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with certain documentation which would allow IEPO to maintain its status as a domestic international stock corporation (DISC) and thereby be eligible for certain tax benefits and deferred income. In 1984, the IRS audited IEP's income tax returns. In 1986, the IRS notified IEP that because of Feddersen's failure to file the proper documentation, IEPO would be disqualified as a DISC. The IRS issued its final assessment on May 16, 1988. IEP and IEPO filed an action against Feddersen on May 15, 1990. Feddersen moved for summary judgment, contending that IEP filed its action beyond the two-year statute of limitations period in Code of Civil Procedure section 339(1). The trial court granted Feddersen's motion; the appellate court affirmed.

The California Supreme Court reversed. After an exhaustive review of the IRS' audit procedures, the court concluded that Feddersen and the court of appeal confused the determination of tax liability with finalization of the audit process, at which point the tax deficiency is actually assessed. The deficiency assessment serves as a finalization of the audit process and the commencement of actual injury, because it is the trigger that allows the IRS to collect amounts due and the point at which the accountant's alleged negligence has caused harm to the taxpayer. The court further stated that, although Feddersen's alleged negligence might have been discovered by IEPO during the IRS audit, "such potential liability could not amount to actual harm until the date of the deficiency tax assessment or finality of the audit process."

■ FUTURE MEETINGS

July 21-22 in Los Angeles.
September 8 (special Board meeting to adopt sunset report; location undecided).
September 22-23 in Sacramento.
November 17-18 in San Diego.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Officer:
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The Board of Architectural Examiners (BAE) was established by the legislature in 1901. BAE establishes minimum professional qualifications and performance standards for admission to and practice of the profession of architecture through its administration of the Archi-

tecs Practice Act, Business and Professions Code section 5500 *et seq.* The Board's regulations are found in Division 2, Title 16 of the California Code of Regulations (CCR). Duties of the Board include administration of the Architect Registration Examination (ARE) of the National Council of Architectural Registration Boards (NCARB), and enforcement of the Board's statutes and regulations. To become licensed as an architect, a candidate must successfully complete a written and oral examination, and provide evidence of at least eight years of relevant education and experience. BAE is a ten-member body evenly divided between architects and public members. Three public members and the five architects are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

While there are no vacancies on the Board at this writing, the terms of three members—Dick Wong, Betty Landess, and Peter Chan—have ended, and they can be replaced by the Governor at any time.

■ MAJOR PROJECTS

Intern Development Program Update. For the past year, BAE has been considering a proposal to require completion of a structured internship program as a requirement for licensure as an architect in California. At BAE's May 1994 meeting, the Internship and Oral Examination Committee presented to the full Board its recommendation that BAE approve the concept of requiring candidates for licensure in California to complete supervised training which meets the standards of NCARB's Intern Development Program (IDP). The Board adopted this recommendation, and directed the Internship and Oral Examination Committee to develop regulations and an implementation plan in consultation with the American Institute of Architects, California Council (AIACC). [14:2&3 CRLR 36; 14:1 CRLR 30] Since that time, the BAE/AIACC task force—now called the IDP Implementation Task Force—has identified several concerns with NCARB's current IDP standards, and agreed that they should be made more flexible and easier for candidates to satisfy in several respects. Among other things, the Task Force would like NCARB to expand the definition of acceptable training activities, and expressed concerns about existing IDP rules which specify when IDP value units may be earned and the overall cost of the recordkeeping involved to the candidates, the firms for which they are working, and the Board. [14:4 CRLR 37-38] In November 1994, the Task Force

agreed that until June 1995, it should focus on communicating with various constituent groups for the purpose of providing accurate information about IDP and the role and activities of BAE and AIACC, and listen to the concerns of students, candidates, licensees, and firms on the proposal for implementing IDP in California. The Task Force also agreed to identify those IDP training requirements and conditions that it recommends be changed and communicate those concerns to NCARB. In December 1994, BAE approved the Task Force's plan; the Board also agreed that it would take whatever action is necessary to effectuate the Task Force's final recommendations. [15:1 CRLR 40]

At BAE's February 10 meeting, the Task Force reported its satisfaction with the feedback it had received from students and candidates, but noted that there had not been enough feedback from licensees and firms. Accordingly, the Task Force held a roundtable specifically for licensees and firms in San Diego on March 17, and invited the principals of approximately twenty firms to share their thoughts and concerns regarding the proposed IDP program. At this writing, the Task Force has not formally reported the results of the roundtable to the full Board.

