did not adhere to state regulations and were therefore improper. After Official A's travel claims were reviewed and approved by other high-ranking spill office officials, the spill office routed the travel claims to Fish and Game's accounting department for processing and reimbursement. For the vast majority of the travel expense claims that Official A submitted for reimbursement for the period we reviewed, Official A listed on the claim forms her residential address and wrote "same" for her headquarters address. However, Fish and Game accounting staff never questioned Official A about the actual location of her headquarters. Nevertheless, we found eight examples among Official A's travel claims on which Fish and Game accounting employees asked Official A either to clarify the purpose of her trips or to provide other information. Although Fish and Game accounting staff did not question Official A specifically about the location of her headquarters, she responded at least twice to them that she had an office in Southern California and one in Sacramento. Because state regulations define headquarters as a single location, accounting staff should have elevated this issue to Fish and Game management to ensure that Official A's travel claims were appropriate.

We recommended that Fish and Game take the following actions to improve its review process for travel expense claims:

- Require all employees to list clearly on all travel expense claims their headquarters address and the business purpose of each trip.
- Ensure that the headquarters address listed on travel expense claims matches the headquarters location assigned to the employees position.
- For instances in which the listed headquarters location differs from the location assigned to the employee's position, require a Fish and Game official at the deputy director level or above to provide a written explanation justifying the business need to alter the headquarters location. This justification must also include a cost-benefit analysis comparing the two locations and should be forwarded to Personnel Administration for approval.

Fish and Game's Action: Partial corrective action taken.

Fish and Game stated in January 2010 that it had updated its employee training to ensure that employees identify the addresses of their headquarters and the purposes of their trips on travel expense claims. According to Fish and Game, it required employees to complete a form designating either a state office address or home address as their headquarters so that supervisors could confirm that correct addresses were listed on employees' travel expense claims. However, we believe this truncated process of certification and approval of an employee's home address as headquarters severely limits the internal controls necessary for Fish and Game to monitor telecommuting assignments and to ensure travel expenses are in the State's best interest. The headquarters designation should be based on an employee's position and not the preference of an employee or supervisor, and Fish and Game should have procedures in place to ensure that the designation of an employee's residence as his or her headquarters is appropriate, necessary, and position-specific. Such designations should be limited strictly to instances in which Fish and Game can clearly show that they are in the State's best interest.

Regarding our recommendation that Fish and Game require justification of the business need to alter a headquarters location identified on travel expense claims, Fish and Game was less comprehensive. In its January 2010 update, Fish and Game stated it would require certification and justification for a headquarters designation that differed from the location assigned for the employee's position. However, it did not specify that the justification should require the approval of a deputy director, that it should include a cost-benefit analysis, and that it should be forwarded to Personnel Administration for approval. Thus, Fish and Game has failed to take appropriate action to address the lack of oversight that led to Official A claiming $71,747 in improper travel expenses. As a result, Fish and Game is susceptible to further instances of its employees incurring improper commute and travel expenses.

Dymally-Alatorre Bilingual Services Act

State Agencies Do Not Fully Comply With the Act, and Local Governments Could Do More to Address Their Clients' Needs

REPORT NUMBER 2010-106, NOVEMBER 2010

Responses from 11 audited state agencies as of November 2010 and three local agencies as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits to determine whether state and local agencies comply with the Dymally-Alatorre Bilingual Services Act (Act). The Act is intended to ensure that individuals who do not speak or write English or whose primary language is not English, referred to in our report as limited-English-proficient (LEP) clients, are not prevented from using public services because of language barriers. For a sample of state and local agencies, the audit committee asked us to determine the procedures and practices that the agencies use to identify the need for language assistance, to evaluate whether these processes accurately identify actual need, and to determine the effectiveness of the methods that the agencies use to monitor their own compliance with the Act. We selected a sample of 10 state agencies for our review, and we surveyed 25 counties and cities throughout the State. The audit committee also asked us to review the policies and procedures used by the State Personnel Board (Personnel Board) to monitor and enforce state agencies' compliance with the Act.

Finding #1: The Personnel Board does not inform all state agencies about their responsibilities under the Act.

The Personnel Board is not meeting the Act's requirement that it inform all state agencies of their duties under the Act. The Act requires the Personnel Board to notify state agencies of such responsibilities, including the need to conduct a language survey at each of their field offices by October 1 of each even-numbered year to identify languages other than English that 5 percent or more of the state agencies' LEP clients (substantial LEP populations) speak. In its efforts to meet this requirement, the Personnel Board created a master list to identify and track the agencies that were potentially required to comply with the Act during the 2008 biennial language survey and the 2009 biennial implementation plan cycle (2008–09 biennial reporting cycle). One of the sources for its master list is a report of state entities that it creates from a file it receives from the State Controller's Office. However, the Personnel Board's chief information officer explained that the Personnel Board is unsure of the parameters that determine which entities that file includes. He asserted that the file would include all major agencies but that some smaller boards or commissions might be omitted. We identified at least nine entities that the Personnel Board should have informed about their responsibilities under the Act but did not.

Audit Highlights . . .

Our review of state and local agencies' compliance with the Dymally-Alatorre Bilingual Services Act (Act) revealed that the State Personnel Board (Personnel Board):

» *Has not effectively implemented key recommendations from our 1999 report.*

» *Is not meeting most of its responsibilities under the Act, including:*

- *Informing state agencies of their responsibilities and ensuring they assess their clients' language needs.*
- *Evaluating compliance with the Act and ordering deficient state agencies to take corrective action.*
- *Ensuring complaints are resolved timely.*

» *Further, our review of 10 state agencies' compliance with the Act revealed the following:*

- *Nine conducted required language surveys, yet four reported erroneous results and two could not adequately support their results.*
- *None had adequate procedures in place to determine compliance with requirements for translation of certain written materials.*
- *Some are not maximizing opportunities to reduce their bilingual services costs by leveraging existing California Multiple Award Schedules or the Personnel Board's contracts.*

continued on next page . . .

Moreover, our survey of administrators and department managers in 25 cities and counties throughout California disclosed the following:

- *Some are not fully addressing their clients' bilingual needs.*
- *Several have not translated materials explaining their services.*
- *Many are not aware of the Act and do not have formal policies for providing bilingual services.*

To ensure that all state agencies subject to the Act are aware of their potential responsibilities to provide bilingual services, we recommended that the Personnel Board improve its processes to identify and inform all such state agencies of the Act's requirements.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it has obtained the Department of Finance's Uniform Codes Manual to create a comprehensive state agency listing. In addition, the Personnel Board reported that its bilingual services program's processes will also include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language surveys and implementation plans.

Finding #2: The Personnel Board does not sufficiently monitor state agencies' participation in language surveys.

The Personnel Board does not always ensure that state agencies conduct language surveys to identify their clients' language needs. The Personnel Board identified 151 state agencies as potentially subject to the Act in 2008; however, only 58 of these agencies conducted language surveys. Further, the Personnel Board's records also indicate that three of the 58 agencies did not follow through and submit implementation plans after completing their language surveys. Records also show that 33 of the 151 state agencies did not take part in the surveys, even though the Personnel Board did not exempt them from doing so. Finally, the Personnel Board exempted the remaining 60 agencies from participating in the 2008 biennial language survey, but the Personnel Board did not always adhere to the Act's exemption criteria when granting these exemptions. If the Personnel Board does not make certain that state agencies conduct language surveys and prepare implementation plans, or if the Personnel Board inappropriately grants exemptions, it is not ensuring that state agencies that provide services to the public are aware of and address the language needs of their LEP clients. The Personnel Board's bilingual services program manager acknowledged that the Personnel Board does not have formal procedures for following up with state agencies that do not submit language surveys or implementation plans, and also agreed that the Personnel Board's exemption process needs improvement.

