

BACKGROUND PAPER FOR THE

Bureau of Automotive Repair

(Joint Oversight Hearing, March 10, 2014, Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business, Professions and Consumer Protection)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BUREAU OF AUTOMOTIVE REPAIR

BRIEF OVERVIEW OF THE BUREAU OF AUTOMOTIVE REPAIR

History and Function of the Bureau of Automotive Repair

The Bureau of Automotive Repair (BAR) was created by SB 51 (Beilenson, Chapter 1578, Statutes of 1971) which established the Bureau within the Department of Consumer Affairs (DCA) and codified the Automotive Repair Act (Act). California became the first state in the nation to implement a comprehensive program for the regulation of the automotive repair industry, and creation of the Act was supported by consumers and many organizations in the industry. The primary purpose of the Act was to protect consumers from unethical and illegal behavior by the automotive repair industry, and achieve consumer confidence in the California auto repair industry.

The Act mandated a statewide automotive repair consumer protection program, including the requirement that automotive repair dealers (ARDs) be registered and regulated by BAR. The Act also gave BAR the authority to license and regulate official stations and mechanics in the areas of lamp, brake, and smog device inspection and repair. The Act protects consumers by requiring all ARD's, including lamp, brake, and smog stations to: (1) provide written estimates that detail the parts and labor to be provided; (2) obtain authorization from their customers prior to commencing any repair services; (3) provide customers with itemized invoices that detail the parts provided and the labor performed.

The Act further requires BAR to mediate complaints, investigate violations, and take action against ARDs and licensed technicians that fail to comply with the Act or regulations adopted under the Act. BAR has authority to pursue these same consumer protections against both licensed and unlicensed individuals.

In 1984, BAR implemented a biennial Smog Check Program, also known as the Motor Vehicle Inspection and Maintenance Program, under SB 33 (Presley, Chapter 892, Statutes of 1982). SB 33 authorized BAR to implement, maintain, and enforce the Smog Check Program, which licenses Smog Check stations and technicians in an effort to reduce air pollution from vehicles through mandatory testing of vehicle emission control components. Smog Check stations must also be registered as ARDs to ensure that consumers receive protection associated with vehicle repairs. In addition, BAR ensures that the equipment used to perform Smog Check inspections and the inspections performed at Smog Check stations by Smog Check Inspectors or Technicians will achieve reductions in vehicle emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen.

In 2010, AB 2289 (Eng, Chapter 258, Statutes of 2010) enhanced BAR's authority to administer the Smog Check Program. That bill authorized BAR to certify high performing Smog Check stations as STAR certified, which allows those stations to inspect and repair vehicles that are likely to be high polluters.

BAR additionally administers the Consumer Assistance Program (CAP), which was created by SB 198 (Kopp, Chapter 28, Statutes of 1994). CAP provides income eligible consumers whose vehicle fails a biennial Smog Check up to \$500 in emissions-related repairs. CAP can also compensate consumers up to \$1,500 for the voluntary retirement of an eligible vehicle that has failed its Smog Check. In 2010, CAP began administration of the Enhanced Fleet Modernization Program (EFMP), which was created by AB 118 (Núñez, Chapter 750, Statutes of 2007). EFMP offers eligible consumers up to \$1,500 in compensation to voluntarily retire an eligible vehicle regardless of Smog Check history. In the South Coast and San Joaquin Valley air districts, EFMP also offers consumers who volunteer to retire their vehicle a voucher worth up to \$2,500 toward the purchase of a newer, cleaner vehicle in a program administered by the Air Resources Board (ARB).

In 2003 the BAR was reviewed by the (then) Joint Legislative Sunset Review Committee (JLSRC). A number of issues were raised in the review with the Bureau's administrative structure and enforcement practices. As a result, the Legislature enacted SB 1542 (Figueroa, Chapter 572, Statutes of 2004). Among other things, SB 1542 required the DCA Director to appoint an Administration and Enforcement Monitor (Monitor) to "evaluate the bureau's disciplinary system and procedures, with specific concentration on improving the overall efficiency and assuring the fairness of the enforcement program, and the need for administrative structural changes" and to report its findings and conclusions by July, 2005, with a final report due in December, 2006.

As described in greater detail below, the Monitor's report identified a number of issues in the Bureau's enforcement program. The Report also made a number of recommendations for addressing the identified issues.

The Bureau licenses and regulates more than 36,000 Automotive Repair Dealers, 4,900 Smog Check Test and Repair Stations, 2,300 Smog Check Test Only Stations, 35 Smog Check Repair Only Stations, 4,000 STAR Certified Stations, and 2,100 Brake and Lamp Stations. Individually, BAR licenses some 6,500 Smog Check Inspectors, 5,600 Smog Check Repair Technicians, and 3,200 Brake and Lamp Adjusters.

BAR Licensees

- Automotive Repair Dealer (ARD) – A person or entity who, for compensation, engages in the business of diagnosing or repairing malfunctions of motor vehicles.
- Smog Check Test and Repair Station – An ARD that is licensed by BAR to perform Smog Check inspections and repairs on vehicles in the Smog Check Program.
- Smog Check Test Only Station – An ARD that is licensed by BAR to inspect vehicles in the Smog Check Program. These stations are not authorized to diagnose the reasons for a Smog Check failure or to perform repairs on a vehicle.

- Smog Check Repair Only Station – An ARD that is licensed by BAR to diagnose and repair vehicles in the Smog Check Program. These stations are not authorized to perform Smog Check inspections.
- STAR Certified Station – An ARD that is licensed by BAR as a Smog Check Test and Repair Station or a Smog Check Test Only Station that meets higher performance standards established by BAR. A station must post a sign stating the services it performs. The STAR Certification replaced the Gold Shield Certification beginning in 2013.
- Brake and/or Lamp Station – An ARD that is license by BAR to test, inspect, adjust, service, and repair brake and/or lamp systems for the purpose of issuing a certificate of compliance or certificate of adjustment.
- Smog Check Inspector – An individual who inspects and certifies vehicles requiring Smog Check inspection, but may not perform Smog Check related diagnoses or repairs.
- Smog Check Repair Technician – An individual who performs vehicle emission control system adjustments, diagnoses and repairs to vehicles in the Smog Check Program.
- Brake and/or Lamp Adjuster – A Lamp Adjuster is an individual who tests, inspects, adjusts, repairs and certifies the lighting systems on all vehicles. A Brake Adjuster is an individual who tests, inspects, adjusts, repairs and certifies braking systems under three separate classifications: Class A – all vehicles, including motorcycles. Class B –trucks over 10,000 pounds gross vehicle weight rating (GVWR) and trailers. Class C – vehicles under 10,000 pounds GVWR, trailers without air brakes, and motorcycles.

ARD registrations and Smog Check station licenses must be renewed each year. Individual licenses for Smog Check Inspectors and Smog Check Repair Technicians must be renewed every two years. Lamp Adjuster and Brake Adjuster licenses must be renewed every four years. A license or registration that is not renewed within three years following its expiration cannot be renewed, restored, or reinstated, and the delinquent registration is cancelled. An ARD whose registration has been canceled must obtain a new registration by meeting the original requirements for registration. An expired registration may be renewed at any time within three years after its expiration upon filing a renewal application and paying all accrued renewal and delinquency fees.

The law mandates that protection of the public shall be the highest priority for the BAR in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount. (Business and Professions Code (BPC) § 9880.3)

The current BAR mission statement, as stated in its 2013-2017 Strategic Plan, is as follows:

The Bureau of Automotive Repair protects the health and interests of California consumers by administering an effective vehicle emissions reduction program and ensuring quality automotive repair services from its licensees.

Bureau Committees

As a bureau, BAR does not have a board with a membership made up of appointed members. Instead, a bureau operates under the oversight of a Bureau Chief who is appointed by the Governor, confirmed by the State Senate, and serves under the direct authority of the Director of DCA. BAR has two ad hoc committees through which it seeks input from consumers, educators, the automotive and Smog Check industries, and other governmental agencies. According to industry representatives, the BAR's utilization of these advisory bodies enhances the relationship between the regulator and the industry, provides transparency to the public, and helps in working through issues between consumers, businesses and the Bureau.

- **BAR Advisory Group (BAG)** – Composed of 13 members and meets quarterly to provide advice and input to the Chief on BAR's programs. Meetings are announced on BAR's Internet web site and are open to the public.
- **Educational Advisory Committee** – Composed of 16 members: five BAR staff, five educators, and six industry representatives (shop owners and/or technicians). Meets twice a year to discuss educational needs and make recommendations to BAR for a variety of classes needed for inspectors and technicians working within the Smog Check Program.