Reciprocity With Canada. An Inter-recognition Agreement between the Committee of Canadian Architectural Councils (CCAC) and NCARB became effective on July 1, 1994; this agreement provides for reciprocal architectural registration and permission to practice by qualified architects within participating jurisdictions in both countries. The Agreement also requires that each NCARB member board execute a Letter of Undertaking stating its intent to register Canadian architects who apply for licensure, based on meeting NCARB's certification requirements; California must also execute this letter in order to enable California licensees to practice in Canadian provinces. At its December 1994 meeting, BAE adopted the recommendation of its Written Examination Committee to allow Canadian licensees to be eligible for reciprocity licensure by obtaining a NCARB certificate. [15:1 CRLR 41]

On February 3, BAE published notice of its intent to amend section 121, Title 16 of the CCR, which sets forth the circumstances under which a candidate may be granted licensure. The Board's proposed change would allow an architect registered in a Canadian province who has been issued a NCARB certificate to be eligible for California licensure upon passing the Board's oral examination. On March 22, BAE held a public hearing on the proposed change; at its April 19 meeting, the



Board adopted the amendment, which awaits review and approval by the Office of Administrative Law (OAL).

Relicensure Requirements. At its December 1994 meeting, BAE discussed the Written Examination Committee's recommendation that all applicants for relicensure be required to take the oral examination; according to BAE Executive Officer Steve Sands, the decision whether to require an examination for relicensure applicants has been made administratively on a case-by-case basis, and the Board has never developed a uniform policy relating to relicensure procedures. DCA legal counsel Don Chang explained the difference between a delinquent license, which can be renewed, and a lapsed license (one which has not been renewed for five years) which is in fact expired and cannot be renewed; in the case of a lapsed license, an architect has to reapply to re-establish qualifications for a new license, and the Board may either require the individual to take its examinations or otherwise demonstrate that he/she can safely practice. [15:1 CRLR 41]

At its February 10 meeting, BAE agreed to pursue a regulatory change which would require that all five-year delinquent licensees applying for relicensure be required to take the oral examination; on March 3, the Board published notice of its intent to amend section 124.7, Title 16 of the CCR, to so require. On April 18, BAE held a public hearing on the proposed change and, at its April 19 meeting, the Board adopted the amendment. At this writing, the proposal awaits review and approval by OAL.

Oral Examination Appeals Process. On April 7, OAL approved BAE's adoption of new section 124.5, Title 16 of the CCR, which sets forth an appeals process for its oral examination; section 124.5 allows a candidate who has failed the oral examination to apply for Board review when the candidate alleges that he/she was significantly disadvantaged due to a significant procedural error or adverse environmental conditions during exam administration. [15:1 CRLR 40; 14:4 CRLR 37; 14:2&3 CRLR 37]

Amendments to Table of Equivalents. On April 5, OAL approved BAE's amendments to section 117, Title 16 of the CCR, which contains the Table of Equivalents used by the Board in evaluating a candidate's training and educational experience for purposes of licensure eligibility. The changes define more precisely the types of degrees that will be considered as degrees in a field related to architecture and which qualify toward BAE's licensure requirement; allow credit for experience gained under the supervision of a licensed

architect; and eliminate a requirement that such experience would qualify only if gained while the candidate is working as an architectural employee. In addition, the changes eliminate the requirement that each licensure candidate applying for credit for courses taken at a foreign college or university provide an original certified translation of the transcript along with his/her transcript; eliminate confusing language and/or unnecessary licensing requirements; and expand the equivalent educational opportunities for architecture students, a goal also being stressed in the IDP proposal (*see above*). [15:1 CRLR 40; 14:4 CRLR 38]

Strategic Planning Process. In response to the November 1993 oversight hearings conducted by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, BAE conducted a strategic planning session in October 1994 in Newport Beach; the purpose of the session was to identify the Board's mission, goals, and objectives, and develop a strategic plan with steps to improve the Board's performance. Those in attendance at the session included BAE members, senior staff, DCA legal counsel, and the Board's architect consultant; the session was facilitated by Daniel Iacofano of Moore Iacofano Goltsman, Inc. (MIG). [15:1 CRLR 41] Thereafter, BAE's Executive Committee reviewed draft versions of the resulting strategic plan throughout the spring.