We recommended that the Personnel Board make certain that every state agency required to comply with the Act conducts language surveys and submits implementation plans unless the Personnel Board exempts them from these requirements. The Personnel Board should also ensure that it adheres to the specific criteria contained in the Act when exempting agencies from conducting language surveys or preparing implementation plans.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with this recommendation and stated that its bilingual services program's processes will include procedures to ensure that all newly created state agencies are properly notified and contacted with regard to both language

surveys and implementation plans. The Personnel Board also indicated that it has incorporated accurate exemption language as specified in the Act into the forms for the language survey and implementation plan. Finally, the Personnel Board reported that its bilingual services program has instituted a tracking mechanism and review process for each exemption approval to reduce the risk of error.

Finding #3: The Personnel Board does not require state agencies to submit key information.

The Personnel Board does not require state agencies to submit critical information that it needs to assess whether the agencies are meeting all of their responsibilities to serve their LEP clients. The Personnel Board receives state agencies' language survey results and implementation plans electronically through an online system that it has designed for this purpose. However, the Personnel Board does not require state agencies to identify their deficiencies in providing translated written materials, to provide detailed descriptions of how they plan to address any deficiencies in written materials or staffing, or to identify when they will remedy any noted deficiencies. Because the Personnel Board does not solicit all required information from state agencies, it cannot fulfill its monitoring and enforcement responsibilities.

The Personnel Board's bilingual services program manager agreed that the limited information the Personnel Board collects inhibits its ability to monitor and enforce state agencies' compliance with the Act. She also said that the Personnel Board does not adequately review agencies' implementation plans or conduct other formal monitoring activities to evaluate whether the state agencies are complying with the Act's staffing and written materials requirements. Additionally, she acknowledged that the Personnel Board does not order agencies to make changes to their implementation plans or to provide periodic progress reports on their efforts to comply with the Act, and it does not otherwise order state agencies to comply with the Act. Finally, she told us that the bilingual services unit currently has only four staff, which she asserts is not enough to address all of the Personnel Board's responsibilities under the Act.

We recommended that the Personnel Board require state agencies to provide all of the information required by the Act. For example, the Personnel Board should ensure that state agencies identify their deficiencies in staffing and translated written materials and that the state agencies' implementation plans detail sufficiently how and when they plan to address these deficiencies.

In addition, we recommended that the Personnel Board assess the adequacy of state agencies' language surveys and implementation plans. If it determines that implementation plans do not address deficiencies in staffing or written materials adequately, the Personnel Board should order the agencies to revise or supplement their plans accordingly. The Personnel Board should also require state agencies to report to it every six months on their progress in addressing their deficiencies. If the Personnel Board determines that state agencies have not made reasonable progress toward complying with the Act, we recommended that it consider ordering them to comply with the Act. These actions could include ordering state agency officials to appear before the Personnel Board to explain why their agencies have not complied. If these actions or its other efforts to enforce the Act are ineffective, the Personnel Board should consider asking a court to issue writs of mandate under Section 1085 of the Code of Civil Procedure, to require agencies to perform their duties.

Finally, we recommended that the Personnel Board seek enough additional staff to fulfill its obligations under the Act, or seek changes to the Act that would reduce its responsibilities and make them commensurate with its staffing levels.

Personnel Board's Action: Partial corrective action taken.

The Personnel Board concurs with these recommendations and reported that it has revised its forms to capture all of the information required by the Act. In addition, the Personnel Board stated that if it determines that state agencies' implementation plans do not adequately address deficiencies,

its bilingual services program staff will follow up with the agencies to supplement their plans. The Personnel Board also indicated that it has revised its bilingual services program's procedures to incorporate a six-month progress report by deficient agencies. Further, the Personnel Board agreed that its five-member board should order noncompliant agencies to appear before the board to explain their noncompliance, and stated that its bilingual services program revised its procedures accordingly. The Personnel Board also indicated that it will consider additional appropriate measures to enforce compliance. Finally, the Personnel Board stated that it will consider options such as legislative changes and/or budget change proposals to increase staffing.

Finding #4: The Personnel Board generally does not ensure that language access complaints are resolved.

In identifying other practices the Personnel Board uses to monitor state agencies' compliance with the Act, the bilingual services program manager stated that the Personnel Board implemented a toll-free complaint line with mailbox options for the top 12 languages other than English reportedly encountered by state agencies. At that time, it sent both a memorandum informing state agencies of the complaint line and posters for the agencies to display in their field offices. The posters display a message in all 12 languages that informs clients of their right to receive services and information in their native languages and that directs them to call the Personnel Board's complaint line if state agencies do not meet the clients' language needs.

The Personnel Board intends its complaint process to ensure that clients' issues are directed to the appropriate government agency for resolution; consequently, in most cases the Personnel Board forwards the complaints to relevant state agencies for them to resolve. However, it generally does not follow up with the responsible state agencies to ensure that language access complaints are resolved; therefore, the Personnel Board does not have assurance that state agencies are addressing the language needs of these clients. In one instance, an individual repeatedly called the Personnel Board's complaint line over a period of nearly three weeks to report that he had not received language assistance from a state agency. If the Personnel Board had followed up with the agency to ensure that it resolved the initial complaint, the Personnel Board might have eliminated the need for this individual to make subsequent calls.

We recommended that the Personnel Board follow up with the responsible state agencies to ensure that the agencies resolve the language access complaints it receives in a timely manner.

Personnel Board's Action: Corrective action taken.

The Personnel Board revised the bilingual services program's procedures to incorporate additional fields to its tracking system to capture the date that a complaint was resolved and how it was resolved.

Finding #5: The Personnel Board's biennial report lacks substance.

The Act requires the Personnel Board to identify significant problems or deficiencies and propose solutions where warranted in its reports to the Legislature. We reviewed the most recent report, which the Personnel Board issued in March 2010, and we found that it does not clearly identify whether state agencies have the number of qualified bilingual staff in public contact positions that is sufficient to serve the agencies' substantial populations of LEP clients. As in the case of staffing deficiencies, the Personnel Board's March 2010 report also does not clearly address whether state agencies are meeting the Act's requirements for translating written materials. In addition, the Personnel Board's March 2010 report does not identify specific agencies that may not be complying with the Act. For example, it states that 13 state agencies accounted for 90 percent of the reported bilingual position deficiencies, but it does not identify these agencies by name. Further, although state agencies often have field offices located throughout the State, the report does not show these deficiencies by field office.

We recommended that the Personnel Board improve the content of its biennial report to the Legislature to identify problems more clearly and to propose solutions where warranted. Specifically, the report should clearly indicate whether state agencies have true staffing deficiencies or deficiencies in translated materials. In addition, the report should identify any agencies that are not complying with the Act and should present key survey and implementation plan results by state agency and field office to better inform policymakers and the public about the language needs of residents in certain areas of the State and about state agencies' available resources to meet those needs.

Personnel Board's Action: Pending.

The Personnel Board concurs with this recommendation and stated that it will revise the format and content of future biennial reports to reflect more comprehensive and meaningful data.

Finding #6: State agencies do not fully comply with the Act.

Although nine of the 10 agencies we reviewed conducted language surveys in 2008, four reported erroneous survey results for one or more of their local offices, and two did not have sufficient documentation to support their survey results. If agencies use inaccurate survey data or do not retain documentation supporting their survey results, they compromise their ability to evaluate their potential need for additional bilingual staff and to identify written materials they need to translate. The tenth agency we reviewed, the California Emergency Management Agency (Emergency Management), failed to conduct the 2008 biennial language survey. Additionally, only one of the state agencies we reviewed formally analyzed its survey results to determine whether the use of other available options, in addition to qualified bilingual staff in public contact positions, was serving the language needs of its clients, as the Act requires. None of the state agencies we reviewed had adequate procedures in place to determine whether they met the Act's requirements to translate certain written materials for their substantial LEP populations. Furthermore, most of the state agencies we reviewed have not developed plans to address their deficiencies in staffing and translated written materials.

