



extended shall not be classified as delinquent, and the financial institution shall not be required to increase its reserves, or be subject to adverse regulatory action because of that loan. [A. F&I]

**AB 1756 (Tucker)**, as amended June 9, would prohibit state, city, and county governments from contracting for services with financial institutions with \$100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include specified information regarding the nature of the governance of the companies, and their lending and investment practices, with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. [A. Inactive File]

## LITIGATION

On September 30, the California Supreme Court granted review of the Second District Court of Appeal's decision in *People v. Charles H. Keating*, 16 Cal. App. 4th 280 (1993). In its ruling, the Second District affirmed a jury verdict in which the former savings and loan boss was found guilty of defrauding 25,000 investors out of \$268 million by persuading them to buy worthless junk bonds instead of government-insured certificates. [12:2&3 CRLR 169]

Keating primarily challenges the trial court's jury instructions stating that Keating could be convicted under theories that he was either the direct seller of false securities in violation of Corporations Code sections 25401 and 25540, or a principal who aided and abetted the violations. Keating was convicted on 17 counts, all violations of sections 25401 and 25540. The major issue raised by Keating is whether aiding and abetting of a section 25401 crime statutorily exists; Keating claims that criminal liability is restricted to direct offerors and sellers, and that the evidence failed to prove he personally interacted with any of the investors. The Supreme Court unanimously voted to hear Keating's appeal of his state conviction, for which he received a ten-year prison term and a \$250,000 fine. However, even if his state conviction is set aside by the court, Keating must serve a twelve-year term in federal prison based on his January conviction by a federal jury for racketeering, conspiracy, and fraud. [13:4 CRLR 110]



## DEPARTMENT OF INDUSTRIAL RELATIONS

### CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. At this writing, OSB is functioning with a labor representative vacancy.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations.

In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

## MAJOR PROJECTS

**Expansion of Cal-OSHA Authorized by New Workers' Compensation Laws.** AB 110 (Peace) (Chapter 121, Statutes of 1993), part of a package of workers' compensation bills which became law during 1993, requires Cal-OSHA to, among other things, establish a program for targeting employers in high hazardous industries with the highest incidence of preventable occupational injuries and illnesses and workers' compensation losses, and to establish procedures for ensuring that the highest hazardous employers in the most hazardous industries are inspected on a priority basis; the bill also requires Cal-OSHA to expand the activities of its consultation unit to proactively target employers with the greatest injury and illness rates and workers' compensation losses. The targeted inspection program and the expansion of the consultation services are to be financed by a surcharge to the workers' compensation insurance premium of employers with a workers' compensation experience modification rate of 1.25 or more (1.0 is average and higher rates reflect worse losses). [13:4 CRLR 133]

As a result of AB 110 and other workers' compensation reform bills, Cal-OSHA is able to hire an additional 122 people to work in compliance and consulting positions, as well as some auditors; additionally, the Division of Workers' Compensation has funding for 200 new positions. Following an October 19 hearing before the Senate Industrial Relations Committee, convened to investigate whether Cal-OSHA is failing to adequately protect the health and safety of Latinos and other minorities working in the Los Angeles area [13:4 CRLR 131], DOSH Chief Dr.



John Howard announced that 38 of the new compliance inspector positions will be added by early 1994 to supplement the 89 Cal-OSHA safety engineers and industrial hygienists who presently work in Los Angeles, Orange, Ventura, San Diego, Riverside, and Kern counties. Additionally, Cal-OSHA will be opening new "consultation service" offices in Anaheim, the San Fernando Valley, and Concord to better provide employers with advice on how to comply with the state's worker safety and health regulations. However, some participants at the October hearing expressed doubt regarding the possibility of significant improvement without a greater willingness among manufacturers and other employers to improve the working conditions of their employees.