Initially, the strategic plan identifies the key components of BAE's current mission and program activities as ensuring that those who enter the practice meet minimum standards of competence by way of education, experience, and examination; requiring that any person practicing or offering to practice architecture be licensed; establishing standards of practice for those licensed to practice; and enforcing the laws, codes, and standards governing architectural practice in a fair and uniform manner. BAE identified the following key organizational strengths: a high-quality and well-organized Board, support staff, and committee system; a proactive mission to promote consumer education, prevention, and enforcement; and a strong organizational relationship with NCARB and a range of other affiliated professional organizations. BAE's identified organizational weaknesses include a feeling of complacency and Board member absences that contribute to a feeling of ineffectiveness; a feeling that committee reports do not provide enough background information to support committee recommendations; some confusion as to the Board's policy agenda and inabil-

ity to effectively address "big" policy issues; and confusion over the roles and responsibilities of individual Board and staff members. There is also a concern that California is underrepresented in NCARB national and regional meetings and committees, and that increased communication with other professional boards and educational institutions is needed.

In order to provide a framework for the results it would like to achieve in furtherance of its mission, BAE established the following seven goals: ensure the professional qualifications of those entering the practice by requiring them to meet minimum requirements for education, experience, and examinations; establish regulatory standards of practice for those licensed as architects; protect consumers by preventing violations and effectively enforcing laws, codes, and standards when violations occur; increase public awareness of BAE's mission, activities, and services; improve the effectiveness of relationships with other organizations in order to further BAE's mission and goals; enhance organizational development and effectiveness; and improve the quality of customer service in all programs.

With MIG's assistance, BAE's Executive Committee, at its February 27 meeting in Sacramento, began to discuss each goal area to develop the actions needed to accomplish the goal, prioritize the required actions, set a timeframe for each action, and assign responsibility for performing each action item. However, in attempting to assign responsibilities for each action item, the Committee realized that Board's current organizational structure is not compatible with the assignments of the action items.

At its March 20 meeting in Burlingame, the Executive Committee decided to propose a reconfiguration of the Board's committee structure to best address the seven goal areas. The Committee determined that the best organizational structure would be to have three main committees—the Executive Committee, Professional Qualifications Committee, and Regulatory and Enforcement Committee—with subcommittees for professional qualification goal areas. The Committee decided that the Executive Committee would be responsible for organizational relationships, organizational development, public awareness, and customer service goal areas; the Professional Qualifications Committee would be responsible for the professional qualifications goal area; and the Regulatory and Enforcement Committee would be responsible for the practice standards and enforcement goal areas. In addition, the Committee determined that BAE's exist-



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ing Written Examination Committee and Oral Examination Committee would become subcommittees under the Professional Qualifications Committee; the IDP Implementation Task Force would become a task force under the Professional Qualifications Committee; and subcommittees or task forces will be established under the Regulatory and Enforcement Committee as needed. The Committee then reviewed the strategies and actions item by item, and assigned lead responsibility for each of the seven goal areas using the proposed organizational structure. At its April 19 meeting in Burlingame, BAE approved the strategic plan and the new committee structure and assignments.

In addition to the reorganized committee and subcommittee structure, the Board has also identified a number of key objectives and actions for the next few years. For example, key objectives in the professional qualifications area are to continue studying whether to require a structured internship program (*see above*); meet with California architectural school officials to establish an ongoing relationship; and review and make recommendations to revise the Architects Practice Act and the Board's regulations to accurately reflect the areas of entry level practice. Key objectives in the practice standards area are to pursue a written contract requirement (*see LEGISLATION*) and investigate alternative methods for attempting to ensure licensees' continued competence. Key objectives in the proactive enforcement area are to update and improve consumer education materials; implement improved complaint handling processes; investigate and implement alternative enforcement tools; and develop and participate in an interstate notification system for disciplinary actions. Key objectives in the organizational relationships area are to develop a strategy to exert greater policy influences on NCARB, and to prepare for the Board's "sunset" review scheduled by the legislature to take place in 1997. [14:4 CRLR 38] In the organizational development area, BAE plans to improve Board systems and procedures (*e.g.*, research the possibility of staggering members' terms to minimize disruption and develop a Board member training and orientation program), and improve Board member involvement in BAE activities. Finally, in the customer service area, BAE plans to study means for licensees, candidates, government agencies, and consumers to access Board services using new technologies.