To ensure that they meet their constituents' language needs, we recommended that state agencies do the following:

- Make certain that they accurately assess and report their clients' language needs to the Personnel Board.
- Analyze formally their language survey results and consider other available bilingual resources to determine their true staffing deficiencies.
- Establish procedures to identify the written materials that the Act requires them to translate into other languages and ensure that such materials are translated or made accessible to the agencies' LEP clients.
- Develop detailed corrective action plans describing how and when the state agencies will address their staffing and written materials deficiencies. In addition, they should submit these corrective action plans to the Personnel Board as part of the state agencies' overall implementation plans.

Emergency Management's Action: Partial corrective action taken.

Emergency Management stated that it will participate in the language survey that is held every even-numbered year, and will submit its language survey results to the Personnel Board by the due date. Emergency Management conducted its 2010 biennial language survey and submitted the results to the Personnel Board in October 2010. Based on its language survey results, Emergency Management indicated that it was able to determine which divisions may require the services of a bilingual employee within a specific program. Emergency Management also asserted that it will

ensure that translated written materials in the appropriate languages are made accessible for its LEP clients. In addition, Emergency Management stated that it is in the process of updating its bilingual services policy, which includes creating a bilingual services handbook that explains the responsibilities and requirements of the Act. Finally, Emergency Management reported that it is in the process of developing an implementation plan showing the corrective actions to be taken to ensure there are no staffing or translated written materials deficiencies, and it will submit this implementation plan to the Personnel Board by the October 2011 due date.

California Highway Patrol's Action: Pending.

The California Highway Patrol (Highway Patrol) stated that it will continue to assess its clients' language needs and to report accurate information to the Personnel Board. In addition, it will continue to enhance and formalize methods of analyzing language survey results and monitoring bilingual staff deficiencies. Highway Patrol also asserted that it will develop a list of documents that are required to be translated and compare this list to existing translations to identify any remaining translated material needs. Finally, Highway Patrol stated that it will submit to the Personnel Board corrective action plans that address any staffing and written materials deficiencies by April 2011.

Department of Corrections and Rehabilitation's Action: Pending.

The Department of Corrections and Rehabilitation (Corrections) agreed that there are deficiencies with regard to compliance with the Act, and stated that it will evaluate the deficiencies identified in our audit further and take corrective action. Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Department of Food and Agriculture's Action: Partial corrective action taken.

The Department of Food and Agriculture (Food and Agriculture) reported that it enhanced its training processes and provided education and guidance for all language survey reporting assistants prior to the commencement of its 2010 biennial language survey. In addition, its bilingual services program coordinator worked closely with its reporting assistants to ensure that they have a better understanding of their role and responsibilities, and are following the appropriate standards and procedures in tallying LEP contacts. Further, at the conclusion of the 2010 biennial language survey, its bilingual services program coordinator reviewed all the tally sheets from every participating division to make sure that the information gathered and reported will yield accurate survey results. In addition, Food and Agriculture stated that it has engaged in a dialogue with the Personnel Board and other state agencies to collaboratively share ideas, efforts, and resources to address the requirements of the Act. Finally, Food and Agriculture reported that its equal employment opportunity officer recently invited other equal employment opportunity professionals to form a collaborative group that will discuss and work together in defining and implementing the provisions of the Act.

Department of Housing and Community Development's Action: Partial corrective action taken.

The Department of Housing and Community Development (Housing) reported that beginning with the 2010 biennial language survey, it assigned responsibility for the survey to its equal employment opportunity officer, who also serves as its bilingual services program coordinator. This individual is responsible for coordinating, implementing, and overseeing the language survey, analyzing completed survey tally sheets, reporting the results of the analysis to the Personnel Board, and maintaining sufficient documentation. Housing also indicated that it will continue to formally analyze its language survey results, including considering other available options for bilingual services in determining staffing deficiencies. In addition, Housing indicated that by June 2011, it will begin to formally document such analyses. Housing also stated that by June 2011 it will confer with the Personnel Board and other Act-compliant departments to identify best practices for determining which written materials need to be translated. Furthermore, Housing indicated that it will develop procedures for identifying written materials to be translated, create a list of written materials that require translation,

and establish dates for the translation and distribution of written materials by June 2012. However, we believe that Housing should develop these procedures much earlier so that its LEP clients have access to this information sooner. In fact, we believe that Housing should develop these procedures and describe how and when it will address any written materials deficiencies in its next biennial implementation plan, which is due in October 2011. Housing also reported that by June 2011, it will submit a memorandum to the Personnel Board informing it that a detailed corrective action plan relative to staffing deficiencies is not required because its 2010 biennial language survey revealed that Housing no longer has staffing deficiencies. Finally, Housing indicated that by June 2011 it will also prepare and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written deficiencies. As noted above, Housing will need to develop procedures for identifying materials requiring translation before it will be in a position to develop a detailed corrective action plan for addressing any written materials deficiencies.

Department of Justice's Action: Partial corrective action taken.

The Department of Justice (Justice) reported that it has recently appointed a new bilingual services program coordinator to monitor the program, the biennial language survey, and the subsequent implementation plan. Justice also indicated that it has adopted and implemented new procedures that provide a higher level of quality control regarding reviewing and analyzing the language survey data in order to avoid future reporting errors. In addition, Justice stated that it carefully analyzed its 2008 biennial language survey results and determined that its true staffing deficiencies were significantly less than originally reported. Justice indicated that these findings were included in an implementation plan follow-up report it submitted to the Personnel Board. Furthermore, Justice reported that it has made draft revisions to the bilingual services program portion of its administrative manual to detail the procedures used to identify written materials that require translation under the Act. Finally, Justice stated that the implementation plan follow-up report that it submitted to the Personnel Board in August 2010 included a corrective action plan to address the deficiencies of the 2008–09 biennial reporting cycle. Furthermore, Justice plans to take corrective actions to address any future identified staffing or written materials deficiencies.

Department of Motor Vehicles' Action: Partial corrective action taken.

The Department of Motor Vehicles (Motor Vehicles) reported that it implemented improved procedures and incorporated additional checks and balances for the 2010 biennial language survey to ensure that it accurately assesses and reports its LEP clients' language needs to the Personnel Board. Motor Vehicles formally analyzes its language survey results and considers other available bilingual resources to determine its true staffing deficiencies. Motor Vehicles will establish a taskforce and create a list of printed materials that require translation by April 2011. Finally, Motor Vehicles indicated that it will develop and submit to the Personnel Board a detailed corrective action plan that describes how and when it will address its written materials deficiencies by October 2011.

Department of Public Health's Action: Pending.

The Department of Public Health (Public Health) reported that it will continue to ensure that it accurately assesses and reports its client's language needs to the Personnel Board. Public Health will also analyze the language survey results and its available bilingual resources to determine its true staffing deficiencies by February 2011. Public Health also stated that it will develop procedures for identifying written materials needing translation for its LEP clients by March 2011. Finally, Public Health will submit an implementation plan to the Personnel Board that includes corrective action plans addressing any staffing and written materials deficiencies by October 2011.

Department of Toxic Substances Control's Action: Pending.

The Department of Toxic Substances Control (Toxic Substances Control) accurately assessed and reported its client's language needs to the Personnel Board. Toxic Substances Control also reported that it performs an internal analysis of its language survey results to determine whether it has true staffing deficiencies. However, it recognizes that it needs to formally document this analysis, and

thus it will ensure that all future analyses of its language survey results and resulting conclusions are formally documented and retained. Toxic Substances Control also indicated that it will develop procedures to identify the materials the Act requires to be translated, as well as a process to ensure that those materials are translated or made accessible to its LEP clients. Finally, Toxic Substances Control will develop a corrective action plan describing how and when it will address its staffing and written material deficiencies and it will include this plan in the implementation plan it submits to the Personnel Board.