Fiscal and Fund Analysis

As a Special Fund agency, the Bureau receives no General Fund support, relying solely on fees set by statute and collected from fees paid into three Special Funds that provide revenue to maintain all of BAR's Programs. BAR has not had any fee changes for licenses, registrations, or renewals within the last 10 years. BAR does not currently project any deficits. BAR does not anticipate increasing or decreasing its fees in the near future.

- **Vehicle Inspection and Repair Fund (VIRF)** – Established by SB 51 (Beilenson, Chapter 1578, Statutes of 1971). (BPC § 9886)
- **High Polluter Repair or Removal Account (HPRRA)** – Established by SB 198 (Kopp, Chapter 28, Statutes of 1994). HPRRA is an account within the VIRF. (Health & Safety Code (HSC) § 44091)
- **Enhanced Fleet Modernization Subaccount (EFMS)** – Established by AB 118 (Núñez, Chapter 750, Statutes of 2007). EFMS is a sub account within the HPRRA. (HSC § 44126)

Each special fund is shown below in a table identifying reserve level and spending. BAR's funds currently have reserves; however, these reserves are not in amounts sufficient to require BAR to modify its fees in keeping with BPC § 128.5 which requires a board or bureau within DCA to reduce its fees if at the end of a fiscal year its fund reserves equals more than the agency's operating budget for the next two fiscal years. There is no mandated reserve level for the Bureau; however, the DCA Budget Office has historically recommended that programs maintain a standard three to six months of reserve. Maintaining an adequate reserve provides for a reasonable contingency fund so that the Bureau has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

Vehicle Inspection and Repair Fund (VIRF)

Between FY 2008/09 and FY 2012/13, BAR derived approximately 91% of its annual revenue from an \$8.25 Smog Check certification fee, and \$2.00 from the Smog Abatement Fee charged to vehicles six years old or newer. License and registration fees generate approximately 7% of the revenue generated in support of BAR. The VIRF also has funds deposited into it as a result of litigation pursued by BAR. The VIRF funds all of BAR's operations, except CAP, which is funded by HPRRA, and EFMP, which is funded by EFMS.

Fund Condition VIRF						
(Dollars in Thousands)	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14⁴
Beginning Balance	\$70,326	\$41,934	\$51,209	\$62,414	\$65,274	\$72,363
Revenues and Transfers	\$110,890	\$111,189	\$111,740	\$118,983	\$117,039	\$80,763
Total Resources	\$181,216	\$153,123	\$162,949	\$181,397	\$182,313	\$153,126
Budget Authority	\$105,318	\$97,393	\$89,428	\$100,976	\$94,317	\$114,043
Expenditures ¹	\$118,239	\$110,020	\$103,800	\$116,123	\$109,950	\$130,040
Loans to General Fund ²	\$25,000	\$0	\$0	\$0	\$0	\$0
Accrued Interest ³	\$1,286	\$281	\$261	\$287	\$269	\$252
Loans Repaid From General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Fund Balance	\$38,817	\$43,103	\$59,364	\$65,274	\$72,363	\$23,086
Months in Reserve	4.2	5.0	6.1	6.4	6.7	2.1

1 FY 2013/14 expenditures are projected

2 Loans included in Revenues and Transfers

3 Included in Revenue and Transfers

4 FY 2013/14 is projected

High Polluter Repair or Removal Account (HPRRA)

The HPRRA, within the VIRF, funds the activities of the CAP. CAP is designed to provide financial assistance to qualified consumers for the voluntary repair or retirement of a vehicle failing a Smog Check inspection. The revenue that funds this program also comes from a portion of the annual Smog Abatement Fee in the form of \$6 in year one and \$4 in years two through six, during the period in which new vehicles are exempt from Smog Check, and to a lesser extent, a portion of the revenue from the sale of vehicles impounded by local law enforcement agencies and temporary operating permits issued by DMV.

HPRRA generated \$51 million in FY 2007/08, and \$35 million in 2012/13. This revenue reduction from abatement fees was directly related to the drop in new vehicle sales from 2 million in 2007 to 1 million in 2009. Since 2009, vehicle sales have recovered to an annual pace of 1.5 million in 2012 and are growing at an annual rate of approximately 3%. The revenue supports three appropriations that cover program administration (\$9.3 million), vehicle retirement (\$20.2 million), and repair assistance (\$11.8 million).

Fund Condition HPRRA						
(Dollars in Thousands)	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14 ²
Beginning Balance	\$52,237	\$22,616	\$4,808	\$11,885	\$10,945	\$15,995
Revenues and Transfers	\$22,385	\$38,855	\$57,018	\$36,298	\$34,642	\$36,873
Total Resources	\$74,622	\$61,471	\$61,826	\$48,183	\$45,587	\$52,868
Budget Authority	\$53,646	\$55,456	\$51,979	\$40,468	\$32,097	\$41,329
Expenditures ¹	\$53,674	\$55,515	\$52,154	\$37,291	\$29,592	\$41,523
Loans to General Fund	\$20,000	\$0	\$0	\$0	\$0	\$0
Accrued Interest	\$805	\$119	\$37	\$38	\$40	\$0
Loans Repaid From General Fund	\$0	\$0	\$20,000	\$0	\$0	\$0
Fund Balance	\$20,948	\$5,956	\$9,672	\$10,945	\$15,995	\$11,345
Months in Reserve	4.5	1.4	2.9	3.3	4.6	3.3

1 Expenditures are projected for FY 2013/14, and include direct appropriation draws to SCO and Fi\$cal

2 FY 2013/14 is projected.

Enhanced Fleet Modernization Subaccount (EFMS)

EFMS was created by AB 118 (Núñez, Chapter 750, Statutes of 2007) to fund the Enhanced Fleet Modernization Program (EFMP), which augments the State's existing statewide vehicle retirement program that is administered by BAR. Approximately \$30 million is available annually through January 1, 2024 to fund the EFMS via a \$1 annual increase in vehicle registration fees. In consultation with BAR, ARB developed regulations for administration of EFMP.

Fund Condition EFMS						
(Dollars in Thousands)	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14 ²
Beginning Balance	\$0	\$29,262	\$58,419	\$5,514	\$20,325	\$15,856
Revenues and Transfers	\$29,263	\$29,171	-\$31,545	\$51,303	\$30,176	\$31,774
Total Resources	\$29,263	\$58,433	\$26,874	\$56,817	\$50,501	\$47,630
Budget Authority	\$0	\$0	\$20,515	\$37,879	\$37,311	\$44,393
Expenditures ¹	\$0	\$0	\$20,515	\$36,492	\$34,645	\$44,564
Loans to General Fund	\$0	\$0	\$60,000	\$0	\$0	\$0
Accrued Interest	\$0	\$0	\$117	\$68	\$50	\$0
Loans Repaid From General Fund	\$0	\$0	\$0	\$20,000	\$0	\$0
Fund Balance	\$29,263	\$58,433	\$6,359	\$20,325	\$15,856	\$3,066
Months in Reserve	0.0	34.2	2.0	6.1	4.3	N/A ³

1 Expenditures are projected for FY 2013/14, and include direct appropriation draws to SCO and Fi\$cal.

2 Projected FY 2013/14 data. FY 2012/13 includes an \$8 million appropriation pursuant to SB 359 (Corbett, Chapter 415, Statutes of 2013).

3 Program spending authority expires on June 30, 2014.

General Fund Loans

Because of the statewide budget crisis, since FY 2002/03 \$219 million has been transferred from BAR's Special Funds to the State's General Fund. Of that amount, \$40 million has been repaid, leaving an outstanding loan balance of \$179 million. The loans to the General Fund from BAR's Special Funds are detailed in the chart below.

General Fund Loans										
Entity	Loan Amounts ¹						Total Loans To General Fund	Repaid		Total Loan Balances Remain FY 2012/13 ²
	FY 2002/03	FY 2003/04	FY 2008/09	FY 2010/11	FY 2011/12	FY 2012/13		FY 2010/11	FY 2011/12	
VIRF	\$100,000	\$14,000	\$25,000				\$139,000			\$139,000
HPRRA			\$20,000				\$20,000	\$20,000		\$0
EFMS				\$60,000			\$60,000		\$20,000	\$40,000
Total	\$100,000	\$14,000	\$45,000	\$60,000			\$219,000	\$20,000	\$20,000	\$179,000

1 Loan amounts in thousands of dollars.

2 Excludes interest.

Expenditures by Program Component – For the last four fiscal years, the Bureau has expended approximately 47% on enforcement, 2% on licensing, 48% on administration including 14% on DCA pro rata (Pro rata refers to a board's share of costs for certain administrative services, usually determined by a proportional, mathematical formula).

