



bill, but continues to make the requirements of the bill applicable to professional engineers, licensed land surveyors, and licensed architects employed by a local agency. The bill also exempts construction inspectors or plans examiners employed by any city or county fire department or district providing fire protection services from the requirements of the bill.

This bill also sets forth examples of actual costs that a local agency could incur in compliance with the bill, and provides that fees to cover the costs of compliance shall reflect these actual costs. This bill was signed by the Governor on October 4 (Chapter 623, Statutes of 1995).

SB 914 (Alquist), as amended April 6, would require BAE, PELS, and the Board of Registration for Geologists and Geophysicists to develop, adopt, and enforce regulations on or before July 1, 1996, applicable to 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]

AB 778 (Aguiar), as amended July 14, is no longer relevant to BAE.

RECENT MEETINGS

At its September 15 meeting, BAE reviewed and approved the contract amendment submitted by CTB/McGraw-Hill (CTB) for oral examination development

and administration services through December 1998. Board staff and CTB agreed that, beginning in 1996, the August administration will be changed to July to lessen the workload of administering the oral examination in two consecutive months.

Also in September, BAE also discussed circumstances concerning Paradise Cemetery in Santa Fe Springs; the cemetery was apparently victimized by its owners who misappropriated endowment funds, dumped bodies in mass graves, and let the cemetery fall apart (*see* agency report on CEMETERY BOARD for related discussion). DCA is coordinating efforts to renovate the cemetery with donated services and materials, and asked BAE to help coordinate efforts to design a memorial park on a one-acre site for the approximately 2,000 people in the mass grave. Steve Sands and BAE Enforcement Consultant Larry Segre have been working with Paul Welch, AIACC Executive Vice President, on developing a process to provide design services for this project.

At its December 15 meeting, BAE approved its Board Member Administrative Procedure Manual, which was created to provide BAE members with a ready reference of important laws, regulations, DCA policies, and Board policies; the Board hopes that this manual will help guide the actions of its members to ensure BAE's overall effectiveness and efficiency.

Also in December, BAE agreed to seek legislative changes which would authorize the Board to adopt standards of professional conduct.

Finally, the Board elected the following new officers at its December meeting: Betsy Weisman, President; Raymond Cheng, Vice President; and Christine Lampert, Secretary.

FUTURE MEETINGS

January 26-27 in Costa Mesa (strategic planning session).

February 21 in Sacramento.

June 7 in southern California (tentative).

ATHLETIC COMMISSION

Executive Officer:

Richard DeCuir
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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.

At the Commission's August 24 meeting, gubernatorial appointee Ernest Weiner was sworn in as a new member of the Athletic Commission. Weiner, who replaces former state legislator and current lobbyist Robert Wilson, was formerly an amateur boxer and is currently a journalist and the Executive Director of the American Jewish Committee in San Francisco.

At its October 6 meeting, the Commission welcomed another new member, Elmer Costa of San Leandro; Costa worked for Pacific Telephone & Telegraph for 38 years as a technician, and formerly worked as a licensed referee.

MAJOR PROJECTS

Pension Plan Update. The Commission's efforts to revise its Professional Boxers' Pension Plan are continuing. On May 26, the Commission published notice of its intent to amend section 400, repeal sections 401, 402, 403, 404, 406, 407, 409, 410, 412, 413, 415, and 416, and adopt new sections 401-409, Title 4 of the CCR. [15:2&3 CRLR 42; 15:1 CRLR 42-43; 14:4 CRLR 39]

Under the Commission's current regulations, the pension plan is a "defined benefit" plan in that boxers who have made contributions to the plan and whose benefits have "vested" are entitled to a defined benefit (\$2 per round fought per month for life) starting at age 65. Thus, a boxer who fights 100 rounds in his career would receive \$200 per month for life starting at age 65. The plan is currently financed by a 3% assessment of the share of gross receipts allocated to promoter, manager, and boxer. However, the pension plan regulations—which were drafted in the early 1980s—permit no cost of living or inflation adjustment, and require the Commission to keep track of the whereabouts of



all boxers who have contributed to the pension plan, because any boxer whose benefits do not "vest" has a claim to the money contributed in his name.