Employment Development Department's Action: Partial corrective action taken.

The Employment Development Department (Employment Development) reported that it designed and implemented corrective actions for the recently completed 2010 language survey to ensure it collected all hard-copy documentation from all public contact employees so there would be no questions about the accuracy of data provided to the Personnel Board. In addition, Employment Development stated that it added controls over data collection, tabulation, and submission so that all information could be traced back to hard-copy documentation. Employment Development stated that it does not consider it cost-effective to implement procedures that require extensive analysis of how to remedy minor staffing deficiencies, but it will update its procedures to have managers document their analyses for significant deficiencies. We believe that Employment Development could determine whether it has sufficient alternative resources (i.e., certified staff from other units, contract staff, etc.) to mitigate the staffing deficiencies identified in its biennial language survey without having to perform an "extensive analysis." Employment Development also reported that it will supplement its existing policy and procedures to provide further guidance about translating materials into other languages. This guidance will include steps to identify and maintain lists of materials that need translation, and procedures to ensure that identified materials are translated.

Finally, Employment Development stated that it will obtain operational managers' reasons for choosing a particular remedy for a staffing deficiency along with implementation details should a significant staffing deficiency occur, and will submit that information to the Personnel Board. Likewise, Employment Development stated that if future language surveys identify any materials that need translation, it will identify its corrective action steps and timeline and submit that information to the Personnel Board.

Finding #7: State agencies are not maximizing opportunities to reduce the costs of providing bilingual services.

Some state agencies are not maximizing opportunities to reduce their costs to provide bilingual services by leveraging existing California Multiple Award Schedules (CMAS) contracts with the Department of General Services (General Services) and the Personnel Board's contracts for interpretation and translation services. For example, both Employment Development and Food and Agriculture entered into separate agreements with a contractor to translate documents into Spanish at a cost of 30 cents per word; however, this service is available from a CMAS vendor for 17 cents per word. If these departments purchase these services up to their maximum contracted amounts, they will collectively end up paying approximately $47,400 more than if they purchased these services from the CMAS vendor. Moreover, the savings could be greater because the prices listed in CMAS vendors' contracts represent the maximum rates they may charge for a given service; thus, General Services strongly encourages agencies to negotiate more favorable rates with these vendors.

The Personnel Board maintains one contract for sign language interpretation services and another contract for over the telephone interpretation services and written translation services. We found that these contracts contained rates that were sometimes lower than the rates negotiated by other state agencies. Thus, state agencies needing contract interpreters or translators should check with the Personnel Board to identify the vendors with which the Personnel Board contracts and the associated rates it is paying. State agencies can use this information as leverage when negotiating prices with CMAS or other vendors.

We recommended that state agencies leverage General Services' and the Personnel Board's contracts for interpretation and translation services to potentially reduce the costs of providing bilingual services.

Emergency Management's Action: Pending.

Emergency Management reported that it will research the possibility of utilizing General Services' and the Personnel Board's contracts as a cost-effective tool to provide written translation and interpretation services for its LEP clients, and will outline this process in its 2011 implementation plan.

Highway Patrol's Action: Corrective action taken.

Highway Patrol reported that it complies with this recommendation and will continue to negotiate the lowest possible rates for bilingual services while ensuring quality deliverables.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services.

Food and Agriculture's Action: Pending.

Food and Agriculture reported that its equal employment opportunity office will further educate all of its divisions regarding the availability of CMAS contracts for language access services. Food and Agriculture also indicated that in upcoming training sessions and workshops, the equal employment opportunity office will promote the utilization of CMAS contracts and the importance of negotiating with CMAS vendors as a cost-effective way of providing language access services.

Housing's Action: Pending.

In an effort to achieve the best service at the lowest cost possible, Housing's equal employment opportunity officer will contact the Personnel Board to obtain information and pricing on its bilingual services contracts, and will compare those prices to the rates of the CMAS and other vendors that it currently uses for its bilingual services needs. Housing reported that these activities will occur by June 2011.

Justice's Action: Pending.

Justice reported that it will consider exploring the bureau's recommendation to leverage General Services' and the Personnel Board's contracts when its current language interpretation and translation service contract expires.

Motor Vehicles' Action: Corrective action taken.

Motor Vehicles reported that it already complies with this recommendation, and therefore, no further action is required.

Public Health's Action: Pending.

Public Health reported that it will issue a contract bulletin by March 2011 outlining the usage of CMAS contracts to procure interpretation and translation services. Public Health indicated that this bulletin will also inform department employees that utilizing CMAS contracts could provide leverage to reduce costs.

Toxic Substances Control's Action: Pending.

Toxic Substances Control reported that it will consider General Services' and the Personnel Board's contracts for interpretation and translation services when appropriate in an effort to reduce the costs of providing bilingual services.

Employment Development's Action: Pending.

Employment Development asserted that it leverages all of General Services' master and statewide contracts, including CMAS contracts, when appropriate for use. However, Employment Development stated that before contracting out for personal services with a private vendor, as is available through CMAS, it first considers an agreement with another state agency. Nonetheless, the Employment Development contract described previously illustrates that state agencies have opportunities to reduce their costs of providing bilingual services by leveraging CMAS contracts.

Finding #8: Two state agencies did not follow contracting rules to pay for their bilingual services.

During the course of our audit, we discovered some inappropriate contracting practices at Public Health and Corrections. The Public Contracts Code generally requires state agencies to obtain a minimum of three bids when contracting for services valued at $5,000 or more. In addition, the State Contracting Manual prohibits state agencies from splitting into separate tasks, steps, phases, locations, or delivery times to avoid competitive bidding requirements any series of related services that would normally be combined and bid as one job.

Despite these requirements, during fiscal year 2007–08, Public Health used four individual service orders for $4,999.99 each to one vendor for interpreting services. Instead of executing multiple service orders having an aggregate value exceeding $5,000 with one vendor for the same service, Public Health should have combined the services into one job and solicited competitive bids. Public Health has a decentralized procurement process and does not track centrally the service orders that exist for language access services; thus, it places itself at risk for violating the State's contracting rules.

Corrections established five individual service orders for $4,999.99 each to purchase interpretation services from one vendor during fiscal year 2009–10. It agrees that these five service orders should have been consolidated into a single competitively bid contract. According to Corrections' service contracts chief, it inadvertently used the five service orders in this case to purchase services from one vendor because its headquarters office received these service orders from different parole regions at different times, and it did not identify the need for a single contract.

We recommended that Public Health and Corrections develop procedures to detect and prevent contract splitting.

Corrections' Action: Pending.

Corrections reported that it would review its internal procurement controls to ensure it is utilizing the reduced rates offered by existing CMAS contracts for language access services. In addition, Corrections stated that it would address our specific recommendations in a corrective action plan at 60-day, six-month, and one-year intervals.

Public Health's Action: Pending.

Public Health reported that it will strengthen its oversight of service orders by providing semi-annual reminders to its staff on the use of service orders to ensure that programs are complying with the guidelines of its service order manual. In addition, Public Health stated that its internal auditors will perform periodic inspections to ensure compliance with contract requirements, prevent splitting of service orders, and to ensure service orders do not exceed the maximum allowed amount of

$4,999.99 per service type and contractor in one fiscal year. Finally, Public Health indicated that it will issue a policy memo by January 2011 that outlines the appropriate and inappropriate uses of service orders and the tracking log that each program must keep for auditing purposes.

Finding #9: Some local agencies have no formal process for clients to complain about any lack of bilingual services.

Our survey of local government administrators and department managers revealed that residents in the cities of Fremont, Santa Ana, and Garden Grove may have insufficient means of voicing their need for bilingual services. Specifically, these jurisdictions reported that they do not have a complaint process at the city's administration offices or at the individual local department included in our survey that would allow the public to notify them about a lack of available bilingual staff or translated written materials. Local agencies without a formal complaint process that would allow their LEP clients to report formally any lack of bilingual services may not hear or address such complaints appropriately.