Expenditures by Program Component ¹												
VIRF (Dollars in Thousands)	FY 2010/11				FY 2011/12				FY 2012/13			
	Personnel Services	OE&E	Total	% ²	Personnel Services	OE&E	Total	% ²	Personnel Services	OE&E	Total	% ²
Administration ³	\$10,566	\$33,600	\$44,167	49.2%	\$11,781	\$42,284	\$54,065	53.2%	\$11,955	\$34,958	\$46,913	49.5%
Licensing	\$1,577	\$216	\$1,793	2.0%	\$1,631	\$175	\$1,806	1.8%	\$1,884	\$281	\$2,165	2.3%
Enforcement:	\$30,533	\$13,269	\$43,802	48.8%	\$31,941	\$13,818	\$45,760	45.0%	\$31,979	\$13,726	\$45,705	48.2%
TOTALS	\$42,676	\$47,085	\$89,761	100%	\$45,353	\$56,277	\$101,630	100%	\$45,818	\$48,964	\$94,783	100%
DCA Pro Rata ⁴		\$15,897				\$16,335				\$15,390		

1 Collected reimbursements are not included in expenditures.

2 Percentage is of a categories total expenditure relative to the funds total expenditure.

3 Administration includes costs for executive staff, Bureau, administrative support, and fiscal services.

4 DCA Pro Rata included in the admin OE&E.

HPRRA (Dollars in Thousands)	FY 2010/11				FY 2011/12				FY 2012/13			
	Personnel Services	OE&E	Total	% ¹	Personnel Services	OE&E	Total	% ¹	Personnel Services	OE&E	Total	% ¹
Administration	\$4,596	\$5,339	\$9,935	19%	\$4,246	\$5,466	\$9,712	24.0%	\$4,501,844	\$4,261	\$8,763	29.8%
Repair		\$18,409	\$18,409	45.5%		\$10,512	\$10,512	26.0%		\$4,315	\$4,315	14.7%
Vehicle Retirement		\$23,635	\$23,635	45.5%		\$20,194	\$20,194	50.0%		\$16,306	\$16,306	55.5%
TOTALS	\$4,596	\$47,383	\$51,980	100%	\$4,246	\$36,172	\$40,418	100%	\$4,501,844	\$24,882	\$29,384	100%
DCA Pro Rata ²		\$2,104				\$1,691				\$1,548		

¹ Percentage is of a categories total expenditure relative to the funds total expenditure.

² DCA Pro Rata included in admin OE&E.

EFMS (Dollars in Thousands)	FY 2010/11				FY 2011/12				FY 2012/13			
	Personnel Services	OE&E	Total	% ²	Personnel Services	OE&E	Total	% ²	Personnel Services	OE&E	Total	% ²
Administration	\$186	\$356	\$542	2.6%	\$426	\$2,711	\$3,137	8.3%	\$300	\$1,487	\$1,788	5.1%
Voucher Program ¹		\$0	\$0	0.0%		\$750	\$750	2.0%		\$238	\$238	0.7%
Off Cycle Retirement		\$19,973	\$19,973	97.4%		\$33,993	\$33,993	89.7%		\$32,736	\$32,736	94.2%
TOTALS	\$186	\$20,329	\$20,515	100%	\$426	\$37,454	\$37,880	100%	\$300	\$34,461	\$34,761	100%
DCA Pro Rata ³		\$0				\$124				\$22,933		

¹ Program implemented in August 2010.

² Percentage is of a categories total expenditure relative to the funds total expenditure.

³ DCA Pro Rata included in admin OE&E.

The Bureau seeks cost recovery under BPC § 125.3 in all of its formal disciplinary cases. BAR is awarded cost recovery in approximately 60% of its formal administrative cases. Over the last four fiscal years, this has amounted to nearly \$6.1 million in costs ordered by and Administrative Law Judge to be repaid to BAR. However, approximately \$3.0 million of that amount is due upon reapplication and will only be recovered if the respondent chooses to apply for licensure or registration at a later date.

Internal BAR collection efforts have resulted in the collection of \$1.77 million over the last four years. In addition, BAR has collected approximately \$85,000 in previously unpaid costs and has entered into payment arrangements with respondents to recover approximately \$850,000 in additional unpaid costs from previously adjudicated cases.

Upon the exhaustion of all reasonable collection efforts, BAR will transmit an unpaid cost recovery case to the Franchise Tax Board (FTB) for collection. To date, BAR has forwarded the information of six debtors owing a total of \$92,181.11 to FTB for interception.

In December 2012, DCA, on behalf of BAR, entered into an agreement with Cedar Financial Services (Cedar) to perform debt collection services on outstanding amounts due. To date, BAR has forwarded to Cedar approximately \$115,000 in delinquent accounts for recovery efforts. Delinquent accounts are only forwarded after BAR staff have exhausted all efforts in an attempt to collect the outstanding

amounts and the respondent has either refused or reported an inability to pay the amount due, or BAR has been unable to locate the respondent.

Cost Recovery				
(dollars in thousands)	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Total Cost of Investigation	\$5,340	\$5,297	\$6,115	\$4,317
Total Cost of Adjudication and Hearings	\$2,080	\$2,007	\$2,890	\$2,086
Total Enforcement Expenditures	\$7,421	\$7,304	\$9,005	\$6,403
Potential Cases for Recovery *	151	268	261	204
Cases Recovery Ordered	126	126	157	133
Amount of Cost Recovery Ordered Upon Re-application	\$883	\$768	\$752	\$598
Amount of Cost Recovery Ordered (not upon reapplication)	\$660	\$842	\$813	\$672
Total Costs Ordered	\$1,542	\$1,610	\$1,565	\$1,270
Amount Collected	\$865	\$247	\$286	\$368
* Cases in which disciplinary action has been taken based on violation of the License Practice Act.				

Staffing Levels

BAR is headed by a Chief, who is appointed by the Governor and confirmed by the State Senate. The Chief serves at the pleasure of the Governor and under the direction and supervision of the Director of the Department of Consumer Affairs. The current Chief, Patrick Dorais, was appointed in 2013 and previously served as BAR Chief in 2003-2004. For FY 2013/14, the Bureau has a staff of 595, with 394 staff dedicated to enforcement and 47 to licensing.

BAR's average vacancy rate is under 3%, due in part to continuous on-line testing for various classifications, such as the Program Representative I and Program Representative II series. This continuous on-line testing was developed by BAR in conjunction with DCA's Personnel Office and the California Department of Human Resources. BAR does not generally experience a high rate of turnover in staff, other than in entry-level office classifications.

Licensing

BAR's Licensing Unit issues all licenses, registrations, and certifications within the average processing timeframes established in the Bureau's regulations. Additionally, BAR processes the waiving of licensee renewal fees and requirements for active duty military service members, as required by AB 1588 (Atkins, Chapter 742, Statutes of 2012). BAR continues to streamline processes and workload to maintain the timely issuance of registrations and licenses to the automotive industry.

AB 2289 (Eng, Chapter 258, Statutes of 2010) revised BAR's administration of the Smog Check Program. That bill authorized BAR to certify high performing Smog Check stations as STAR certified, which allows those stations to inspect and repair vehicles that are likely to be high polluters.

The STAR Program was fully implemented on January 1, 2013. The STAR Program inspects vehicles identified as being likely high or gross polluters. STAR certified stations must meet higher,

performance based criteria as defined by BAR through regulation. There are over 4,000 stations that are currently certified under the STAR Program.

BAR has experienced approximately a 20% increase in new applications in FY 2012/13 compared with FY 2010/11, and a 7% renewal increase over the same period. Much of the increase may be attributed to the recovering economic conditions in the state, and to the restructuring of its Smog Check Technician license, and implementation of the STAR Program.

In 2012, BAR restructured its Smog Check licensing programs, which resulted in more licensing options for stations and new license types for individuals that better reflect the current job tasks and marketplace needs within the Smog Check industry. This restructuring was in response to independent analyses performed in 2009 by Comira Psychometric Services Division (Comira) titled *Comparative Analysis of Current Training and Proposed Training Initiatives for Smog Check Technicians*, and a separate study titled, *Job Analysis Update for Basic and Advanced Smog Technicians for the Bureau of Automotive Repair, State of California* performed by Donnoe and Associates.

Ultimately, it was determined that BAR's Smog Check Technician classification and training needed updating. As a result, the previous Smog Check Technician license was divided into two license types through regulatory changes – Smog Check Inspector and Smog Check Technician. BAR's Licensing Unit was prepared for the influx of Smog Check Technician applications during the transition to the two new license types, and processing of the applications went smoothly. The new licensing options provide viable paths to licensure for individuals already working in the automotive repair industry, as well as for individuals in school with a desire to obtain employment in the automotive repair industry. These paths take into consideration the various experience and skill levels of prospective licensees and include knowledge and skill development training provided by BAR-certified training institutions.