**Federal Legislation Seeks to Reform OSHA.** Legislation pending in Congress would enact the Comprehensive Occupational Safety and Health Reform Act (COSHRA), which supporters contend would make federal OSHA more effective in enforcement, standard-setting, training and education, discrimination prevention, and construction safety (see LEGISLATION). S. 575, sponsored by Senator Edward Kennedy (D-Massachusetts) and H.R. 1280, sponsored by Representative William Ford (D-Michigan), are nearly identical bills which propose the following changes:

- mandatory safety and health programs for all employers and mandatory joint labor-management safety committees for all employers with eleven or more workers;
- full federal OSHA coverage for state, county, and municipal employees and Department of Energy contract workers. Although the Senate version covers federal workers, the House version does not; however, Representative William Clay (D-Missouri) has introduced separate legislation in the House to cover federal and U.S. Postal Service employees;
- deadlines for the establishment of standards on permissible exposure limits, exposure monitoring, health surveillance, and ergonomics;
- expanded criminal sanctions for cases involving "serious bodily injury" or death;
- increases in maximum jail time to ten years for first-time criminal offenders and twenty years for subsequent offenses;
- abatement of serious hazards cited by OSHA while employers contest citations;
- creation of an "OSHA Assistance Fund" which employers would pay into when using OSHA's state consultation programs;
- establishment of a new minimum \$1,000 penalty for each serious violation,

with fines deposited to OSHA (not the U.S. Treasury); and

-establishment of a new deputy administrator position for construction and other measures to strengthen construction safety's profile within the agency.

In December, U.S. Labor Secretary Robert Reich notified Kennedy and Ford that the Department of Labor will "strongly support" the reform legislation. At this writing, both bills are pending in committee.

**OSB Proposes Long-Awaited Ergonomics Regulation.** On November 26, after years of delay and resistance, OSB published notice of its intent to adopt new section 5110, Title 8 of the CCR, to establish ergonomics standards which seek to prevent cumulative trauma disorders resulting from repetitive motion. Although OSB has been petitioned to adopt ergonomics standards on numerous occasions (particularly in relation to the use of video display terminals), it has consistently refused to take action on this issue. [11:3 CRLR 140-41; 10:4 CRLR 130-31; 9:4 CRLR 102] However, AB 110 (Peace) (Chapter 121, Statutes of 1993) requires OSB to address the issue as part of a comprehensive effort to lower workers' compensation costs.

In its rulemaking notice, OSB now acknowledges that the reported incidence of cumulative trauma disorders (CTDs) has increased dramatically during the last decade; according to the U.S. Department of Labor's Bureau of Labor Statistics (BLS), the incidence of disorders associated with repeated trauma rose from 22,600 cases in 1982 to 185,400 cases in 1990, the latest year for which BLS statistics are currently available. Since 1989, CTDs have been more prevalent than all other occupational diseases combined. OSB notes that California statistics reveal a similar trend; in 1991, disorders associated with repeated trauma constituted 32% of all occupational diseases reported in California. According to OSB, because existing regulations provide a cumbersome and incomplete mechanism for addressing CTDs, "[r]egulatory intervention with a specific focus on prevention of CTDs is needed."

Accordingly, proposed section 5110, which would apply to all employers, would establish minimum requirements for controlling exposure to the risk of developing cumulative trauma disorders. In order to determine whether CTD risk or CTDs must be addressed under section 5110, each employer would be required to gather preliminary information. First, the employer must perform a one-time review of certain records bearing on the presence of CTDs and CTD risk in the workplace,

covering a specified period of time. Then, the employer must establish a reporting procedure which encourages employees to report CTD symptoms or CTD risk as specified, with provisions for documentation and maintenance of records.

Among other things, section 5110 would also provide the following:

-When CTD risk, a diagnosed CTD, or CTD symptoms are present, section 5110 would require a structured approach to evaluating the work activities that are implicated, specify the required procedures for conducting and updating worksite evaluations (including documentation and maintenance of records), and define the proper scope of worksite evaluations.

-Section 5110 would contain requirements for the implementation, in a timely manner and based on the severity of the hazard, of engineering controls, administrative controls, and personal protective equipment as necessary to reduce or eliminate CTD risk.