We recommended that the cities of Fremont, Santa Ana, and Garden Grove should consider establishing complaint processes through which the public can report the absence of bilingual services or resources.

City of Fremont's Action: Pending.

The city of Fremont reported that it is currently researching the complaint processes that other jurisdictions have in place and plans to adopt a complaint procedure in early 2011.

City of Santa Ana's Action: Pending.

The city of Santa Ana (Santa Ana) reported that it plans to provide complaint forms regarding bilingual services and resources at all of its public counters and on its Web site, and that these forms will be available in each of the primary languages spoken in Santa Ana. In addition, Santa Ana stated that it will ensure that a central department is responsible for addressing all complaints. Finally, Santa Ana asserted that it will ensure that any complaints are addressed in a timely manner.

City of Garden Grove's Action: Pending.

The city of Garden Grove (Garden Grove) reported that it will establish a central point of contact for complaints related to the Act. In addition, Garden Grove stated that over the next few months, it will draft a formal complaint process as an administrative regulation. When this regulation is adopted, the formal complaint process will be made available to the public in all of the city's public facilities and on its Web site, in each of the city's major languages.

High-Speed Rail Authority

It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management

REPORT NUMBER 2009-106, APRIL 2010

High-Speed Rail Authority's response as of October 2010

The High-Speed Rail Authority (Authority), created in 1996, is charged with the development of intercity, high-speed rail service that is fully integrated with existing intercity rail and bus networks. In 2008 voters approved Proposition 1A, which authorized the State of California to sell $9 billion in general obligation bonds for planning, engineering, and construction of a high-speed rail network. The Joint Legislative Audit Committee (Audit Committee) asked the Bureau of State Audits to assess the Authority's readiness to manage funds authorized for building the high-speed rail network.

Finding #1: The Authority's financial plans indicate heavy reliance on federal funds but lack details.

Although the Authority's 2009 business plan contains the elements required by the Legislature, it lacks detail regarding how it proposes to finance the program. For example, the Authority estimates it needs $17 billion to $19 billion in federal grants. The business plan, however, specifies only $4.7 billion in possible funds from the American Recovery and Reinvestment Act of 2009 (Recovery Act) and two other small federal sources. According to its communications director, the Authority has no definite commitments from the federal government other than Recovery Act funding, which actually amounted to $2.25 billion when awards were announced in January 2010. The program risks significant delays without more well-developed plans for obtaining or replacing federal funds.

Further, the Authority's plan relies heavily on federal funds to leverage state bond dollars through 2013. Proposition 1A bond funds may be used to support only up to 50 percent of the total cost of construction of each corridor of the program. The remaining 50 percent must come from other funding sources. Thus, the award of up to $2.25 billion in Recovery Act funds allows for the use of an equal amount of state bond funds for construction, for a total of about $4.5 billion. However, the Authority's spending plan includes almost $12 billion in federal and state funds through 2013, more than 2.5 times what is now available.

We recommended that the Authority develop and publish alternative funding scenarios that reflect the possibility of reduced or delayed funding from the planned sources. These scenarios should detail the implications of variations in the level or timing of funding on the program and its schedule.

Audit Highlights . . .

Our review of the High-Speed Rail Authority (Authority) revealed the following:

» *The Authority's 2009 business plan estimates it needs $17 billion to $19 billion in federal funds. However, the Authority has no federal commitments beyond $2.25 billion from the American Recovery and Reinvestment Act of 2009 (Recovery Act), and other potential federal programs are small.*

» *The Authority's plan for spending includes almost $12 billion in federal and state funds through 2013, more than 2.5 times what is now available.*

» *The Authority does not have a system in place to track expenditures according to categories established by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, its largest source of committed funding.*

» *The Authority has not completed some systems needed to administer Recovery Act funds, for example, a system to track jobs created and saved.*

» *Some monthly progress reports, issued by the Authority's contracted Program Manager to provide a summary of program status, contain inconsistent and inaccurate information.*

» *Authority staff paid at least $4 million of invoices from regional contractors received after December 2008 without having documented written notification that the Program Manager had reviewed and approved the invoices for payment.*

continued on next page . . .

» *The Authority paid contractors more than $268,000 for services performed outside of the contractors' work plans and purchased $46,000 in furniture for one of its contractor's use, based on an oral agreement contradicted by a later written contract.*

Authority's Action: Pending.

The Authority stated that it is currently in the process of hiring new financial consultants. The Authority said that the new consultants will assist it in developing alternative funding scenarios and that it plans to provide a full set of alternative scenarios in its one-year response to the audit.

Finding #2: The Authority's plans for private funding are vague.

Private investors have expressed interest in the program, but they have made no commitments and the Authority expects they will require a revenue guarantee to participate. The Legislative Analyst expressed concern that a revenue guarantee might violate state law prohibiting an operating subsidy for the program. In a February 2010 memo, the Authority's financial consultant provided clarification, indicating that the revenue guarantee would not be used as an operating subsidy but would be a limited-term contingent liability used to support up-front capital investment. The consultant also stated that the guarantee would be of a limited duration, from five to 10 years. Therefore, a guarantee could increase costs to the public sector. The business plan does not make clear which government would be responsible for the guarantee or how much it might cost.

We recommended that the Authority further specify the potential costs of planned revenue guarantees and who would pay for them.

Authority's Action: Pending.

The Authority stated that it continues to work with financial and legal consultants to provide a discussion of revenue guarantees.

Finding #3: The Authority is working to improve its approach to risk management.

The Authority's 2009 business plan identifies a number of risks associated with the program, but it provides little detail on how it will manage those risks. In March 2010 the contractor that serves as the Authority's program management team (Program Manager) completed a major revision to its risk management process to include a "Risk Register Development Protocol." This protocol details how the Program Manager, regional contractors, and Authority staff will collaborate to identify, assess, analyze, manage, and monitor risk. The protocol also includes a description of a process for developing broadly accurate estimates of potential impact and probability of risks, and expectations for personnel assigned risk management responsibilities. Further, its consultant providing program management oversight, hired in January 2010, will review the risk management plan. Also, the Authority's risk insurance manager, hired in February 2010, will provide services aimed at reducing exposure to project liabilities. The Authority must ensure that these actions for managing risk are fully implemented so it can respond effectively to circumstances that could significantly delay or even halt the program.

We recommended that the Authority ensure that it implements planned actions related to managing risk.

Authority's Action: Pending.

The Authority stated that on July 7, 2010, the Legislature added an additional management position designated by the Authority as Deputy Director, Risk Management. The Authority said that this position will assume responsibility for risk management for the entire project. Further, the Authority indicated that it will move forward with the steps necessary to fill the position once the state budget is approved. The Authority also stated that it has developed a duty statement for one of two audit positions it plans to fill. However, due to a lack of a state budget and the current freeze on hiring, the Authority has not begun the hiring process for these positions.

Finding #4: Selection of the peer review group has not been completed, and it may be subject to open meeting requirements.

State law requires the Authority to establish an eight-member, independent peer review group (review group) that is to assess various plans the Authority may develop. The review group is also to issue independent judgments as to the feasibility of funding plans and the appropriateness of the Authority's related assumptions. State law directs the Authority to establish this group, but it leaves appointment of the group's members to four other agencies. As of March 2010 only five of the eight members had been appointed.