BAR has further partnered with DCA on the BreEZe database project. The BreEZe system will allow for the online submittal of initial license applications and renewal processing. The BreEZe system will also incorporate online payment processing and allow for the collection of licensing statistics to better measure performance metrics. BAR is scheduled to be in Phase Three of the BreEZe rollout in the later part of 2014.

Licensing and registration applicants are required to provide a detailed explanation of any criminal convictions. If it is found that the applicant knowingly made a false statement of fact, the application may be denied pursuant to BPC § 480 (c). BAR has authority to deny a license or registration for a criminal conviction substantially related to the licensed practice as provided under BPC § 480 (a), but BAR does not have authority to fingerprint applicants or existing licensees in order to receive criminal record information from the California Department of Justice (DOJ) or the Federal Bureau of Investigation (FBI), or to receive subsequent arrest notices from DOJ.

School Approval

As part of the administration of the Smog Check Program, BAR is required to certify schools that provide training to Smog Check Repair Inspectors and Technicians. BAR has established, through regulation, requirements that training institutions must meet to qualify for BAR certification. Approval by the Bureau for Private Postsecondary Education (BPPE) is a part of those qualification requirements. Specifically, prospective training institutions must obtain BPPE approval or, as applicable, an exemption of approval from BPPE. BPPE serves to screen private training institutions

to ensure student protection mechanisms are in place. BAR's requirements for certification focus on the institution's technical capabilities, including an inspection of the facility to verify that it has the required tools, equipment, vehicles, and instructors. As of May 2013, BAR has certified 111 training institutions. These training institutions' qualifications are audited and reviewed annually upon submission of their renewal applications.

Continuing Education

For license renewal, Smog Check Inspectors must complete four hours of continuing education (CE) every two years. Smog Check Repair Technicians must attend 16 hours of CE every two years. A licensee who holds both the inspector and repair technician licenses, must complete 16 hours every two years. BAR certified instructors conduct the CE and enter the licensee's name into a BAR database on the Standards and Training Web site upon the licensee's successful completion of the course. Since the CE information is entered directly into the BAR database by the instructor, BAR does not perform audits of individual licensee's CE.

BAR implemented the current CE training in August 2012. BAR states that it does not yet have the ability to track how many licensees fail CE training, but is implementing a technology change that will allow BAR to gather this data. According to BAR, if a licensee wants to continue practicing in the trade, they will retake CE training (often with the original provider) until they pass.

Enforcement

Performance measures for the Enforcement Division of BAR are defined by DCA as part of the Consumer Protection Enforcement Initiative (CPEI) and focus on timely response to consumers and the pursuit of prompt disciplinary action against those found in violation of the Act.

Consumers initially contact BAR through the complaint investigation and mediation process. Prior to 2008, the responsibilities for complaint mediation, investigations, and formal and informal disciplinary actions were treated separately according to whether the issue concerned general consumer protection issues or the Smog Check Program. In an effort to ensure consistency in BAR's enforcement activities and functions, and in recognition of the Monitor's recommendations, in 2008, the program division was eliminated, merging with Consumer Protection Operations and Smog Check Enforcement Operations, and creating a single enforcement program at BAR. This led to a major enforcement reorganization that necessitated the merging of office resources and staff functions.

In the 2003 review, BAR reported transferring between 37% and 42% of its consumer complaints to DCA's mediation centers for resolution. However, due to the enforcement reorganization, in FY 2011/12 and FY 2012/13, BAR retained 98% of complaints for investigation and mediation by BAR field offices.

BAR has a goal of assigning complaints received to an investigator within seven days. Currently BAR meets this expectation and averages assigning complaints within four days. For investigations and mediation, BAR's goal is to close complaints within 60 days of receipt. For FY 2010/11, FY 2011/12, and FY 2012/13, BAR averaged approximately 48 days to close complaints, meeting expectations in this area.

Finally, BAR further seeks for an 85% positive result in its consumer satisfaction survey. Currently, 87% of consumers responding to the Bureau’s Consumer Satisfaction Survey indicate that they would refer a family member or friend to BAR. BAR considers the response to this item an accurate measure of consumer satisfaction.

For formal disciplinary cases, the goal defined by the CPEI is 540 days from the date the investigation is opened to the date of the resulting disciplinary order or other action. In FY 2010/11, the average was 535 days; in FY 2011/12, the average was 652 days; and for FY 2012/13, the average was 560 days. To better meet the CPEI goal of 540 days, BAR has implemented the following: (1) the implementation of a streamlined case review process; (2) a beginning to end case tracking process that identifies areas of inefficiency; (3) collaborating with the Office of the Attorney General to expedite adjudication of BAR cases.

The total time for formal disciplinary cases includes time necessary for the Attorney General’s office to prepare an accusation and the time necessary to schedule and hold an administrative hearing – both components which are largely outside the control of BAR. BAR’s internal goal for completion of an investigation is 180 days to allow time for the completion of the disciplinary adjudicatory process. For FY 2012/13 to the filing of the sunset report in November 2013, BAR’s average case completion time is 176 days.

The table below shows the timeframes for the last three years for investigations and formal discipline.

Enforcement Timeframes	FY 2010/11	FY 2011/12	FY 2012/13
Complaints received	18,531	19,076	17,157
Complaints referred for Mediation/Investigation	17,814	18,608	16,862
Investigations: Average days to close	48	47	48
Accusations filed	162	234	133
Average days to Accusation	258	177	398
Discipline: Average Days to Complete	535	652	556

The table below identifies the actual formal disciplinary actions taken by the Bureau in the past three years.

Formal Disciplinary Actions	FY 2010/11	FY 2011/12	FY 2012/13
Accusations Filed	162	234	133
Proposed/Default Decisions	59	105	95
Stipulations	160	99	122
Revocation	249	416	372
Probation with Suspension	57	79	109
Probation	103	55	55

Online Advertising

The BAR indicates that online advertisement of auto repair by unlicensed individuals and facilities is a recurring problem. BAR staff frequently reviews online bulletin boards and other such sites to identify potential unlicensed individuals. It is a practice of BAR Enforcement staff to attempt to engage unlicensed individuals advertising online through an in-person repair transaction, at which point BAR issues a citation and order of abatement or monetary fine.

BAR began issuing citations for unlicensed activity in November of 2011, pursuant to California Code of Regulations § 3394.40.

BAR states that it is currently exploring regulations which would require specified automotive repair dealers to publish their registration number in the advertisement. BAR believes this requirement which will further enhance BAR's ability to identify those who are engaged in unlicensed activity.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Bureau was last reviewed by in 2003 by the Joint Legislative Sunset Review Committee (JLSRC). During the previous review, JLSRC raised several issues. Below are actions which have been taken over the last 11 years to address a number of these. For those which were not addressed and which may still be of concern, they are addressed and more fully discussed under "Current Sunset Review Issues."

In November, 2013, the BAR submitted its required sunset report to the Committees. In this report, the Bureau described actions it has taken since its prior review to address the recommendations of JLSRC. According to the Bureau, the following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made:

Internal Changes:

- **Changes in BAR Chief.** Since the review in 2003, there have been five BAR Chiefs appointed. The current Chief, Patrick Dorais was appointed in 2013. Previously, John Wallauch (2012-2013), Sherry Mehl (2007-2012), Richard Ross (2004-2007), and Patrick Dorais (2003-2004) served as Chief of the Bureau.
- **Consolidate Complaint Mediation and Investigation Functions.** Prior to 2008, the responsibilities of enforcement related functions such as complaint mediation, investigations, and formal and informal disciplinary actions were treated separately according to whether the issue concerned general consumer protection issues or the Smog Check Program. In an effort to ensure consistency in BAR's enforcement activities and functions, in 2008, the program division was eliminated, merging with Consumer Protection Operations and Smog Check Enforcement Operations, and creating a single enforcement program at BAR. This led to a major enforcement division reorganization that necessitated the merging of office resources and staff functions.
- **Headquarter Relocation.** In July 2012, BAR headquarters was relocated to 10949 North Mather Boulevard in Rancho Cordova, approximately four miles from the prior location.

Major Studies:

- **Evaluation of the California Smog Check Program Using Random Roadside Data** (March 2009); **2010 Addendum.** Commissioned by ARB in cooperation with BAR, Sierra Research, Inc. conducted research and analysis of the Smog Check Program using data collected from roadside inspections from 2003 to 2006. The study compared roadside inspection results for

1976 through 1995 (pre-On-board Diagnostics II) model-year vehicles to the Smog Check inspection results reported by Smog Check stations for these same vehicles.