In 1994, the Commission's Pension Plan Review Committee (Pension Committee), consisting of Commissioners Willie Buchanon and Kim Welshons—at the suggestion of Commission actuarial expert Kevin Long and Professor Robert Fellmeth of the Center for Public Interest Law (CPIL), who chaired the Commission in the early 1980s and drafted the original pension plan legislation—recommended that the plan be converted to a "defined contribution" plan. Rather than guaranteeing a "defined benefit" (which may never actualize because the contribution mechanism may be actuarially unsound and the unvested boxer may never be located by the Commission), the proposed amendments would require the pension plan to be financed by a 3% assessment at the promoter level (a "defined contribution" on each covered fight); the promoter may apportion this assessment to the boxer and manager through contracts, consistent with Business and Professions Code section 18881.

Under the proposed 1994 changes, a boxer would become "vested" if he has fought in at least ten scheduled rounds per calendar year during each of four calendar years, which will ensure that benefits go to boxers who have made boxing their primary profession. The 1994 proposal also sought to change the retirement age from 65 to 55, enable the Commission to authorize early payment of benefits (at age 36) for education or vocational training, and provide a more flexible payout system (payments may be made in monthly or annual installments).

However, in July 1994, the Commission rejected the Pension Committee's proposal in favor of a change to the 3% funding mechanism. Under this change, the promoter's contribution is capped at \$1,500 per event and the boxer's contribution does not begin until the third fight in California in each calendar year. [14:4 CRLR 39] Professor Fellmeth contended that this change would reduce revenue substantially and, noting that the plan remained a "defined benefit" plan, argued that the change would cause a breach of fiduciary duty as revenues would not meet promised benefits. The July 1994 change to the funding mechanism was adopted nevertheless, and has been in effect from that time.

Since 1994, both Long and Fellmeth have continued to urge a more comprehensive overhaul of the pension plan regulations, culminating in the Commission's

May 26 publication of substantial proposed regulatory changes nearly identical to the original 1994 proposal. At its July 13 meeting in South Lake Tahoe, the Commission received public comment on the proposed changes. Long and Fellmeth both testified in support of the amendments; Fellmeth emphasized that Business and Professions Code section 18881(c) requires the Commission to administer the pension plan in an actuarially sound manner. No promoter or representative of promoters testified on the proposed changes, either orally or in writing. Following discussion, the Commission unanimously approved all the proposed regulatory changes with the exception of proposed section 406(f) relating to the educational/vocational early retirement benefit; the Commission instructed Department of Consumer Affairs (DCA) legal counsel Anita Scuri to modify the language of section 406(f) and release it for a 15-day public comment period prior to the Commission's August meeting.

At the August meeting, however, Commission Chair Bill Eastman asked that the Commission's approval of section 403(a), relating to the funding source for the pension plan, be "revisited" because he felt that insufficient information about the funding source had been presented at the July hearing, no promoters were present when section 403(a) was discussed, the section does not cap the promoters' share of pension plan funding, and the funding source is too expensive and burdensome for promoters. Present at the August meeting was promoter John Jackson to request clarification of the funding source of the pension plan, and to object to the provisions which assess the full 3% against the promoter's gross and then require the promoter to allocate the assessment against the boxer and manager. DCA legal counsel Scuri and Kevin Long warned the Commission that it must take action immediately to enable Office of Administrative Law (OAL) approval by December 31, because an actuarial review and certification was scheduled for December 31; if the amendments to the pension plan regulations are not approved by December 31, the Commission must pay for another actuarial review (costing \$20,000) in 1996.

Following considerable discussion at the August meeting, the Commission approved a two-part motion based on a suggestion from Kevin Long: (1) section 403 would be amended to reinsert the historical funding formula (3% each from the promoter, manager, and boxer) and released for a 15-day public comment period; and (2) the Commission's Pension Committee will review the funding source

language and the possible imposition of a cap on promoter contributions to the pension plan in 1996.

After a 15-day public comment period, the Commission submitted the proposed regulations to DCA for approval in early September. Upon approval, the Commission submitted the proposed changes to OAL on October 11. On November 27, Debra Comez of OAL advised the Commission that several technical, nonsubstantive changes in the language should be made, and the Commission should renote the matter for another 15-day public comment period, after which it would be deemed adopted.

Meanwhile, pursuant to a request from promoter Jackson, Commission staff listed an "update and discussion on proposed pension plan regulations" on the Commission's agenda for its December 8 meeting. At that meeting, Jackson expressed dissatisfaction with the proposed changes, arguing that his profits could be eliminated. Following Jackson's presentation, Chair Eastman moved, and the Commission approved, that the rulemaking file be withdrawn from OAL, effectively rescinding the adoption vote taken at the August 18 meeting; Commissioners Welshons and Buchanon dissented vigorously.