-Section 5110 would require employers to make available, at no cost to employees, effective medical management, when any employee reports CTD symptoms; the term "medical management" includes, to the extent feasible, early detection and diagnosis of work-related CTDs and CTD symptoms. The section would require employers to provide certain information to medical evaluators, and to provide employee access to the results of medical evaluations. Further, the section would require employers to reimburse employees for the cost of eye examinations and corrective lenses under narrowly defined circumstances, and would provide that termination of employment will not relieve an employer of the obligation to provide medical evaluation.

-Section 5110 would require employers to provide two types of training to minimize CTD risk. General training is required for all employees, and could be accomplished by brief, pre-job safety conferences; job-specific training is required for all employees whose work activities are required to be addressed by engineering controls, administrative controls, or personal protective equipment, unless the controls eliminate the necessity for safety instruction with respect to CTD risk.

-Appendix A to section 5110 would provide non-mandatory guidance in identifying and evaluating CTD risk and performing worksite evaluations in general.

-Appendix B to section 5110 would provide specifications for engineering and administrative controls for video display terminal (VDT) operators, which may be chosen as one means of complying with the general job activity control measure



requirement of section 5110 as it relates to VDT operators.

—Appendix C to section 5110 would contain language employers must use to request a medical evaluation to ensure an effective evaluation.

According to OSB, “[i]t is anticipated that this proposal will not have a significant adverse impact on California businesses”; further, based on cost data submitted by Blue Cross of California, Vision Service Plan, 3M Company, and the California Chamber of Commerce, and on specified data regarding rising CTD incidence and the portion of workers’ compensation costs associated with CTD claims, OSB concluded that “compliance with this proposal is likely to produce a net savings to employers if workers’ compensation costs saved as a result of compliance are considered.”

At this writing, OSB is scheduled to hold public hearings on proposed section 5110 on January 13 in Los Angeles and February 24 in San Francisco.

**Haulage Vehicle Operation.** On October 29, OSB published notice of its intent to amend section 1593, Article 10, Title 8 of the CCR, regarding safety requirements for the use of haulage vehicles. The proposed amendments would prohibit employees at construction jobsites from using the attachments of haulage vehicles, which do not provide full protection equivalent to that required by section 3210, Title 8 of the CCR, to elevate employees or serve as work platforms. The amendment would also prohibit haulage vehicles from being used to transport other employees in a manner inconsistent with section 1597, Title 8 of the CCR. As amended, section 1593 would hold the employer responsible for ensuring that, when used as an elevated work platform or to transport employees, the haulage vehicle attachment (e.g., dozer blade, scoop, or bucket) is equipped with standard guardrail protection, seat belts, or safety belts with lanyards to provide fall protection consistent with specified regulatory provisions.

OSB conducted a public hearing on this proposal on December 16; no public comment was received. The proposed amendment awaits adoption by OSB and review and approval by the Office of Administrative Law (OAL).

**Riding Loads on Derricks, Hoists, or Cranes.** On October 29, OSB published notice of its intent to amend section 4999, Article 98, Title 8 of the CCR, which would prohibit persons from riding on the load, hook, or sling of any derrick, hoist, or crane; according to OSB, the change would provide consistency between the General Industry Safety Orders and the

Construction Safety Orders by prohibiting employees from riding loads in all crane operations, whether in the general or construction industry.

OSB conducted a public hearing on this proposal on December 16; at this writing, the proposed amendment awaits adoption by OSB and review and approval by OAL.

**Ventilation Requirements for Laboratory-Type Hood Operations/Biological Safety Cabinets.** On October 29, OSB published notice of its intent to amend section 5154.1 and adopt new section 5154.2, Article 107, Title 8 of the CCR, which regulate the use of laboratory-type hoods and biological safety cabinets. Section 5154.1 currently sets forth requirements for ventilation rates, operation, and other special requirements for laboratory-type hoods. OSB’s proposed amendment would, among other things, exempt biological safety cabinets from the section’s requirements; biological safety cabinets are used primarily in microbiological laboratories and pharmacies where organisms and pharmaceutical materials which present a health hazard must be manipulated to maintain a sterile environment.