January 1995 Oral Examination Results. In March, BAE was notified by its examination test vendor, CTB/McGraw-

Hill (CTB), that a computer malfunction occurred which affected the scoring system for the January 1995 administration of the Board's oral examination held in Irvine; specifically, CTB determined that the data used to set the pass/fail standard for the oral examination was faulty, and that the scores for several candidates were incorrect. As a result, CTB corrected the data, and recalculated the candidates' scores; based on the corrected exam, the scores of 15 candidates were changed from fail to pass and the scores of 20 candidates were changed from pass to fail. On March 24, BAE notified the affected candidates of the error; for those candidates whose scores were corrected from pass to fail, the Board held a special no-charge administration of its oral examination on April 24 in Irvine. BAE's Oral Examination Committee, which is responsible for the administration of the test, asked CTB to investigate the problem; at this writing, CTB is expected to make a report to the full Board at its May 30 meeting.

Award of Architect Consultant Contract. At its December 1994 meeting, the Board approved a request for proposals (RFP) for an architect consultant for fiscal years 1995-96, 1996-97, and 1997-98; BAE's current architect consultant contract with Larry Segrue is due to expire on June 30, 1995. BAE placed an advertisement in the *State Contracts Register* to publicize the RFP; BAE received three proposals, which were forwarded to the Evaluation Committee to review the proposals and assign a rating to each candidate in the first step of the evaluation process. Oral interviews, the second step in the evaluation process, were conducted in Burlingame by the Evaluation Committee on March 20; each candidate was assessed for knowledge, skills, and experience, with point scores given. Based on this two-step evaluation, the highest point score was achieved by Larry Segrue, and the three candidates were notified that the contract would be awarded to him. At the April 19 meeting, the Board approved the award of the architect consultant contract to Larry Segrue, contingent upon the resolution of any protests.

■ LEGISLATION

AB 969 (Davis), as amended April 27, is a Board-sponsored bill which would require architects to use a written contract when contracting to provide professional services to a client, with specified exceptions. [15:1 CRLR 39-40; 14:2&3 CRLR 36-37; 14:1 CRLR 30] [*S. B&P*]

AB 778 (Aguilar). BAE is composed of ten members, five of whom are architects and five of whom are public mem-

bers; the Governor appoints all of the architects and three of the public members. As amended May 1, this bill would provide that one of the public members shall be an active local building official and include that member as one of the public members to be appointed by the Governor.

[*S. B&P*]

AB 717 (Ducheny, Hauser), as amended May 9, would establish certification, training, and continuing education requirements for construction inspectors, plans examiners, and building officials, as defined, who are employed by a local agency in a temporary or permanent capacity; exempt from its training and certification requirements any person currently and continuously employed by a local agency as a construction inspector, plans examiner, or building official, for not less than two years prior to the effective date of the bill, until that person obtains new employment, as specified; provide that it is not intended to prohibit any local agency from prescribing additional criteria for the certification of construction inspectors, plans examiners, or building officials; and set forth other powers and duties of the local agency, including the power of the local agency to impose fees to cover the cost of compliance with the bill's provisions. The bill would exempt licensed architects, registered professional engineers, and licensed land surveyors who contract with a local agency from the requirements of the bill, but would continue to make the requirements of the bill applicable to licensed architects, professional engineers, and licensed land surveyors employed by a local agency. [*A. Floor*]

SB 914 (Alquist), as amended April 6, would require the Board of Architectural Examiners, PELS, and the Board of Registration for Geologists and Geophysicists to develop, adopt, and enforce regulations on or before July 1, 1996, applicable to the state and local enforcement agencies that regulate building standards and that, pursuant to the bill, have, on staff or under contract, appropriately licensed architects, registered geologists, and registered professional engineers with demonstrated competence to review plans, specifications, reports, or documents for the design and construction of all architectural, engineering, and geological work regulated by building standards.