CPIL's Professor Fellmeth, who was not present at the December meeting, sent a letter to the members of the Commission contesting Jackson's contentions. Fellmeth noted that the figures presented by promoter Jackson assumed a purse payout approximating total receipts, an assumption which "begged the question posed," as the promoter's purse agreement in relation to anticipated revenues is a matter of negotiation; he also contended that the rules which had been withdrawn would be more than 25% less burdensome on promoters than the pension plan that existed from 1982-94. Fellmeth also argued that the Commission's December agenda described the pension issue as a "report only" item, not an action item, and that the withdrawal of the previously-approved pension plan regulations under this agenda item violated the Bagley-Keene Open Meeting Act. Finally, he reiterated his contention that the existing contribution system—which would remain in effect if the proposed changes are rejected—would result in underfunding of the pension plan in violation of the pension statute requiring "adequate funding," particularly since the Commission's plan remained a defined benefit system promising \$2 per round per month.

Professor Fellmeth also made a California Public Records Act request shortly after the December meeting, asking that



the Commission provide copies of the revenue records of the four largest California fights in the recent past, including one which occurred just before the July 1994 rule change reducing pension contributions and three after its implementation; all four fights generated over \$500,000 in revenue. The documents provided by the Commission indicated that the fight before the fee reduction yielded a \$32,000 contribution to the pension plan; the three largest fights after August 1994 contributed \$500, \$22, and \$0 to the pension plan, respectively. Accordingly, Fellmeth revised his estimate of the pension collection shortfall from one-third below previous "barely adequate" levels, to less than one-half of the amount necessary to provide promised benefits. He also noted that despite the substantial lowering of all three fees applicable to boxing through all of 1995, there was no increase in the number of major fights held nor more revenue, nor were more major fights scheduled for 1996.

Professor Fellmeth requested that the Commission address the contribution and improper rescission issue at its January 19 meeting, and that he be allowed public comment. CPIL notified the Commission that it was preparing a civil petition for writ of mandamus to protect the integrity of the pension plan and to void the rescission of the previously adopted regulatory changes.

CPIL also informed the Commission that it was drafting legislation to assure a minimum contribution to the pension plan. Fellmeth noted that if the Long plan were adopted, there would no longer be an assured benefit level; hence, the statute requiring "adequate funding" of the Commission's plan would be rendered moot since the plan would not promise any particular benefit. Fellmeth contended that if previous patterns are repeated, the promoters' apparent influence over the Chair and Executive Officer—combined with a Commission which traditionally defers to the Chair and staff—would jeopardize financing for the plan and leave CPIL without any statutory basis to compel its provision through litigation.

Meanwhile, DCA legal counsel Anita Scuri recommended that the Commission seek revision of some language in the existing pension statute to give the Commission fee assessment flexibility to implement the Long plan and to make certain technical changes allowing separate control of the fund and its effective investment. However, the Commission had difficulty in finding a legislative author to carry this and other bills. By agreement with the Commission, CPIL is expected to

sponsor that legislation, with the addition of language by Professor Fellmeth creating a floor of required contributions at least equivalent to historical levels.

Sunset Review. On November 28, Commission Chair Bill Eastman and Vice-Chair Willie Buchanan appeared before the Joint Legislative Sunset Review Committee (JLSRC) in Sacramento. As with other agencies within DCA, the Athletic Commission must undergo a "sunset" review pursuant to SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). [14:4 CRLR 20, 41] Sunset review is somewhat problematic in the case of the Athletic Commission, given the constitutional source of its authority and mission. However, the nature of its regulation may be subject to legislative alteration, including the authority and composition of its Commission.

In addition to the Chair and Vice-Chair of the Commission, also present at the November 28 sunset review hearing were John Jackson representing the California Promoters Association, and Marty Denkin representing the California Referees Association. Eastman, Buchanan, Jackson, and Denkin all spoke in favor of the Athletic Commission's continued existence. CPIL representative Julianne D'Angelo Fellmeth submitted written testimony to the JLSRC recommending that the Athletic Commission continue to exist, and that it continue to take the form of an independent commission. CPIL cited three historical justifications for the regulation of boxing: the violence of the sport; the exploitation of boxers; and the association of the boxing industry with gambling.