The Bagley-Keene Open Meeting Act (Meeting Act) prohibits a majority of members of a state body from discussing, deliberating, or taking action on items of business outside of an open meeting. Thus, according to our legal counsel, the review group must hold a meeting that is properly announced and open to the public when it analyzes and evaluates the Authority's plans. The Authority received informal advice from its legal counsel, a lawyer with the Office of the Attorney General, stating that the review group is not subject to the Meeting Act because it is not similar to a board or commission in that it is not expected to make collective decisions. State law, however, requires the review "group" to analyze and evaluate the Authority's plans and to report to the Legislature. Therefore, our legal counsel does not see any basis in law to conclude that the review group is not expected to make collective decisions. Moreover, the Meeting Act is explicit in applying to multimember bodies created by state law and allowing for very specific exceptions, which do not apply to the review group. Without clarity on whether the review group is subject to the Meeting Act, the Authority risks having the group act in a manner contrary to state law, potentially voiding its analyses, such as those related to the viability of the Authority's funding plans.

We recommended that the Authority ensure that the review group adheres to the Meeting Act or seek a formal opinion from the Office of the Attorney General regarding whether the review group is subject to this act.

Authority's Action: Pending.

The Authority reports that its staff is working with legislative contacts to obtain clarification of the law. It asserts that it will obtain adequate clarification in time for the final audit response.

Finding #5: The Authority lacks systems to comply with state law and federal grant requirements.

The Authority does not have a system in place to track expenditures funded by Proposition 1A to ensure compliance with statutory limitations on administrative and preconstruction task costs. Only 2.5 percent ($225 million) of the Authority's portion of Proposition 1A bond funds may be used for administration (the Legislature may increase this to 5 percent), and only 10 percent ($900 million) may be used for preconstruction tasks. Until such a process is in place, the Authority cannot accurately

report on its expenditures in each category, cannot create an accurate long-term spending plan, and risks not knowing when or whether it has run out of bond funds available for administration or preconstruction task costs.

Furthermore, the Authority still needs to develop some systems to track and report on the use of Recovery Act funds. Because of its $2.25 billion federal award, the Authority will be required to comply with both the Recovery Act reporting requirements and with the readiness requirements of the California Recovery Task Force. Nevertheless, a proposed database does not allow the Authority to track the number of jobs created or saved, as the Recovery Act requires; nor has the Authority developed an alternative mechanism to track this information. In addition, we recently issued a report on the State's system for administering Recovery Act funds, which includes a recommendation that agencies incorporate Recovery Act provisions into their policies and procedures. According to its December 2009 Financial Integrity and State Manager's Accountability Act (Accountability Act) report, the Authority has not developed basic operational policies and procedures to which Recovery Act provisions could be added.

We recommended that the Authority track expenditures for administrative and preconstruction activities and develop a long-term spending plan for them. It also should develop procedures and systems to ensure that it complies with Recovery Act requirements.

Authority's Action: Pending.

The Authority stated that it enhanced its computer system to include systems for tracking administrative versus project expenditures and for compliance with Recovery Act requirements. However, while the system enhancements went online on May 28, 2010, the Authority continues to work with the contractor to resolve issues with the system. In addition, the Authority states that it has not been able to provide sufficient policy guidance to staff regarding key elements of the system. The Authority expects full system operability by the time it submits its final response to the audit in April 2011.

Finding #6: The Authority is working to increase its involvement.

Until recently, Authority members had not provided significant oversight to the program. State law requires this group of nine appointees to direct the development and implementation of high-speed rail service. However, the Authority's involvement thus far has been limited. For example, it did not have an opportunity, as a body, to discuss or approve the revised business plan issued in December 2009. Also, the Authority has been only minimally involved in creating the strategic plan. Unless the Authority exercises oversight of plans and activities, it risks being unaware of significant issues that could disrupt or delay the program.

In addition, the Authority has not always followed the policies and procedures it develops. In June 2009 it adopted policies and procedures related to its members' communications with Authority staff and contractors. For example, the policies and procedures require Authority members to communicate with contractors only through the executive or deputy director. However, the Authority's former executive director claims that member-to-contractor contact has occurred often and provided us with documentation showing that subsequent to the policy adoption, a board member met directly with a contractor to receive an update on program issues. According to the former executive director, when individual members express opinions to contractors, the contractors may be unsure if they should consider the opinions to be direction from the Authority or just comments. Such conduct also might affect the public's perception of openness and accountability, and create expectations for contractors to respond directly to Authority members' requests that staff may not know about.

We recommended that the Authority participate in the development of key policy documents, such as its business and strategic plans. Further, Authority members should adhere to their policies and procedures, including those outlining how they may communicate with contractors.

Authority's Action: Corrective action taken.

The Authority added language to its policies and procedures stating that it is responsible for developing key policy documents, including approving business plans and strategic plans. The Authority also added language to its policies and procedures requiring that its members communicate with contractors through the Authority's CEO.

Finding #7: A primary tool for communicating the status of the program contains inaccurate and inconsistent information.

Contractors accounted for 95 percent of the program's total expenditures over the past three fiscal years. Although the Authority generally followed state requirements for awarding contracts, its processes for monitoring the performance and accountability of its contractors—especially the Program Manager—are inadequate. The Program Manager's monthly progress reports, a primary document summarizing monthly progress on a regional and program level, have contained inaccurate and inconsistent information. For example, the July 2009 report indicated that the regional contractor working on the Los Angeles-to-Anaheim corridor had completed 81 percent of planned hours but had spent 230 percent of planned dollars. In addition, although the progress reports described actions taken or products created, they did not compare those actions and products to what the contractors promised to complete in their work plans. The work plan for a consultant the Authority recently hired to oversee the Program Manager does not include a review of the monthly reports.

We recommended that the Authority amend the oversight consultant's work plan to include a critical review of the progress reports for accuracy and consistency. Authority staff also should request that the Program Manager revise its progress reports to include information on the status of contract products and services.

Authority's Action: Partial corrective action taken.

The Authority stated that the Program Manager revised its progress report format to ensure that its reports accurately reflect project status. However, the program management oversight consultant said that it did not have sufficient information to assess the Earned Value Analyses in the Program Manager's reports. These analyses are designed to express the value of work produced for the cost paid. The consultant stated that it would prefer to focus on physical deliverables and their actual level of completion.

Finding #8: The Authority paid invoices without ensuring that they accurately reflected work performed.

The Authority does not generally ensure that invoices reflect work performed by contractors. According to the chief deputy director, the Program Manager should review each regional contractor's invoice to ensure that the work claimed actually has been performed and then notify Authority staff whether the invoice should be paid. The chief deputy director further stated that staff should not pay invoices without notifications. However, Authority staff paid at least $4 million of invoices from regional contractors received after December 2008—when the Authority's fiscal officer says she was informed that such notifications were required—without documenting notification. The Authority only recently adopted written policies and procedures related to invoice payment. However, those policies and procedures do not adequately describe its controls or their implementation.

We recommended that the Authority ensure that staff adhere to controls for processing invoices. For example, staff should not pay invoices from regional contractors until they receive notification from the Program Manager that the work billed has been performed, or until they have conducted an independent verification.

Authority's Action: Corrective action taken.

The Authority asserts that it developed an invoice review, verification, and approval process. In addition, it provided evidence showing that invoices now include cover sheets requiring signatures from both the Program Manager and Authority staff. Furthermore, this process is detailed in the Authority's *Contract Administration Manual* (contract manual).

Finding #9: The Authority made some payments that did not reflect the terms of its agreements.

The Authority also made some payments that did not reflect the terms of its agreements, risking its ability to hold contractors accountable for their performance. For example, it spent $46,000 on furniture for its Program Manager's use based on an oral agreement, despite the fact that its written contract expressly states that oral agreements not incorporated in the written contract are not binding. The written contract requires the Program Manager to provide its own furniture, equipment, and systems. Additionally, the Authority paid a regional contractor more than $194,000 to subcontract for tasks not included in the regional contractor's work plan and paid the Program Manager $53,000 for work on Recovery Act applications, which was also outside the Program Manager's work plan.

We recommended that the Authority adhere to the conditions of its contracts and work plans, and make any amendments and modifications in writing.