New section 5154.2 would include requirements for use, operation, ventilation rates and negative pressure, airflow measurements and leak testing, and other special requirements for biological safety cabinets; under the proposed language, section 5154.2 would only apply to biological safety cabinets used to control biohazard materials or hazardous substances. The section would also allow the use of biological safety cabinets to control exposure to cytotoxic drugs, aerosols, and particulate matter, provided the presence of these substances presents no risk of fire or explosion, and specified control requirements are met.

OSB conducted a public hearing on this proposal on December 16 and received comments from various members of the advisory committee it had convened to develop the proposal, as well as from various health safety professionals. Lawrence Gibbs, a member of the Executive Council of the American Biological Safety Association and a representative of Stanford University, expressed his concern that the technical language of the proposed standard lacks the precision needed to provide an efficient, up-to-date standard for users of the cabinets. Roger Richert, representing California Association of Hospitals and Health Systems (CAHHS) and the California Society for Hospital Engineering (CSHE), stated that he believed the cost estimates for compliance with the new standards are too low;

he expressed concern that many hospitals would be forced to buy new cabinets at a high price, and noted the additional costs of the required review process through the Office of Statewide Health Planning and Development (OSHPD). Ben Gonzalez of Technical Safety Services, which purchases and installs the cabinets for its clients, stated that the prices in the proposal are realistic for the type of devices being installed. A representative from UC Davis Medical Center then noted that because of the requirement for OSHPD approval, many hospitals cannot simply have someone come in and install the device; instead, they must engineer and submit drawings for approval, then pay for the installation through OSHPD, which adds significantly to the cost.

Because of the technical complexity of the standard and the number of public comments submitted, OSB extended the period for written comments until March 18.

**Automotive Lift Standards Amendments.** On October 1, OSB published notice of its intent to amend sections 3542 and 3543, Title 8 of the CCR, regarding automotive lifts. Existing section 3542 requires automotive lifts to be designed, constructed, and installed in accordance with the provisions of ANSI B153.1-1974, or to be approved by the California Division of Industrial Safety for lifts installed prior to November 1976. Among other things, OSB’s proposed amendment would change the reference from the Division of Industrial Safety to the Division of Occupational Safety and Health, to reflect DOSH’s current name. In addition, the amendments would require that new lifts installed after February 1, 1994 be in accordance with the provisions of ANSI/ALI B153.1-1990, which is incorporated by reference, except for specified sections. The proposed amendments to section 3543 would require that automotive lifts manufactured after May 21, 1990, be provided with a label or statement of compliance indicating the lift was manufactured to conform to the requirements of ANSI/ALI B153.1-1990.

OSB held a public hearing on this rulemaking proposal on November 18; at this writing, the amendments await adoption by OSB and review and approval by OAL.

**Lead in Construction.** On September 28, OAL accepted OSB’s adoption of new section 1532.1, Title 8 of the CCR, which establishes interim standards regarding occupational exposure to lead in construction work; the standard, which is identical to the interim final rule adopted by federal OSHA in May 1993, went into effect on



November 4 and will remain in effect for six months from that date unless OSB readopts it for an additional six months or adopts a state standard that is at least as effective as the federal standard. Section 1532.1, which was exempt from OAL review because it is the same as the federal standards [13:1 CRLR 91], provides in part that it applies to all construction work where an employee may be occupationally exposed to lead; the term "construction work" is defined as work for construction, alteration, and/or repair (including painting and decorating), and includes demolition or salvage of structures where lead or materials containing lead are present; removal or encapsulation of materials containing lead; new construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead; installation of products containing lead; lead contamination/emergency clean-up; transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and maintenance operations associated with the construction activities described above.

Among other things, section 1532.1 provides that an employer shall assure that no employee is exposed to lead at concentrations greater than fifty micrograms per cubic meter of air averaged over an eight-hour period. If an employee is exposed to lead for more than eight hours in any work day, the employees' allowable exposure, as a time weighted average (TWA) for that day, shall be reduced according to a specified formula.