This bill would also provide that, notwithstanding existing law, every state and local enforcement agency shall have, on staff or under contract, appropriately licensed architects, registered professional geologists, and registered professional engineers with demonstrated competence to review the plans, specifications, reports,



or documents for the design and construction of all architectural, geological, or engineering work related by building standards, prior to agency approval of this work. The bill would also provide that, notwithstanding existing law, all state and local enforcement agencies shall return any incomplete building plans, specifications, reports, or documents, accompanied by a statement to the applicant identifying the part or parts of the plans that are incomplete, and specifying the actions required to be taken by the architect, engineer, geologist, or building designer to complete the plans, specifications, reports, or documents prior to any resubmission. [S. H&LU]

■ LITIGATION

On February 9, the Attorney General's Office issued *Opinion No. 94-819* in response to a request by Senator Milton Marks, who questioned whether a state or local agency may contract with a private firm for construction project management services if all or part of such services are to be performed other than under the direction and control of a licensed architect, registered engineer, or licensed general contractor. The opinion noted that local agencies often divide construction project management services into smaller sub-projects to allow small business contractors to bid on the subprojects or, as an alternative, allow prime consultants to associate with smaller firms to provide certain components of the prime contract, often to promote the utilization of businesses owned by minorities, women, and disabled veterans.

The question the Attorney General was asked to resolve was whether the sub-consultants, as well as the prime consultants, are required to be duly licensed to carry out construction project management services; the opinion concluded that a state or local agency may not contract with a private firm for construction project management services if all or part of such services are to be performed other than under the direction and control of a licensed architect, registered engineer, or licensed general contractor. The Attorney General noted that in awarding contracts for professional services, state and local agencies are statutorily required to select firms of demonstrated professional competence with the professional qualifications necessary for the satisfactory performance of the services required; the underlying policy objective is to ensure that the contractor delivers a quality product, on schedule, within budget, and in conformance with the project documents. According to the Attorney General, given the

widespread use of subconsultants to perform components of construction project management, the purposes and policies underlying this requirement would be undermined if subconsultants were permitted to carry out their function without being either duly licensed themselves or subject to the direction and control of the licensed prime consultant.

■ RECENT MEETINGS

At its February 10 meeting, BAE agreed to participate in NCARB's nationwide field test for the computer administration of the ARE in February 1996. By participating in the field testing, BAE will have first-hand information about how the computer administration works, which will assist the Board in making the planned transition to administering the ARE by computer. BAE is seeking 200 candidates for the multiple-choice division and about 400 candidates for the graphic divisions; BAE will send information on the field test program to all candidates, and participants will be selected by NCARB and Education Testing Services (ETS) based on exam history and education. Those candidates taking the multiple-choice portion will receive the computer-generated grade; the exam results of those taking the graphic division will be graded by both the computer and by architect graders as usual. Only the scores assigned by the architect graders will apply; the scores assigned by the computer in the field test will be compared to the scores assigned by the architect graders to fine-tune the computer grading system.

Also at its February meeting, the Board adopted the Enforcement Committee's recommendation to establish minimum penalties for violations of various provisions of the Business and Professions Code. Since 1994, the Enforcement Committee has been reviewing the Board's disciplinary guidelines which BAE adopted in 1988; one goal was to expand the guidelines and make them more specific so as to give guidance to administrative law judges (ALJs), Deputies Attorney General, Board licensees, those involved in the Board's disciplinary process, and the Board itself. Deputy Attorney General Steve Kahn noted that the guidelines are used as general parameters; depending on the circumstances, it may be appropriate to seek discipline other than that recommended in the guidelines. After discussion, the Board adopted minimum penalty guidelines ranging from 60 to 90 days for four Code sections governing violations.

■ FUTURE MEETINGS

May 30 in Sacramento.

ATHLETIC COMMISSION

Executive Officer:
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The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act, Business and Professions Code section 18600 *et seq.* The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms. All eight members are "public" as opposed to industry representatives.

The Commission has sweeping powers to license and discipline those within its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, boxers, and martial arts competitors. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical requirements. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of boxers, and the integrity of the sport of boxing in the interest of the general public and the participating athletes.

■ MAJOR PROJECTS

Broadcasting Tax Cap. SB 2101 (McCorquodale) (Chapter 1275, Statutes of 1994) amended Business and Professions Code section 18824 to authorize the Commission to charge a fee of up to 5% of the gross price, as defined, for the sale, lease, or other exploitation of broadcasting or television rights associated with professional boxing and full-contact martial arts events televised in California. At its September 1994 meeting, the Commission discussed the possibility of establishing a dollar cap on the amount of fees collected from any one event, in order to be competitive with what other states charge promoters. Following discussion, the Commission directed staff to research the issue and present recommendations at the November meeting. In November, staff recommended that the Commission pursue regulatory language stating that the fee prescribed by section 18824 with respect to broadcasting rights shall be 5% of the gross price paid for the sale, lease, or other exploitation of broadcasting rights, exclusive of any federal taxes paid thereon, up