Authority's Action: Corrective action taken.

The Authority amended its contract with the Program Manager to require use of an audit-adjusted field rate for staff co-located with the Authority and using Authority facilities. The "audit adjusted field rate" is a discounted overhead rate used when consultants use client facilities. The Authority also amended its contract with a regional contractor to include work that was not part of the original contract.

Finding #10: The Authority lacks adequate written policies and procedures for invoice review.

The Authority recently adopted written policies and procedures related to invoice payment, however, they do not adequately describe its controls or their implementation. In December 2008 the Authority's Accountability Act report identified its need to ensure that contract payments are accurate and to develop adequate control procedures. The Authority completed a contract manual in September 2009, which includes a description of the process for reviewing and paying invoices, but it does not reflect all the controls Authority staff say are in place. For example, the contract manual states that a contract manager must conduct a technical evaluation of each invoice, based on promised goods and services, to determine the reasonableness of charges; however, it does not discuss the review the Program Manager is to perform on regional contractors' invoices or the need for Authority staff to hold payments until they receive written notification from the Program Manager. The Authority's 2009 Accountability Act report, issued December 2009, noted that, although it had performed some work on standardized policies and procedures, it had not yet developed basic operational policies and procedures. Without adequate written policies and procedures, the Authority cannot ensure that its staff understand how to implement internal controls over payments or guarantee that they implement them consistently.

We recommended that the Authority ensure that its written policies and procedures reflect intended controls over invoice processing and offer sufficient detail to guide staff. These procedures should include steps for documenting implementation of invoice controls.

Authority's Action: Corrective action taken.

The Authority amended its contract manual to include detailed procedures for implementation of invoice review and documentation of invoice controls.

Department of Parks and Recreation

Investigations of Improper Activities by State Employees, July 2008 Through December 2008

ALLEGATION I2008-0606 (REPORT I2009-1), APRIL 2009

Investigative Highlight . . .

The Department of Parks and Recreation paid at least $1,253 more than necessary on a $4,987 purchase without obtaining competitive price quotes.

Department of Parks and Recreation's response as of July 2009

We investigated and substantiated that a supervisor at the Department of Parks and Recreation (Parks and Recreation) failed to ensure that he paid a fair and reasonable price for goods costing $4,987 in violation of state law. Consequently, Parks and Recreation overpaid for the items by at least $1,253.

Finding: A supervisor did not solicit competitive bids from suppliers of goods and failed to pay a fair and reasonable price for goods he purchased.

The supervisor purchased a storage container in December 2007 to store supplies for several parks that he oversaw at the time. However, the supervisor did not obtain two price quotes using any of the five techniques described in the State Contracting Manual to ensure that the cost of the storage container was fair and reasonable, as required by state law. The supervisor later asserted to us that he contacted other suppliers but apparently did not document the price quotes he obtained. He also admitted to us that he had not obtained the "best possible price" for the storage container. As proof that the supervisor did not obtain a fair and reasonable price, just three weeks later another Parks and Recreation employee who worked for him obtained a price quote of $3,734 for a similar storage container. Thus, if the supervisor had obtained and documented fair and reasonable price quotes, Parks and Recreation could have avoided spending an additional $1,253 for the storage container.

The supervisor provided various reasons why he did not document other price quotes. According to the supervisor, he did not have sufficient staff and was overwhelmed by his workload. In addition, he stated that he had not received sufficient training at the time of the purchase. Parks and Recreation promoted the supervisor in January 2007. However, he indicated that he did not complete his three weeks of supervisor training until June 2008, six months after the purchase of the container.

We recommended that Parks and Recreation require its employees to adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under $5,000. We also recommended that Parks and Recreation provide timely training for new supervisors.

Parks and Recreation's Action: Corrective action taken.

In June 2009 Parks and Recreation reported that it gave the supervisor a letter of reprimand for failing to ensure that it paid a fair and reasonable price for the goods costing $4,987. In July 2009 Parks and Recreation provided a copy of its existing procurement

policy that addressed the requirement that its employees adequately document their efforts to obtain price quotes to ensure that they obtain a fair and reasonable price for the purchase of goods under $5,000. Parks and Recreation also stated that it provides courses on purchasing policies and procedures, which are required for all employees that make purchases, not just supervisors. Parks and Recreation noted that the supervisor received the training in April 2004 yet he still failed to ensure that he paid a fair and reasonable price for the goods previously cited.

Department of Resources Recycling and Recovery

Deficiencies in Forecasting and Ineffective Management Have Hindered the Beverage Container Recycling Program

REPORT NUMBER 2010-101, JUNE 2010

Department of Resources Recycling and Recovery's response as of December 2010

The Joint Legislative Audit Committee (audit committee) asked the Bureau of State Audits (bureau) to review the Department of Resources Recycling and Recovery's (department) management of the Beverage Container Recycling Program (beverage program) and the financial condition of the Beverage Container Recycling Fund (beverage fund). The audit committee wanted us to determine how the department forecasts revenues and expenses as well as the methodology it used to calculate the reductions in payments and fee offsets. In addition, the audit committee requested that we evaluate the department's procedures for ensuring that all fees are collected from beverage distributors and how it investigates potential fraud. Further, we were asked to review a sample of grant award expenditures for the past five years and determine how the department monitored these funds. Finally, the audit committee requested that we evaluate the department's ability to assess the efficiency and effectiveness of the beverage program.

Finding #1: Deficiencies exist in forecasting revenues and expenditures of the beverage fund.

Because of deficiencies in its forecasting process, the department is not always able to reliably project the revenues and expenditures for the beverage fund. We noted that over the past five fiscal years, its forecasting model has produced results that differ by between 3 percent and 15 percent from the actual revenues and expenditures. Ineffective supervisory oversight and lack of review of the accuracy of the forecasts have also weakened the value of the forecasting model. For example, the department failed to detect errors in its forecasting of the beverage fund condition, which resulted in a $158.1 million overstatement of the fund balance in the 2009–10 Governor's Budget. Moreover, the department incorrectly calculated a reduction in payments to recyclers and others due to an error in computing its reserve for the projected fund balance in its May 2009 forecast. Further, the Department of Conservation did not include prior-year adjustments and incorrectly presented the actual fund balances of the beverage fund for three fiscal years—2004–05 to 2006–07.[1]

We recommended that the department implement a new forecasting model in time for it to be used for the fiscal year 2011–12 Governor's Budget. We also recommended that appropriate controls be put in place to monitor the reliability of the model and that the department

[1] Until January 1, 2010, the Department of Conservation administered the Beverage Container Recycling Program.

Audit Highlights . . .

Our audit of the Beverage Container Recycling Program (beverage program) at the Department of Resources Recycling and Recovery (department) revealed the following about the department:

» ***Its forecasting process is outdated and not able to reliably project revenues and expenditures.***

- ***Over the past five years, projections have differed from actuals by between 3 percent and 15 percent.***
- ***Errors in forecasting the condition of the Beverage Container Recycling Fund resulted in a $158.1 million overstatement in the 2009–10 Governor's Budget.***
- ***A projected fund balance deficit in May 2009 prompted the department to reduce payments to beverage program participants.***

» ***Significant lags exist between the completion of an audit of redemption payments and billing for any identified underpayments.***

- ***For one audit with identified underpayments of $941,000, including interest, the department took six months to bill the distributor.***
- ***In two instances, the department could not collect a total of $324,000 because it exceeded the two-year statute of limitations on collecting underpayments.***

continued on next page . . .