**Rulemaking Update.** The following is a status update on other OSB regulatory proposals reported in detail in previous issues of the *Reporter*:

• **Excavation Access and Egress.** On July 22, OSB conducted a public hearing on its proposed amendments to sections 1541(c)(2) and 1541(l)(1), Title 8 of the CCR, regarding safe walkways and egresses in and around trench excavations. As originally proposed, the amendments would specify that existing provisions for safe egress shall apply to all excavations, including trenches, that are four feet or more in depth, and change existing provisions to require walkways or bridges only if the excavation is six feet or more in depth. [13:4 CRLR 131] At its December 16 meeting, OSB modified the amendments to apply to trenches over 30 inches in width or six feet in depth; OSB then adopted the amendments, which await review and approval by OAL.

• **Permit to Operate Elevators.** On September 22, OAL approved OSB's

amendments to section 3001(c)(4), Title 8 of the CCR, which allow the issuance of a two-year permit if an elevator is subject to a full service maintenance contract. Section 3001(c)(4) requires elevator service companies to submit specified information within thirty days of notification to allow DOSH to determine if an elevator qualifies for a two-year permit; the revision allows elevator service companies sixty days instead of thirty days to prepare and submit the necessary information. [13:4 CRLR 131]

• **Hazards Associated With the Use of Reinforcing Steel and Other Projections.** On November 8, OAL approved OSB's amendments to section 1712, Title 8 of the CCR, regarding the safety of employees working above protruding reinforcing steel or similar hazards. [13:4 CRLR 132]

• **Process Safety Management of Acutely Hazardous Materials.** On November 11, OSB adopted its modified amendments to section 5189, Title 8 of the CCR, regarding the management of processes using highly hazardous chemicals, flammables, and explosives; at this writing, the amendments await approval by OAL.

• **Occupational Exposure to Serious Safety and Health Hazards in Confined Spaces.** On November 18, OSB reviewed its proposed amendments to sections 5156-5158 and the repeal of section 5159, Title 8 of the CCR, regarding the control of exposure to serious safety and health hazards in confined spaces; the revisions are designed to bring California's standards up to the level of effectiveness provided by the federal standard. Following a public hearing last May, the Board had requested staff to prepare a side-by-side comparison of the federal and existing state standards; some Board members believe the state standard is already as effective as the federal standard. [13:4 CRLR 132] Following a review of staff's summary of the differences between the state and federal standards, OSB adopted the proposed changes. On November 24, OAL approved the changes.

• **Skylight Safety Fall Protection.** On October 7, OAL approved OSB's amendments to section 3212(e), Title 8 of the CCR, which specify certain methods of fall protection for employees exposed to the hazard of falling through skylights. [13:4 CRLR 133]

• **Wood-Frame Construction Regulatory Changes.** On November 18, OSB adopted its proposed changes to section 1710, Title 8 of the CCR, which provide procedures for safely erecting substructure components such as trusses, beams, and floors during structure construction;

the amendments require that safeguards be used to prevent a framed wall from sliding or kicking out while it is being raised, and specify that anchor bolts shall not be used for blocking or bracing the wood-framed walls being raised. [13:4 CRLR 131] On December 15, the amendments were approved by OAL.

• **Cleaning, Repairing, Servicing, and Adjusting Prime Movers, Machinery, and Equipment.** On November 18, OSB adopted its proposed amendments to section 3314(a) and (b), Title 8 of the CCR, which would specifically include unjamming activities as part of cleaning, repairing, servicing, and adjusting activities conducted on prime movers, machinery, and equipment; require employers to address unjamming machinery and equipment in their hazardous energy control procedures; and provide that for the purpose of section 3314, the term "locked out" means the use of devices, positive methods, or procedures which will result in the isolation or securing of prime movers, machinery, and equipment from mechanical, hydraulic, pneumatic, chemical, electrical, thermal, or other energy source. [13:4 CRLR 131] At this writing, the proposed changes are being reviewed by OAL.