- **Comparative Analysis of Current Training and Proposed Training Initiatives for Smog Check Technicians** (February 2009). Comira provided an in-depth analysis of BAR's Smog Check training processes and made recommendations to better meet the needs of BAR's Licensing program and its licensees.
- **Job Analysis Update for Basic and Advanced Smog Technicians for the Bureau of Automotive Repair, State of California** (February 2009). The Donnoe & Associates, Inc. analysis identified specific knowledge, skills and abilities associated with both Smog Check inspections and Smog Check repairs. This analysis provided details needed to implement improvements to the Smog Check licensing program, including updating license classes, training, and examinations.

The analyses by Comira and Donnoe & Associates were used to develop regulations which establish licensing requirements reflecting the best practices of the marketplace and which better meet the business and professional needs of licensees.

- **Evaluation of Remote Sensing for Improving California's Smog Check Program** (March, 2008) by Eastern Research Group, Inc. ARB and BAR conducted a pilot study to evaluate whether use of Remote Sensing Devices (RSD), could improve the effectiveness of the Smog Check Program. The study focused on the practicality and cost-effectiveness of an RSD Program to determine whether it could supplement rather than replace California's Smog Check program. The study found that in situations such as in California where a Smog Check Program already exists, utilizing an RSD program is cost-prohibitive, and the cost generally outweighs the estimated benefits. However, RSD generated relevant, but limited, information on the effectiveness of the Smog Check Program and the characteristics of the state's vehicle fleet.
- **2006 Final Report Bureau of Automotive Repair Enforcement Monitor**, (December 2006), by STRATEGICA Inc. The report was mandated by SB 1542 (Figueroa, Chapter 572, Statutes of 2004). The report focused on how consistent, equitable, and fair BAR had been in applying the laws and regulations to licensees statewide. This study was undertaken to evaluate the operation of BAR's Enforcement unit within the authority of federal and California law.
- **April 2004 Evaluation of the California Enhanced Vehicle Inspection and Maintenance (Smog Check) Program** (Report to the Legislature submitted by ARB and BAR). This report, required by statute, assessed the effectiveness of the Smog Check Program and recommended improvements, including annual inspection of older vehicles and high usage vehicles, inspection of smoking vehicles, establishment of more stringent cut-points.

Prior Sunset Issues:

In 2003, BAR was reviewed by the (then) JLSRC. During the review, several issues were raised with BAR's administrative structure and enforcement practices. As a result, SB 1542 (Figueroa, Chapter 572, Statutes of 2004) required the appointment of a BAR Administration and Enforcement Monitor (Monitor) to evaluate BAR's disciplinary system and procedures, with specific concentration on

improving the overall efficiency and assuring the fairness of the enforcement program, and the need for administrative structural changes. The Monitor was to submit an initial written report of findings and conclusions by July 1, 2005 and a final report by December 2006.

The final report made a total of 12 recommendations. As noted below, several were completed or are pending, several required statutory changes, and one (technical review of software products on request) was considered problematic as noted below.

Items completed or pending:

- BAR amended office conference reports to include an acknowledgement at the end of the report regarding the attendee's understanding of what was discussed and the purposes of the conference.
- BAR reinstated the Auto Body Repair Inspection Pilot Program in 2006 and established a toll-free phone number for consumers to request no-cost inspections of collision repairs by BAR field representatives.
- BAR has been working with industry on updating the disciplinary guidelines regulation and establishing brake inspection procedures.
- BAR should implement annual or semi-annual technical conferences for shop management software providers and offer technical reviews of software products on request. BAR states that a problem with implementing this recommendation is the perception that software dealing with diagnosis and repairs would be identified as "BAR Approved" and could become an issue in a disciplinary action.
- Amend the Act to include time limitations for filings accusations against registrants under BPC § 9884. In 2007, SB 1047 (Committee on Business, Professions and Economic Development, Chapter 354, Statutes of 2007) added BPC § 9884.20 to establish a statute of limitations as recommended.

Items requiring legislative change to implement:

- Exclusion of the non-adopt provision from the Act.
- Amend Business and Professions Code § 125.3 directing DCA to pay all actual legal fees incurred by licensees where BAR was not able to prove a substantial number of the allegations in an administrative hearing.
- DCA should enhance the guidelines and authority of the Bureau's Industry Ombudsman.
- Establish a system of required testing and licensing for service writers. Provide training on tested material on a voluntary basis through classroom, on-site or self-directed methods. In addition, at least one beneficial owner of an ARD should be licensed.

Since the issuance of the Enforcement Monitor's recommendations, BAR underwent a reorganization of its enforcement processes and internal structure in 2008, addressing many of the issues addressed by

the enforcement monitor. As a result of the reorganization, all enforcement related cases go through the same review and evaluation process and all office conferences and other enforcement methods have been standardized.

CURRENT SUNSET REVIEW ISSUES FOR THE BUREAU OF AUTOMOTIVE REPAIR

The following are unresolved issues pertaining to the Bureau, or those which were not previously addressed by the Committee, and other areas of concern for this Committee to consider along with background information concerning the particular issue. There are also recommendations the Business, Professions and Economic Development Committee staff have made regarding particular issues or problem areas which need to be addressed. The Bureau and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

ADMINISTRATIVE ISSUES

ISSUE #1: Relationship between the BAR and the ARB.

Background: The Smog Check Program is administered by the Bureau of Automotive Repair (BAR), which is a part of the California Department of Consumer Affairs. The Air Resources Board (ARB), within the California Environmental Protection Agency, establishes air quality standards.

The ARB is a regulatory board established in 1967 composed of 11 members appointed by the Governor, and operates within the California Environmental Protection Agency. ARB seeks to maintain healthy air quality; protect the public from exposure to toxic air contaminants; and provide innovative approaches for complying with air pollution rules and regulations.

Several years ago, ARB, in cooperation with BAR, contracted with Sierra Research, Inc. to examine the effectiveness of the Smog Check Program using data collected for 1976-1995 model year vehicles during roadside test from 2000-2002 and again from 2003-2006 and compared them to results from those vehicles' biennial smog inspections. The resulting report titled, *Evaluation of the California Smog Check Program Using Random Roadside Data* (March 2009) and the *2010 Addendum* found that 19% of the vehicles sampled initially passed a tailpipe inspection at a licensed smog check station but failed a roadside inspection within one year. The data also showed that 49% of the vehicles that failed a roadside inspection had failed, and then subsequently passed, a tailpipe inspection within the past year.

In 2010, ARB and BAR co-sponsored AB 2289 (Eng, Chapter 258, Statutes of 2010) to make a number of changes to the Smog Check Program, including requiring that vehicles be inspected using the vehicle's onboard diagnostic equipment (OBD II, for second generation) and establishing performance standards that test only test and repair stations participating in the and Gold Shield program must meet in order to be eligible to issue certificates of compliance or noncompliance to high-emitting vehicles directed to it. The requirements to implement OBD II testing, to establish performance standards, and to strengthen enforcement procedures are intended to reduce fraud while also providing convenience to consumers.

It would be helpful for BAR to inform the Committees of the relationship between BAR and ARB, including identifying the roles which the two agencies play in establishing Smog Check policies and in what ways the two agencies work together to establish appropriate protections for California consumers.

Staff Recommendation: *The Bureau should advise the Committees about the roles that ARB and BAR play in the Smog Check Program, and in establishing Smog Check policies. In what ways do ARB and BAR work together to establish policies which protect California consumers?*

BUDGET ISSUES

ISSUE #2: General Fund Loans.

Background: The BAR is a special fund agency which is funded from the sale of Smog Check certificates, the annual smog abatement fee paid by owners of newer vehicles which are temporarily exempt from the biennial smog inspection, and to a lesser extent, by licensing fees, fines and penalties. BAR revenues are deposited into a statutorily created Vehicle Inspection and Repair Fund (VIRF) which also has within it a separate High Polluter Repair and Removal Account (HPPRA). Beginning in 2010, CAP began administration of the Enhanced Fleet Modernization Program (EFMP) which offers eligible consumers financial assistance by way of compensation to voluntarily retire an eligible vehicle regardless of Smog Check history.

To help address the statewide budget crisis, in FY 2002/03, \$100 million was transferred from BAR’s VIRF to the General Fund as a loan with no specified repayment date. An additional \$14 million was similarly transferred in FY 2003/04, and \$25 million in FY 2008/09. The total loans to the General Fund from the VIRF is \$139 million. In FY 2010/2011, \$20 million was loaned from the HPPRA to the General Fund; that loan was repaid in FY 2011/12. An additional loan of \$60 million in FY 2010/11 was made from the EFMP Fund to the General Fund. Of that amount, \$20 million was repaid in FY 2011/12.

The current total loan amount to the General Fund from the Special Funds administered by BAR is \$179 million. The current Budget Proposal anticipates the repayment of \$14 million to the VIRF, and \$10 million to the EFMP fund in FY 2014/15, leaving an outstanding balance of \$155 million in loans to the General Fund.