Some of the more troubling problems addressed in the sunset review of the Commission involve its financing and regulation. The low revenues produced by license fees and the gate tax have created a regular claim on general fund assistance, which legislators do not favor. Both CPIL and the Commission contend that the answer rests with a fee on cable telecasts of boxing, including pay-per-view (*see* LEGISLATION). At this writing, the report and recommendations of the JLSRC are due in early 1996.

Rulemaking Update. On July 13, the Commission held a public hearing on its proposed changes to sections 219 and 368, Title 4 of the CCR. [15:2&3 CRLR 42] Section 219 authorizes the Commission to issue temporary licenses if certain criteria are met; the Commission's proposed amendments would specify the time limit during which a temporary license is valid and prohibit a temporary license from extending from one license year into another. Section 368 authorizes the Commission to change the decision of a bout if certain

conditions are met; the proposed amendments would require a boxer or manager to file a written petition to change a decision within five days of the contested decision. If a written petition is not filed, the Commission may, upon the vote of a majority of the Commissioners present, change a decision at any time. Following the July hearing, the Commission adopted the proposed amendments, which await review and approval by OAL.

The Commission's amendments to sections 216, 234, 242, 272, 282, 287, 294, 298, 302, 305, 318, 319, 320, 321, 322, 330, 335, 337, 338, 339, 341, 342, 345, 346, 347, 349, 351, 352, 353, 354, 356, 357, 360, 361, 362, 363, 365, 368, 371, 372, 373, 375, 376, 378, and 379, adoption of new sections 495 and 496, and repeal of sections 223, 313, and 340, of Title 4 of the CCR, represent the Commission's efforts to review and update its regulations to reflect changes in law and practice. [15:1 CRLR 42] Although OAL originally disapproved the rulemaking file on May 19, the Commission modified several of its proposed changes and released the modified text on June 23 and July 1 for additional 15-day public comment periods; on October 30, OAL approved the rulemaking file.

LEGISLATION

SB 1288 (Alquist), as introduced February 24, would impose, on the promoter or producer of a pay-per-view telecast of a boxing or martial arts contest, a fee of 5% of the promoter's or producer's gross receipts attributable to the individual's or entity's pay-per-view telecast fees, exclusive of federal, state, or local tax, as specified; require that these fees shall be collected from the producer by the cable television system operator or operators whose pay-per-view facilities are being utilized by the producer for this purpose and forwarded to the Commission; provide that a fee may not be assessed on the cable company transmitting the event or applied to a pay-per-view boxing event that originates in this state; require that payment of the fee be made within thirty days, accompanied by a form prescribed by the Commission that requires the payee to set forth the number of subscriptions sold, the gross receipts that it received from the pay-per-view telecast, and other information as the commission may deem appropriate; and provide that revenues received by the imposition of this fee are for the exclusive use of the Commission, as specified. [15:1 CRLR 44] Although this is a two-year bill, it is not known at this writing whether Senator Alquist will continue to carry the bill in light of opposition from the California Cable Association. [S. B&P]



Future Legislation. Commission Executive Officer Richard DeCuir and DCA legal counsel Anita Scuri have drafted proposed new language for the pension plan statutes at request of the Commission at its December meeting (see MAJOR PROJECTS). The proposal would amend sections 18881 and 18882 and repeal section 18883 of the Business and Professions Code to allow the Commission to establish a pension plan that would not be entirely funded by boxers, promoters, and managers.

DeCuir and Scuri have also drafted proposed changes to Business and Professions Code section 18711, which would allow the Commission to shift the costs of required neurological exams to the boxer.

LITIGATION

In *Twenty-Nine Palms Band of Mission Indians v. Wilson, et al.*, No. CV 95-5177 MRP, filed on August 4 in the U.S. District Court for the Central District of California, Twenty-Nine Palms Band of Mission Indians (Tribe) brought an action for declaratory relief against Governor Wilson, the Athletic Commission and Executive Officer Richard DeCuir, and Attorney General Dan Lungren over the state's jurisdiction—through the Athletic Commission—to regulate and/or license boxing events staged and promoted or co-promoted by the Tribe on the Tribe's reservation. Specifically, the Tribe is seeking a declaration that the defendants have no jurisdiction or authority to regulate or require the licensing of boxing events that are staged and promoted by the Tribe on the Tribe's reservation; that California Business and Professions Code section 18600 *et seq.* (the "Boxing Act") does not apply to boxing events staged and promoted by the Tribe on the Tribe's reservation; and that defendants have no jurisdiction or authority to fine or suspend any California licensee who participates in such boxing events. The defendants filed a cross-complaint for declaratory and injunctive relief seeking a declaration with respect to the applicability of the Boxing Act to boxing events held on tribal land, and an injunction enjoining the Tribe and all persons acting in concert with the Tribe from promoting professional boxing events absent approval by the Athletic Commission until the Tribe is licensed as a boxing promoter by the Athletic Commission.