• **Above-Ground Storage Tank Regulations.** On June 24, OSB conducted a public hearing on its proposed amendments to sections 5415 and 5595, Title 8 of the CCR. Among other things, the regulations would add a definition for the term "integral secondary containment," which describes a method of above-ground tank storage which utilizes an inner tank and outer containment barrier providing containment of spills in the event of inner tank rupture and fire resistivity; exclude above-ground storage tanks (ASTs) equipped with integral secondary containment from the diking/drainage requirements stated in section 5545(a) for Class I, II, or IIIA liquids where overflow protection, prevention, and other features are provided, but require such exempt ASTs to be equipped with a metallic spill contain for each tank fill pipe; and require spill containers to have a capacity of not less than five gallons and to be equipped with a drain valve which can drain overflowed liquids back into the primary tank. [13:4 CRLR 132-33] Because the California Fire Marshal did not approve the proposed changes, OSB is not expected to pursue this regulatory action.

• **Electrical Regulations Pertaining to Elevators.** At this writing, the Board's proposed amendments to sections 3011, 3012, 3016, 3020, 3040, 3050, 3071, 3073, 3078, 3090, 3092, 3093.41, 3093.42, 3100, and 3112, Title 8 of the CCR, and sections



7-3040, 7-3073, 7-3093.41, 7-3093.42, and 7-3100, Title 24 of the CCR, regarding electrical regulations pertaining to elevators, still await adoption by OSB and review and approval by OAL. [13:4 CRLR 133]

• **Leg Protection for Chain Saw Operators in Logging Operations.** At this writing, OSB's proposed amendments to section 6283(a), Title 8 of the CCR, which specify that certain employees who are required to operate chain saws during logging operations must use leg protection, await adoption by OSB and review and approval by OAL. [13:4 CRLR 131]

• **Toilets at Construction Jobsites.** On October 21, OSB conducted a public hearing on its proposed amendments to section 1526, Title 8 of the CCR, which would require employers to provide jobsite toilet facilities which provide toilet users with privacy and are maintained so as to provide users with privacy. [13:4 CRLR 131-32] On December 16, OSB adopted the proposed amendments, which await review and approval by OAL.

## LEGISLATION

**S. 575 (Kennedy) and H.R. 1280 (Ford)** are federal legislative proposals which would enact the Comprehensive Occupational Safety and Health Reform Act, which would amend the Occupational Safety and Health Act of 1970 with respect to occupational safety and health programs, committees, employee representatives, coverage, standards, enforcement, antidiscrimination, training and education, hazard and illness evaluation, state plans, and victims' rights (see MAJOR PROJECTS). S. 575 is pending in the Senate Labor and Human Resources Committee; H.R. 1280 is pending in the House Education and Labor Committee.

**AB 1800 (T. Friedman)**, as amended June 22, would abolish DIR and instead establish the Labor Agency supervised by the Secretary of the Labor Agency. Under the bill, the Agency would consist of DOSH, the Department of Workers' Compensation, the Department of Rehabilitation, the Department of Labor Standards Enforcement, the Employment Development Department, the Department of Fair Employment and Housing, and the Contractors State License Board. The bill would also provide that the Cal-OSHA Plan, the Division of Labor Statistics and Research, the Division of Apprenticeship Standards, the Division of Industrial Accidents, the California Apprenticeship Council, the State Mediation and Conciliation Service, and the Office of Self-Insurance Plans are subject to the Agency's jurisdiction. The bill would also provide

that OSB, the Occupational Safety and Health Appeals Board, the Workers' Compensation Appeals Board, the Industrial Medical Council, the State Compensation Insurance Fund, the Rehabilitation Appeals Board, the Industrial Welfare Commission, the Employment Training Panel, the Apprenticeship Council, the State Job Training Coordinating Council, the Unemployment Insurance Appeals Board, the Fair Employment and Housing Commission, the Public Employee Relations Board, and the Agricultural Labor Relations Board are within the Agency for administrative purposes. [A. L&E]

**AB 2225 (Baca).** Existing law requires the Department of Health Services (DHS) to establish and maintain an occupational lead poisoning prevention program, including but not limited to specified activities related to reducing the incidence of occupational lead poisoning. As introduced March 5, this bill would additionally include among those specified activities, for purposes of the occupational lead poisoning prevention program, the study and documentation of the incidence and effects of lead exposure and occupational lead poisoning in the construction industry.