General Fund Loans										
Entity	Loan Amounts ¹						Total Loans To General Fund	Repaid		Total Loan Balances Remain FY 2012/13 ²
	FY 2002/03	FY 2003/04	FY 2008/09	FY 2010/11	FY 2011/12	FY 2012/13		FY 2010/11	FY 2011/12	
VIRF	\$100,000	\$14,000	\$25,000				\$139,000			\$139,000
HPPRA			\$20,000				\$20,000	\$20,000		\$0
EFMS				\$60,000			\$60,000		\$20,000	\$40,000
Total	\$100,000	\$14,000	\$45,000	\$60,000			\$219,000	\$20,000	\$20,000	\$179,000

¹ Loan amounts in thousands of dollars.

² Excludes interest.

It is unclear what the effect that fund reductions have had on BAR’s operations or its ability to expand its programs in recent years. What is the overall impact that the General Fund loans have had on the Bureau’s operations? What is the current status of the outstanding General Fund loans, and what are the plans to repay them to the Special Funds administered by BAR?

Staff Recommendation: *The Bureau should inform the Committees of the impact that the General Fund loans have had on the Bureau’s operations. What is the current status of the outstanding General Fund loans, and what are the plans to repay them to the Special Funds administered by BAR?*

ISSUE #3: Pro Rata.

Background: Through its various divisions, DCA provides centralized administrative services to all boards and bureaus in the department. Most of these services are funded through a pro rata calculation that is based on “position counts” and charged to each board and bureau.

In the current Sunset Report, BAR lists Expenditures by Program Component, dividing the three separate funds into their component parts, and lists pro rata as a part of the administrative overhead for each of the funds. The chart below shows the DCA Pro Rata for the last three fiscal years charged to each of the funds administered by BAR.

Pro Rata Expenditures (dollars in thousands)				
	FY 2010/11	FY 2011/12	FY 2012/13	Totals
VIRF	\$15,897	\$16,335	\$15,390	\$47,622
HPRRA	\$2,104	\$1,691	\$1,548	\$5,343
EFMS	\$0	\$124	\$23	\$147
Total	\$18,001	\$18,150	\$16,961	\$53,112

While BAR is one of the largest regulatory programs in DCA, it appears to pay a large portion of pro rata. For the three fiscal years shown in the chart above, BAR paid to DCA some \$53 million in pro rata, an average of \$16.7 million a year from the three special funds.

BAR should advise the Committees about the bases upon which pro rata is calculated, and how it is determined how the pro rata charged will be paid from among the three funds under the Bureau’s jurisdiction. The Bureau should additionally inform the Committees of the types of services that are funded by the pro rata it pays to the DCA.

Staff Recommendation: *The Bureau should advise the Committees about the bases upon which pro rata is calculated, and how it is determined how the pro rata charged will be paid from among the three funds under the Bureau’s jurisdiction.*

LICENSING ISSUES

ISSUE #4: Verification of Criminal Conviction Information.

Background: BAR indicates that applicants must disclose all prior criminal convictions or administrative discipline, including Smog Check citations, as part of the application process. Applicants are further required to provide a detailed explanation of any criminal convictions disclosed on the application. BAR's Enforcement Division reviews prior disciplinary and/or criminal history to determine if the initial or renewal license should be granted. If it is found that the applicant knowingly made a false statement of fact, the application may be denied pursuant to BPC § 480 (c).

BAR does not have the authority to fingerprint applicants under BPC § 144, in order to receive criminal record information from the California Department of Justice (DOJ) or the Federal Bureau of Investigation (FBI), or to receive subsequent arrest notices from DOJ. Accordingly, none of the existing licensees or registrants of the Bureau have been fingerprinted to determine whether they have any criminal convictions which are substantially related to their practice.

However, BAR has authority to deny a license or registration for a criminal conviction substantially related to the licensed practice as provided under BPC § 480 (a). Without the authority to fingerprint applicants, it is unclear how BAR is able to verify the disclosures on a licensing application regarding criminal convictions.

How does BAR verify whether or not an applicant has prior criminal convictions? Does the Bureau feel that it would be helpful in its consumer protection efforts to fingerprint applicants, and existing licensees and registrants?

Staff Recommendation: *The Bureau should inform the Committees on how it verifies whether or not an applicant has been convicted of any crimes which are substantially related to the licensed practice. Does the Bureau feel that it would be helpful in its consumer protection efforts to fingerprint applicants, and existing licensees and registrants?*

ISSUE #5: Tracking CE Failure Rates.

Background: The Bureau's report indicates that for license renewal, Smog Check Inspectors must complete four hours of continuing education (CE) update training every two years. Smog Check Repair Technicians must attend 16 hours of update training every two years. A licensee who holds both the inspector and repair technician licenses, must complete 16 hours every two years. BAR certified instructors conduct the CE training and enter the licensee's name into a BAR database on the Bureau's Standards and Training (S&T) Web site upon the licensee's successful completion of the course. Since the CE information is entered directly into the BAR database by the instructor, BAR does not perform audits of individual licensee's CE.

BAR implemented the current CE training in August 2012. BAR states that it does not yet have the ability to track how many licensees fail CE training, but is implementing a technology change that will allow BAR to gather this data.

According to BAR, if a licensee wants to continue practicing in the trade, they will retake CE training (often with the original provider) until they pass. A licensee or registrant who does not successfully pass the CE or who has failed the CE will be unable to renew their license or registration.

Staff Recommendation: *The Bureau should update the Committees on the current status of the CE program for Smog Check Inspectors and Smog Check Repair Technicians. What is the current status of the Bureau's efforts to implement technology changes which give BAR the ability to track the CE failure rate for licensees?*

ISSUE #6: Should facilities that offer services that have been considered exempt areas of practice such as replacing spark plugs, batteries, fan belts and with tire pressure monitoring systems be required to register as automotive repair dealers?

Background: In its sunset report, the BAR raised the issue of ancillary services which have typically been regarded as exempt areas of practice and therefore not subject to regulation and registration as an ARD, such as replacing spark plugs, batteries, and fan belts. BAR indicates that because of advances in automotive technology many of these services require more specialized repair skills, and necessitate the removal of automotive systems, engine components, shrouds or other electrical equipment. The Bureau indicates that an ARD registration should be required for those carrying out such complex repairs.

BPC § 9880.1 (e) defines “repair of motor vehicles” to exclude repairing tires, changing tires, lubricating vehicles, installing light bulbs, batteries, windshield wiper blades and other minor accessories, cleaning, adjusting, and replacing spark plugs, replacing fan belts, oil, and air filters, and other minor services determined by the Bureau to be “performed by gasoline service stations.” The law further states that “No service shall be designated as minor, for purposes of this section, if the director finds that performance of the service requires mechanical expertise, has given rise to a high incidence of fraud or deceptive practices, or involves a part of the vehicle essential to its safe operation.” A person who engages in such practices must register as an ARD as provided by BPC § 9884.6.

Another example cited by BAR of repairs exempt from registration under the Automotive Repair Act is tire services. Many modern vehicles are equipped with tire pressure monitoring systems that may require the technician to update the vehicle's on-board diagnostic system when serviced.

Discussions with repair industry representatives indicate that recently BAR has determined that some tire dealers must register as ARDs. This determination has apparently been made because of the definitions in BPC § 9880.1, and the Federal Transportation Recall Enhancement, Accountability, and Documentations Act (TREAD). TREAD requires that beginning with the 2006 model year, every new vehicle, of less than 10,000 pounds GVWR, must be equipped with a TPMS (Tire Pressure Monitoring System). BAR has determined that shops engaging in the repair, removal, and installation of TPMS must register as ARDs because TREAD mandated new vehicles be equipped with TPMS in response to numerous deaths. As a clear health and safety issue, the proper functioning of such components is essential to the safe operation of a vehicle. BAR has further indicated that the repair and diagnosis of TPMS often requires the use of specialized equipment and adherence to specific diagnostic procedures, which necessitates specific mechanical expertise.

In its sunset report, BAR indicated that the definition of repair of motor vehicles may need to be updated by regulation to clarify what constitutes maintenance and repairs of motor vehicles, given changes to automotive technology over time. BAR should more fully discuss this issue, and advise the Committees of what it is doing to appropriately protect consumers in these areas. Is BAR's regulatory authority sufficient in these areas? Does BAR recommend legislative changes to better enhance or clarify its regulatory authority in these areas?

Staff Recommendation: *The Bureau should discuss this issue with the Committees. What is the Bureau doing to appropriately protect consumers in this area? Is the Bureau considering regulatory changes to better protect consumers? Is BAR's regulatory authority sufficient in these areas? Does BAR recommend legislative changes to better enhance or clarify its regulatory authority in these areas?*

ENFORCEMENT ISSUES

ISSUE #7: Enforcement timeframes.

