BACKGROUND

In April 2009 the State Controller released the last of three audit reports that reveal the State loses millions of dollars each year because state agencies often fail to collect the fines and penalties they have levied on various parties. The Controller's Office conducted a sampling of state agency audits to determine if state reimbursements were being collected appropriately.

Unfortunately, poor collection efforts may not be unique to these three agencies, and could be indicative of a systemic problem affecting the State's 170 departments, boards and commissions.

Conducted over the past two years, the audits looked into collection efforts and rates at the California Highway Patrol, the Public Utilities Commission, and the Department of Industrial Relations. The reviews uncovered the loss of at least $80 million, but the actual amount of funds that go uncollected is difficult to determine because the agencies failed to maintain accurate and reliable records of accounts receivable.

Under existing law, agencies that receive revenues – whether from fines, penalties or the issuance of licenses – must make an effort to collect those funds. But the audits of the three agencies indicate that none adequately prioritize their debt collection responsibilities, fully document the amount owed or collected, or make sufficient efforts to collect the owed amounts.

The latest review completed in April 2009 revealed that over a two-year period, the California Highway Patrol (CHP) failed to record as "accounts receivable" at least $9.6 million in delinquent billings for the costs of investigating Driving Under the Influence (DUI) incidents. That resulted in those debts being internally dismissed, or ignored, instead of being subjected to appropriate collection actions.

The audit also revealed that the CHP, for more than a year, delayed implementing a state law that increased from $1,000 to $12,000 the maximum amount the CHP could recover from convicted drunk drivers for the costs of investigating accidents caused by their criminal behavior. The audit cited that due to the inadequate record-keeping at CHP, the Controller's office was unable to determine how much that may have cost the State in under-billings. However, with an average of 21,000 DUI cases each year, these uncollected cost recoveries could total millions of dollars.

An audit completed in August 2007 showed the California Public Utilities Commission (PUC) failed to adequately record valid accounts receivable, which resulted in the PUC failing to collect $20.6 million in fines over a 10-year period levied against telecommunications providers that defrauded consumers.

An audit completed in August 2008 of the Department of Industrial Relations (DIR) showed that up to $54 million in fines against businesses that abuse the rights of their workers were ignored over a three-year period.

According to the audits, the most common problem underlying the failure of these departments to effectively collect the debt owed to them is management's disregard for the agencies' collection functions.

Because these losses are ultimately shortchanging the State's General Fund, the Controller forwarded his report to the Department of Finance's Accounts Receivable Workgroup, the Assembly Committee on Accountability and Administrative Review, and the Senate Office of Oversight and Outcomes for review and possible oversight hearings.

California Highway Patrol
Background Information

The California Highway Patrol's (CHP) core mission is to ensure safety and enforce traffic laws on approximately 100,000 miles of roadways, including all state highways (interstate routes, U.S. highways, and state routes), as well as county roads in unincorporated areas.

In addition to road patrol, the CHP promotes traffic safety by inspecting commercial vehicles, certifying school buses, ambulances, and other specialized vehicles, and carries out a variety of other mandated tasks related to law enforcement, including investigating vehicular theft and providing backup to local law enforcement in criminal matters. The CHP's responsibilities have expanded further since September 11, 2001, with the department playing a major role in the state's enhanced security activities.

The CHP's overall level of staffing is about 11,000 positions. The department is comprised of uniformed and non-uniformed personnel, with uniformed personnel accounting for approximately 7,600 positions, or 70 percent, of total staff.

The 2008-09 estimated budget for the CHP of $1.9 billion is composed of a variety of special funds. The largest source of funding ($1.7 billion) is the Motor Vehicle Account of the State Transportation Fund, which derives its revenues primarily from vehicle registration and driver license fees.

Issues identified by the State Controller's audit

The CHP misclassified Driving under the Influence (DUI) cost-recovery billings as contingent receivables rather than accounts receivable, and failed to record the billings in CalSTARS. This led to a recovery deficiency of $9.6 million over 2 years.

The CHP does not have adequate controls in place to ensure accuracy, reliability, and completeness of the DUI cost-recovery billings. This resulted in an outstanding balance of $16 million as of June 30, 2008. Auditors cited these figures as highly questionable due to the unreliable data available.

The maximum DUI cost-recovery billing was legislatively increased from $1,000 to $12,000 per case, but the increase was not implemented by the CHP for at least a year. As a result, the Controller estimated the CHP failed to collect $9.6 million over two years.

California Public Utilities Commission
Background Information

The California Public Utilities Commission (CPUC) regulates privately-owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies. Five Governor-appointed Commissioners and their staff work to ensure that consumers have safe, reliable utility service at reasonable rates, protect against fraud, and promote the health of California's economy.

The CPUC employs a staff of approximately 1,000 professionals, including engineers, economists, attorneys, administrative law judges, accountants, auditors, safety inspectors, customer service representatives and administrative personnel. The personnel is organized into several industry advisory units, along with other independent divisions focused on outreach, ratepayer advocacy, consumer protection, due process, and other specialty functions.