At this writing, both parties are expected to file motions for summary judgment; the court is expected to rule on those motions in early 1996.

RECENT MEETINGS

At the Commission's August 24 meeting, Chair Eastman requested that, in the

future, Commissioners not attend unsanctioned events, so that they will be able to participate in disciplinary hearings related to such events.

Also at the August meeting, the Commission discussed possibilities for increasing the marketability of boxing in general, and specifically in California. Chair Eastman suggested experimenting with an "open" scoring system, in which the judge's score cards are revealed after each round. Commissioner Welshons suggested a "winner take all" purse or purses of different value for winner and loser. The Commission took no action on these proposals.

At its October 6 meeting, the Commission directed staff to draft regulatory language to clarify existing section 221, Title 4 of the CCR, regarding the suspension of contracts; specifically, the Commission may pursue regulatory language stating that any contract is nonenforceable during a time period in which a manager is on suspension for up to 60 or 90 days; any suspension exceeding a 60- or 90-day period would result in the permanent termination of all boxer/manager contracts.

FUTURE MEETINGS

March 8 in Irvine.
April 19 in San Francisco.
May 31 in South Lake Tahoe.

BOARD OF BARBERING AND COSMETOLOGY

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On July 1, 1992, pursuant to AB 3008 (Eastin) (Chapter 1672, Statutes of 1990), the enabling statutes of the Board of Barber Examiners (BBE) and the Board of Cosmetology (BOC) were repealed and replaced with an enabling act creating the Board of Barbering and Cosmetology (BBC); that act is found at Business and Professions Code section 7301 *et seq.* BBC licenses and regulates cosmetologists, barbers, manicurists, estheticians, electrologists, establishments where licensed services take place, and cosmetology and barber instructors. The Board is authorized to conduct and administer examinations, adopt regulations governing public health and safety, and discipline persons in violation of its statutes or regulations. BBC represents the first merger of two California regulatory agencies. The Board, which consists of five public members and

four members representing the professions, holds meetings at least four times per year.

MAJOR PROJECTS

BBC Undergoes Sunset Review. On December 5, following months of preparation and the submission of a comprehensive report describing its functions and performance, BBC underwent its first "sunset" review by the Joint Legislative Sunset Review Committee (JLSRC) created pursuant to SB 2036 (McCorquodale) (Chapter 908, Statutes of 1994). [14:4 CRLR 20, 42-43] SB 2036 repeals the laws establishing the Board on July 1, 1997; if the legislature does not pass legislation extending the sunset date prior to that time, the Department of Consumer Affairs (DCA) will assume the powers and responsibilities of the Board and its executive officer.

Preparation of its 130-page sunset report consumed much of the Board's time and attention through the summer and fall. The JLSRC required BBC to describe its responsibilities, provide background information on its budget, and define the functions and tasks of each BBC licensing category. The report also included statistical information on the Board's licensing examinations and pass rates, and its enforcement program—including number of complaints received, investigations commenced, and disciplinary actions taken. The JLSRC also required BBC to analyze the necessity of its seven licensing programs, and consider other less restrictive alternatives which would protect the public without imposing unnecessary costs on licensees or consumers.

The Board prepared its report with the assistance of a paid consultant, Macias Consulting Group, which facilitated strategic planning sessions on August 14-15, helped to draft the report, and advised BBC on lobbying techniques to convince the legislature to pass a bill extending the life of the Board. Also in conjunction with the preparation of its report, Executive Officer Pamela Ramsey and Deputy Executive Officer Denise Brown met with Julie D'Angelo Fellmeth of the Center for Public Interest Law (CPIL), to ascertain CPIL's position on the report and the sunset review. At its August 15, September 17, and October 2 meetings, BBC received extensive public comment on various drafts of the report; many schools, instructors, and representatives of the California Teachers Association (CTA), whose members teach the required barber and cosmetology curricula at community colleges and vocational schools, urged the Board to strongly advocate BBC's extension and retention of its existing licensing requirements, licensing examinations, and educational requirements.