Background: The goal established by DCA's Consumer Protection Enforcement Initiative (CPEI) for formal disciplinary cases is 540 days from the date the investigation is opened to the date of the resulting disciplinary order or other action. Even though BAR is not a health care board, it seeks to comply with the CPEI timeframes.

Although still not reaching the 540 day goal, the Bureau appears to be making improvements in its timeframes for completing disciplinary actions. In FY 2010/11, the average was 535 days; in FY 2011/12, the average was 652 days; and for FY 2012/13, the average was 560 days.

BAR indicates the keys to achieving the current improvements are: (1) the implementation of a streamlined case review process; (2) a beginning to end case tracking process that identifies areas of inefficiency; (3) collaborating with the Office of the Attorney General to expedite adjudication of BAR cases.

It is important to note that the goal of 540 days includes the total time from the day BAR initiates an investigation until the final effective date of the administrative action. This includes time necessary for the Attorney General's office to prepare an accusation and the time necessary to schedule and hold an administrative hearing. BAR's internal goal for completion of an investigation is 180 days to allow time for our partner agencies to complete adjudication. For Fiscal Year 2012/13 to date, BAR's average case completion time is 176 days.

Clearly, significant blocks of time during the administrative disciplinary process are outside of BAR's direct control. The time a case is in the control of the AG's office is subject to a number of factors, including the AG's caseload, and prioritization of cases. The process can also be backlogged by delays in the Office of Administrative Hearings (OAH). This is impacted by OAH caseloads, staffing and a variety of other priorities.

The table below shows the timeframes for the last three years for investigations and formal discipline. Clearly timeframes have significantly increased and far exceed the established performance measures.

Enforcement Timeframes	FY 2010/11	FY 2011/12	FY 2012/13
Complaints received	18,531	19,076	17,157
Complaints referred for Mediation/Investigation	17,814	18,608	16,862
Investigations: Average days to close	48	47	48
Accusations filed	162	234	133
Average days to Accusation	258	177	398
Discipline: Average Days to Complete	535	652	556

BAR should further advise the Committees about any existing bottlenecks in its enforcement process which impacts timeframes. Are there any further measures the Bureau would recommend to improve timeframes, and thereby improve consumer protection?

Staff Recommendation: *The Bureau should advise the Committees about where it believes the bottlenecks are in its investigation processes and disciplinary actions. What does the Bureau think are the causes of the delays? In the Bureau's opinion, what are viable solutions to the extensive timeframes in its enforcement processes?*

ISSUE #8: Implementation of the Administrative and Enforcement Monitor Recommendations.

Background: As indicated above, in 2005, the Department, under the provisions of SB 1542 (Figueroa, Chapter 572, Statutes of 2004) appointed a BAR Administration and Enforcement Monitor (Monitor). The Monitor was to evaluate BAR's disciplinary system and procedures, with specific concentration on improving the overall efficiency and assuring the fairness of the enforcement program, and the need for administrative structural changes. The Monitor submitted a written report in July 2005 and a final report in December 2006.

The final report made a total of 12 recommendations. According to BAR, several were completed or are pending, several would require statutory changes, and others may be considered problematic.

Since that time, BAR has made significant strides in prior issues which resulted in the appointment of the Monitor. BAR has reorganized its enforcement processes and carried out an internal structure revision in 2008, addressing many of the issues raised by the enforcement monitor. As a result of the reorganization, all enforcement related cases go through the same review and evaluation process and all office conferences and other enforcement methods have been standardized.

BAR has stated in its sunset report that a number of the recommendations would need legislative action to implement. To understand the final status of BAR's implementation of the Monitor's recommendations, it would be helpful if BAR would give a current update on the status and outcomes of the recommendations. Does BAR believe that any of the legislative changes that the Monitor recommended should be carried out?

Staff Recommendation: *BAR should report to the Committee on the status of implementing the recommendations of the administrative and enforcement monitor. Are there recommendations that still have not been implemented? Why have they not been implemented? Does BAR recommend that the legislative changes proposed by the monitor should be made?*

ISSUE #9: Updating Disciplinary Guidelines.

Background: Each regulatory board and bureau within DCA adopts disciplinary guidelines through its regulatory process. Consistent with its mandated priority to protect the public, a board establishes guidelines that the board finds appropriate for specific violations by a licensee. The disciplinary guidelines are established with the expectation that Administrative Law Judges hearing a disciplinary case, or proposed settlements submitted to a bureau for adoption will conform to the guidelines. The disciplinary guidelines are intended to bring consistency with how disciplinary actions are imposed upon licensees.

In its 2006, report the Monitor recommended BAR improve and clarify its disciplinary guidelines and work with stakeholders to establish brake inspection procedures. In its sunset report, BAR states that it is updating the disciplinary guidelines regulation with input from industry and establishing brake inspection procedures. BAR should update the Committees on the current status of updating the disciplinary guidelines.

Staff Recommendation: *BAR should update the Committees on the current status of updating the disciplinary guidelines.*

ISSUE #10: Why are there so few requests by the Bureau to suspend a license under Penal Code § 23?

Background: Penal Code § 23 authorizes a licensing agency under the BPC to appear before the Court in any criminal proceeding against a licensee to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the public. In such matters, the Bureau is represented by the Office of Attorney General. The Court may issue an order pursuant to PC § 23 regarding the suspension, probation or other conditions to be imposed on a criminal defendant licensee pending administrative action.

PC § 23 orders can be an effective way to remove a licensee from practice while criminal charges are pending and while a licensing board or bureau is preparing an administrative disciplinary case against the licensee.

As indicated in BAR's Sunset Report, for the past three years, the Bureau has only had a total of 9 requests for suspension under PC § 23: 1 in FY 2010/11, 5 in FY 2011/12, and 3 in FY 2012/13.

The Bureau should advise the Committees of why it seeks so few PC § 23 orders. Are there impediments to taking these types of actions? Are there ways that the Bureau could more effectively use this regulatory authority through the state's criminal Courts? In those cases where the Bureau does make a PC § 23 request, how does the Bureau become aware of the pending charges against a licensee?

Staff Recommendation: *The Bureau should advise the Committees of the manner in which it finds out about pending criminal charges against licensees. Are there any impediments to the Bureau making requests under PC § 23? Why are there so few PC § 23 requests made by the Bureau? Are*

there ways the Bureau could more effectively use consumer protection tool available through the Courts?

ISSUE #11: Update on the use of the Bureau's new citation and fine authority.

Background: Since the implementation of regulations for issuing citations for unlicensed activity became effective in October 2011, BAR has issued nearly 700 citations to unlicensed persons and facilities.

BAR is an active participant in the Governor's *Labor Enforcement Task Force* (LETTF) and partners with the other agencies in the LETTF to perform compliance sweeps numerous times each year. BAR also continuously monitors online listings and advertisements such as *Craigslist*, *Angie's List*, *Penny Saver*, etc. to identify and target potential unlicensed activities. BAR sets up covert sting operations to engage these operators and take appropriate action.

For citations and fines for violations by licensees, BAR reports that in FY 2012/13, there was a noticeable decrease in BAR enforcement activity, most noticeably in the issuance of citations and fines pursuant to the Smog Check Program. This is due to the fact that in November of 2012, BAR began initiating service contracts with confidential undercover operators. This involved a six month contracting process. Working with DCA, BAR was able to develop and implement these procedures in May of 2013; however, the six months during which BAR was unable to utilize civilian operators resulted in a substantial decrease in enforcement actions.

It is unclear whether BAR will be using the confidential undercover operators for enforcement activities relating to unlicensed persons or for licensed persons. The Bureau should update the Committees about its citation and fine program since it has begun to fully utilize the undercover operators. Have the number of citations and fines increased or decreased as a result?

Staff Recommendation: *BAR should update the Committees on the current status of its ability to issue citations and fines. Are the confidential undercover operators being used for enforcement activities relating to unlicensed or for licensed persons? Have the number of citations and fines increased or decreased as a result?*

ISSUE #12: Cost Recovery and Reapplication of Revoked Licensees.

Background: The Bureau seeks cost recovery under BPC § 125.3 in all of its formal disciplinary cases. BAR is awarded cost recovery in approximately 60% of its formal administrative cases. For the last four years, this totals nearly \$6.1 million in costs ordered to be paid to BAR. However, approximately \$3.0 million of that amount is due upon reapplication and will only be recovered if the respondent chooses to apply for licensure or registration at a later date.

Internal BAR collection efforts have resulted in the collection of \$1.77 million over the last four years. In addition, BAR has collected approximately \$85,000 in previously unpaid costs and has entered into payment arrangements with respondents to recover approximately \$850,000 in additional unpaid costs from previously adjudicated cases.