- *It may be missing opportunities to detect fraud because it lacks a systematic and documented methodology for analyzing data regarding the volume of recycled containers.*
- *It does not always perform key steps to monitor grants awarded to private entities and local governments and ensure that funds are properly used by visiting grantees and obtaining project status reports.*
- *It did not ensure grantees met their commitments for six completed market development and expansion grants that we reviewed—ultimately costing the State nearly $2.2 million.*

continue with its effort to hire an economist to lead its forecasting efforts. In addition, we recommended that the department ensure that the contingency reserve for the beverage fund not exceed the statutory limit specified in the Public Resources Code. Finally, we recommended that the department ensure that the actual fund balance of the beverage fund reflect actual revenues and expenditures from its accounting records in future governor's budgets.

Department's Action: Partial corrective action taken.

The department redesigned its forecasting methodology, which it used for the October 2010 fund projection. In addition, the department implemented review procedures, including a process to compare actual sales and return values with prior projections. Further, the department stated that it will follow the Public Resources Code when calculating the contingency reserve and will propose a change in the fund reserve statute to ensure the recycling fund's ability to pay consumer deposits when they recycle. The department also developed a procedure to reconcile its records with the State Controller's Office data to ensure correct information is presented to the Department of Finance for preparing the governor's budget. Finally, following the August 2010 hiring freeze, the department indicated that it had to suspend its process for hiring an economist to assist in revising the forecasting model.

Finding #2: The department audits beverage distributors inconsistently and could do more to pursue underpayments.

The department is required to establish an auditing system to ensure that redemption payments that are made to the beverage fund comply with state law. However, the department has not followed its three-year plan to audit the top 100 beverage distributors, who provide 90 percent of revenues for the beverage fund, and a sample of mid-sized distributors and others that pose a risk to the beverage fund. Moreover, when audits were conducted, a significant lag existed between the audit's completion and billing for identified underpayments, which increased its risk for failing to collect underpayments before the two-year statute of limitations expired. In fact, for one audit with identified underpayments of $941,000, including interest, the department took six months to bill the distributor. Further, we identified two instances in which the department exceeded the two-year statute of limitations and lost the opportunity to collect a total of $324,000, and a third instance in which it did not complete an audit, losing the opportunity to collect $431,000. We also identified that the department is actively pursuing regulatory changes to require beverage distributors to register with it, and it is also pursuing regulatory changes to require registered distributors to notify the department if another entity has agreed to make payments on behalf of that beverage distributor.

We recommended that the department take steps to better follow its three-year plan to audit beverage distributors by considering the inclusion of a risk assessment process and policies to identify and terminate low risk audits. In addition, we recommended that the department strive to complete the fieldwork for audits in a more timely fashion and to bill for collections sooner to avoid exceeding the statute

of limitations for collecting underpayments. Further, the department should take steps to implement policies to shorten the time needed to review completed audits before billings are made, and should also develop policies to expedite reviews when an audit identifies a significant underpayment. We also recommended that the department continue with its efforts to implement regulation changes that will require beverage distributors to register with the department and notify the department if another entity has agreed to make payments on behalf of that beverage distributor.

Department's Action: Partial corrective action taken.

The department has included a risk-based evaluation in its audit program to determine whether there is material harm to the fund and to terminate audits based on initial assessments. The department updated its current three-year audit plan to reflect this change, and its auditors received training on this risk-based process. Also, the department indicated that its Division of Recycling Integrated Information System (DORIIS) will include functions to track audit activity while also paying specific attention to the statute of limitations for each audit. In addition, the department indicated that it is working to develop criteria to rank findings and prioritize the review and completion of audits. The department did provide statute of limitations training for audit staff in its investigations and audits units in December 2010. Finally, the department stated that it is pursuing regulatory changes to regulate reporting of agreements where an entity has agreed to make payments on behalf of that beverage distributor.

Finding #3: Weaknesses exist in the department's investigation of potential recycling fraud.

The department conducts investigations of recyclers that collect used beverage containers from consumers to ensure that they do not commit fraud when claiming reimbursements from the beverage fund. Although the department tracks the status of the investigations that have been initiated or completed, it does not track all fraud leads received, nor does it record how it determined that no follow-up was needed on fraud leads that were not investigated. Further, because the department does not have a systematic and documented methodology for analyzing beverage program data regarding the volume of recycled containers, it is potentially missing opportunities to detect fraud. We also noted that in response to concerns over unusually high recycling rates, particularly for plastics, in October 2009 the department began an enhanced effort to detect and prevent fraud before it occurs. This effort, called the fraud prevention project, is intended to significantly increase the presence of department staff at recycling and processing centers. However, as of May 2010 the department had not yet fully evaluated the effectiveness of the fraud prevention project.

To improve management of its fraud investigations, we recommended that the department track all fraud leads that the investigation unit receives and the disposition of those leads. We also recommended that the department formalize the approach used to analyze recycling data for potential fraud and to develop criteria to use when deciding whether to refer anomalies for investigation. Finally, we recommended that the department continue to evaluate the effectiveness of the fraud prevention project to determine whether it is a cost-beneficial activity.

Department's Action: Partial corrective action taken.

The department drafted procedures for analyzing fraud tips and now uses DORIIS to track, assign, and follow up on fraud tips. Further, the department implemented the fraud detection modules in DORIIS that will use data collected from beverage manufacturers, beverage distributors, recyclers, and processors to analyze indicators of potential fraud. The department acknowledged that systematic and defined documentation of its current practices and methodology for reviewing recycling data for potential fraud would be valuable, but it has not yet developed and documented these procedures. The department indicated that it has developed a methodology to evaluate the effectiveness of the fraud prevention project, but it is awaiting completion of a data library in DORIIS before it can determine whether it is a cost-beneficial activity.

Finding #4: The department's grant management is generally effective, except for conducting certain monitoring activities.

To encourage and support recycling activities, state law authorizes the department to award grants to private entities and local governments, which totaled approximately $67.5 million in fiscal year 2008–09. Although it has a process to monitor grantees to ensure that funds are used properly, the department does not always perform key steps, such as visiting grantees and obtaining status reports on how projects are progressing. When funding market development and expansion (market development) grants, which are intended to encourage new and innovative recycling techniques, the department accepts a level of risk that financial institutions would not accept. However, for six completed market development grants we reviewed, the department did not ensure that grantees met their commitments, which ultimately cost the State nearly $2.2 million. For two of the grants, the department's failure to promptly process grant extensions contributed to the problems.

To allow the department to more effectively monitor the grant funds it awards, we recommended that the department conduct site visits and require regular status reports from grantees. We also recommended that the department require that cities and counties report how they spend grant funds. Further, we recommended that the department more closely scrutinize the risks associated with market development grants and maintain contact with recipients that are unable to meet the goals of their grants to determine if the goals may ultimately be achieved. Finally, we recommended that the department approve grant extensions in a timely manner.

Department's Action: Pending.

The department indicated that it has drafted changes to how it will conduct and document site visits of grantees. In addition, the department indicated that it will ensure regular status reports are submitted by grantees on time, which will include withholding payments when status reports are not current. The department further indicated that it is working to implement a reporting requirement for cities and counties. The department also indicated it is developing a process to do a risk analysis of each new market development grant. The department stated that it has already begun to review past market development grants to determine factors contributing to their success and sustainability, and that the evaluation will be expanded to contact with grantees. Finally, the department implemented a review schedule to determine, at least three months prior to the end of a grant agreement, whether an extension is required.

Finding #5: The department is taking steps to assess the efficiency and effectiveness of the beverage program.

Although the department's strategic plan for the beverage program includes high-level goals and outcomes, it does not have specific criteria that would allow it to measure the effectiveness of the beverage program.

To better measure its progress in meeting the goals of the beverage program, we recommended that the department weave benchmarks, coupled with metrics to measure the quality of its activities, into its strategic plan. Further, we recommended that the department include all relevant activities of the beverage program in the strategic plan.

Department's Action: Pending.

The department stated that as it refines its strategic plan, relevant beverage program activities such as metrics to achieve audit plans, inspections, and enforcement objectives as well as other program activities will be incorporated along with the means to measure the quality of the outcomes.