The estimated 2008-09 budget for CPUC was $1.2 billion. The Governor's 2009 May Revise proposes to consolidate the CPUC into a new Department of Energy.

<u>Issues identified by State Controller's audit</u>

Since 1999, the PUC has imposed approximately $300 million in fines and restitution against utility companies. The records show that $105.9 million of the $126.2 million (84%) in fines have been collected and $130.5 million of the $173.8 million (75%) in restitution has been paid. The CPUC has deemed uncollectible approximately $31.8 million in fines and restitution against utility companies.

Decisions against transportation companies represent the next highest category of fines and restitution among CPUC programs. Excluding fines imposed and collected through the informal citation process, the CPUC records show that it has collected $72,505 of $515,421 (14%) in fines and restitution. Almost all of the remaining $440,000 has been deemed uncollectible.

In many cases, it was difficult for the CPUC to collect, as the companies that engaged in fraudulent or inappropriate practices either ceased to operate or filed for bankruptcy shortly after the CPUC launched investigations or imposed fines. In addition, when a company refuses to pay a fine, the CPUC has to obtain a court judgment, which can be a lengthy process. However, the CPUC’s collection difficulties are further compounded by the following processing shortcomings and control deficiencies:

- The CPUC does not adequately review the background and financial viability of applicants for licenses to operate as telecommunications providers. Of the $32.2 million in fines and restitution that have been deemed uncollectible, $29.2 million is from such companies. An applicant for a license only has to provide minimal information on an application form and pay a nominal application fee of $75 to register as a telecommunication provider. In many cases, unscrupulous individuals or companies began billing consumers for millions of dollars in unauthorized charges shortly after being registered by the CPUC.

- The CPUC sometimes took years to render a decision imposing fines and restitution. In one case, after a CPUC administrative law judge made a recommendation about disposition, the CPUC did not render a decision to impose a $1.5 million fine until 21 months later. In the meantime, the company filed for bankruptcy protection.

- The CPUC made little effort to refer companies or individuals that apparently engaged in fraudulent activities to law enforcement agencies for prosecution. Nothing in the case files indicated why no referral was made. Some of these companies, or their principals, were prosecuted by law enforcement agencies in other states for engaging in activities similar to those in California.

- The CPUC has no procedures in place to ensure that its accounting office is notified of fines when they are imposed. Approximately $126.5 million in fines imposed by the CPUC since 1999 has never been entered into the CPUC's accounting records

- The CPUC has not undergone a comprehensive audit of its fiscal operations and internal control processes and procedures since 1992.

As a result, some unscrupulous companies or individuals may have been able to defraud California consumers for tens of millions dollars and then essentially disappear without suffering any fiscal or legal consequences.

Department of Industrial Relations
Background Information

The mission of the Department of Industrial Relations (DIR) is to protect the workforce of California, improve working conditions, and enhance opportunities for profitable employment. The Department's 2,700 employees carry out these responsibilities through three major programs: the adjudication of workers' compensation disputes; the prevention of industrial injuries and deaths (DOSH/CalOSHA); and the enforcement of laws relating to wages, hours, and working conditions.

In addition, the Department regulates self–insured workers' compensation insurance plans, provides workers' compensation payments to injured workers of uninsured employers and other special categories of employees, offers conciliation services in labor disputes, and conducts and disseminates labor force research. The 2008-09 estimated budget for DIR was $393 million, of which $69 million was General Fund.

Issues identified by State Controller's audit

According to the DIR's annual report to the Legislature, it was able to collect only $17.8 million of $71.9 million (24.7%) in fines for citations the Division of Labor Standards Enforcement (DLSE) issued against employers from the 2004 through the 2006 calendar year.

The DIR circumvented state controls by not setting up accounts receivable for fines imposed by the DLSE. Based on DLSE Field Enforcement annual reports, the DIR failed to record an estimated $71.9 million in accounts receivable in its accounting records from 2004 through 2006. According to DLSE staff, this amount is composed of all citations issued regardless of whether there were subsequent reductions in the citation amount or if the citation was dismissed altogether. Therefore, this amount may be inflated significantly. However, the DIR does not have the means to determine the actual amount due to the lack of sufficient and reliable data.

Apparently, this problem has been ongoing for more than ten years. In a report issued in March 2006, the Department of Finance (DOF) found that the DIR failed to record approximately $43.4 million in accounts receivable. The DOF report further noted that similar findings were included in another report issued in 1997. The failure to record accounts receivable represents a serious internal control weakness. DIR management does not have an accurate, complete, and independent data-management system to effectively oversee DLSE enforcement activity.

Moreover, the DIR's failure to record fines and penalties as accounts receivable is, in effect, bypassing the review by outside state control agencies. State agencies are required to file Discharge from Accountability requests to write off the uncollectible accounts receivable. By not recording the fines as accounts receivable, the DIR would not need to file the Discharge from Accountability requests for approval to write off uncollectible fines and penalties.