Upon the exhaustion of all reasonable collection efforts, BAR transmits unpaid cost recovery cases to the Franchise Tax Board (FTB) for collection. To date, BAR has forwarded the information of six debtors owing a total of \$92,181.11 to FTB for interception.

In December 2012, DCA, on behalf of BAR, entered into an agreement with Cedar Financial Services (Cedar) to perform debt collection services on outstanding amounts due. To date, BAR has forwarded to Cedar approximately \$115,000 in delinquent accounts for recovery efforts. Delinquent accounts are only forwarded after BAR staff have exhausted all efforts in an attempt to collect the outstanding amounts and the respondent has either refused or reported an inability to pay the amount due, or BAR has been unable to locate the respondent.

BAR Administrative Cost Recovery				
(Dollars in Thousands)	FY 2009/10	FY 2010/11	FY 2011/12	FY 2012/13
Total Cost of Investigation	\$5,340	\$5,297	\$6,115	\$4,317
Total Cost of Adjudication and Hearings	\$2,080	\$2,007	\$2,890	\$2,086
Total Enforcement Expenditures	\$7,421	\$7,304	\$9,005	\$6,403
Potential Cases for Recovery *	151	268	261	204
Cases Recovery Ordered	126	126	157	133
Amount of Cost Recovery Ordered Upon Re-application	\$883	\$768	\$752	\$598
Amount of Cost Recovery Ordered (not upon reapplication)	\$660	\$842	\$813	\$672
Total Costs Ordered	\$1,542	\$1,610	\$1,565	\$1,270
Amount Collected	\$865	\$247	\$286	\$368

* Cases in which disciplinary action has been taken based on violation of the License Practice Act.

The Bureau should advise the Committees of its assessment of the current efforts to recover ordered costs through the use a collection agency and through the use of the FTB intercept program. The Bureau should further inform the Committees whether there are any issues with reapplication of revoked licensees under another name or different ownership in order to avoid paying costs?

Staff Recommendation: *BAR should give the Committees its assessment of the current efforts to collect cost recovery amounts that are due to the Bureau. Are there additional steps that could be taken? Has BAR found instances of issues of a licensee who has been revoked applying for a new license under another name or different ownership in order to avoid paying costs?*

ISSUE #13: Regulations Requiring ARD advertising to include Registration number.

Background: According to BAR, online advertisement of auto repair by unlicensed individuals/facilities is a recurring problem. BAR staff frequently reviews online bulletin boards and other such sites to identify potential unlicensed individuals. It is a practice of BAR Enforcement staff to attempt to engage unlicensed individuals advertising online in an in-person repair transaction, at which point BAR issues a citation and order of abatement or monetary fine. As otherwise indicated above, BAR began issuing citations for unlicensed activity in November of 2011 under newly enacted regulations.

BAR states that it is exploring promulgating regulations which would require specified automotive repair dealers to publish their registration number in their advertisements. BAR indicates that this would further enhance BAR's ability to identify those who are engaged in unlicensed activity.

BAR should inform the Committees of the status of regulations to require advertisers of automotive repair services to publish their BAR registration number in advertisements.

Staff Recommendation: *Bureau should update the Committees on the status of regulations which seek to fight unlicensed activity by requiring specified automotive repair dealers to publish their BAR registration number in advertisements.*

TECHNOLOGY ISSUES

ISSUE #14: What is the status of BreEZe implementation by the Bureau?

Background: As one of the largest bureaus within DCA, BAR is a major stakeholder in the BreEZe project. BreEZe will replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology. The BreEZe Project will provide DCA boards, bureaus, and committees with a new enterprise-wide enforcement and licensing system.

BAR realized early on that its investment in the BreEZe project is both necessary and valuable. To that end, BAR has assigned four staff persons who know BAR's business needs to actively participate with the BreEZe project management team. This allows BAR to acquire early knowledge of the BreEZe system and design, which will assist in the training of staff upon deployment of BreEZe.

While BAR is not scheduled for active participation until preparations for release Phase Three begin, BAR has chosen to be proactive in its efforts to support the project by contributing the aforementioned staff resources. Additionally, BAR holds a seat on the BreEZe Executive Steering Committee, which allows BAR to keep abreast of the project's progress and to identify further opportunities to provide support.

BreEZe will provide all DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements; BreEZe will improve DCA's service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information. The BreEZe solution will be maintained at a three-tier State Data Center in alignment with current State IT policy.

BreEZe is an important opportunity to improve the Bureau's operations to include electronic payments and expedite processing. Staff from numerous DCA boards and bureaus have actively participated with the BreEZe Project. Due to increased costs in the BreEZe Project, SB 543 (Steinberg, Chapter 448, Statutes of 2011) was amended to authorize the Department of Finance (DOF) to augment the budgets of boards, bureaus and other entities that comprise DCA for expenditure of non-General Fund moneys to pay BreEZe project costs.

The Bureau is scheduled to begin using BreEZe in Phase Three which is anticipated to be released in the fall of 2014. It would be helpful to update the Committees about the Bureau's current work to implement the BreEZe project.

Staff Recommendation: *BAR should update the Committee about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? What are the costs of implementing this system? Is the cost of BreEZe consistent with what the Bureau was told the project would cost?*

ISSUE #15: Development of an Automotive Resource Center Website by the Foundation of California Community Colleges.

Background: Effective August 1, 2012, BAR separated the Smog Check Technician license into two license types: Smog Check Inspector and Smog Check Repair Technician. This flexible licensing structure aligns qualifications required for inspectors and technicians to specific services for which they are licensed to provide. New training programs and course work for the two licenses were developed by BAR certified schools using standards defined by BAR. As an aid to schools, BAR developed a comprehensive training program, The California Smog Check Program series, which is a Web-based interactive program that consists of nine modules that cover the fundamentals of the Smog Check Program and inspection procedures. Since the license restructure, BAR certified schools have successfully trained 2,900 individuals looking to become licensed to work in the Smog Check industry.

The sunset report notes that, in addition to the above, BAR has asked the Foundation for California Community Colleges (FCCC), BAR's Referee contractor, to develop an Automotive Resource Center Web site. BAR indicates that this Web site will provide information about training, training facilities, employment, and hiring to instructors, automotive industry students, automotive industry jobseekers, and the automotive industry.

BAR should update the Committees on the development of this Automotive Resource Center Web site. What is the current status of this project? What benefits does BAR believe the development of the Web site will bring?

Staff Recommendation: *BAR should update the Committees on the development of the Automotive Resource Center Web site. What is the current status of this project? When will the Web site be complete? What benefits does BAR believe the development of the Web site will bring?*

OTHER ISSUES

ISSUE #16: Technical Cleanup.

Background: Committee staff notes clean up provisions that should be made to the Business and Professions Code and the Health and Safety Code relating to the Bureau.

BPC § 9882 (b) refers to the Bureau being reviewed by "the Joint Committee on Boards, Commissions and Consumer Protection." That committee was repealed in 2010 by AB 2130 (Huber, Chapter 670, Statutes of 2010). This section should be amended, cleaning up the references to the repealed committee.

In addition, BPC § 9882.2 deals with the appointment of the Chief of the Bureau, and provides for the Governor to give due consideration to any person “recommended by the board.” The term board refers to a “Bureau of Automotive Repair Board” which was repealed in 1993 by SB 574 (Boatwright, Chapter 1264, Statutes of 1993). This section should be amended, updating the outdated reference to the board.

There may also be other technical cleanup and clarifying provisions that might be made to the Automotive Repair Act or to the provisions of the Health and Safety Code under the Bureau’s regulatory authority.

The Bureau should work with Committee staff to recommend cleanup amendments for these provisions of law.

Staff Recommendation: *BAR should work with Committee staff to identify cleanup amendments for the Business and Professions Code and the Health and Safety Code provisions relating to the Bureau.*

**CONTINUED REGULATION OF THE PROFESSION BY THE
CURRENT PROFESSION BY THE BUREAU OF AUTOMOTIVE REPAIR**

ISSUE #17: (CONTINUED REGULATION BY THE BUREAU.) **Should the licensing and regulation of automotive repair industry be continued and be regulated by the current Bureau of Automotive Repair?**

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory agency with oversight over the automotive repair industry.

The Bureau has made improvements in recent years in meeting the mandates of the law, improving its licensing and regulatory activities, and protecting the interests of Californian consumers. The Bureau should be continued and reviewed again in 4-years so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Staff Recommendation: *Recommend that the licensing and regulation of the automotive repair industry continue to be regulated by the current Bureau of Automotive Repair in order to protect the interests of the public and that the Bureau be reviewed once again in four years.*