Existing law generally requires every employer to establish, implement, and maintain a written IPP. This bill would also require any employer who engages in lead-related work, as defined, to establish, implement, and maintain an effective occupational lead injury prevention program designed to identify and eliminate unsafe work practices, and prevent occupational lead poisoning and other lead related diseases in the workplace. [A. L&E]

**AB 1605 (B. Friedman)**, as amended August 16, would require that every supermarket, grocery store, or drugstore employer, as defined, with twenty or more full-time or part-time employees and a retail building location of more than 20,000 square feet, develop and implement a minimum security plan at each store site that is designed to protect employees from crime and to assist law enforcement officers in the identification of perpetrators of crimes committed in these stores, and that includes specified elements. This bill would require OSB to adopt regulations to enforce these provisions relating to supermarket, grocery store, and drugstore safety not later than September 1, 1994. [S. Appr]

**AB 1978 (Jones).** Existing law requires registration with DOSH for specified asbestos-related work, as defined, and prescribes civil and criminal penalties for violating those requirements. As introduced March 5, this bill would exclude

from the definition of "asbestos-related work," the installation, repair, maintenance, or removal of asbestos cement pipe and sheets containing asbestos that does not result in asbestos exposures to employees in excess of the permissible limit as determined pursuant to specified regulations, if the employee involved in the work has received training through a task-specific training program, including specified information, and written confirmation of completion of that training from the employer or training entity responsible for the training.

Existing law governing asbestos-related work defines "asbestos-containing construction material" as any manufactured construction material which contains more than one-tenth of 1% asbestos by weight. This bill would change the definition of "asbestos-containing construction material" to any manufactured construction material that contains more than 1% asbestos by weight. [A. L&E]

**SB 547 (Hayden)**, as amended April 19, would prohibit an employer, commencing January 1, 1997, from requiring or permitting the use of diethylene glycol dimethyl ether or ethylene glycol monoethyl ether in any place of employment, a violation of which would be a misdemeanor. This bill would also require employers, no later than March 1, 1994, to warn employees who could be exposed to diethylene glycol dimethyl ether or ethylene glycol monoethyl ether in their work of the reproductive health dangers of these chemicals, including but not limited to the high risk of miscarriage associated with these chemicals. [S. Appr]

**SB 832 (Hayden)**, as amended May 10, would require that, on or after January 1, 1995, every computer VDT and peripheral equipment, as specified, that is acquired for or used in any place of employment conform to all applicable design and ergonomic standards adopted by the American National Standards Institute (ANSI); require that, on and after January 1, 1995, every employer, except as specified, upon the request of a covered operator, as defined, of a VDT, provide certain equipment that conforms to the aforementioned design and ergonomic standards; require, on and after January 1, 1995, every employer who employs a covered operator to provide that covered operator, under certain conditions, with an alternate work break, as defined, or with reasonable alternative work; provide that a workstation employing new or alternative technologies shall be considered to conform to the standards required by these provisions if certain conditions are met, as specified; require, on or before January 1, 1996,



every employer who employs one or more covered operators to make certain equipment modifications to conform to the equipment standards imposed by these provisions, but would specify that an employer shall only be required to expend a maximum of \$250 per workstation to make the required equipment modifications; require, on or before January 1, 1998, every employer who employs one or more covered operators to expend those amounts necessary to modify and upgrade all VDT equipment that is used by any covered operator to fully conform to the equipment standards set forth in these provisions; require, on or before January 1, 1995, that every employer required to comply with specified laws and regulations relating to worker safety, who employs one or more covered operators, provide training and instruction to every covered operator, that includes specified information; require DOSH to monitor ongoing research on VDT radiation emissions and to inform employers, through the use of existing communications materials, of the status of that research, and, on or before January 1, 1995, to report to the legislature on the results of that research, as specified; and authorize DOSH to enforce these provisions by the issuance of citations for any violations thereof. [*S. Appr*]

**SB 999 (Dills).** Existing law requires DOSH to promulgate regulations establishing specific criteria for licensing certifiers of cranes and derricks, including a written examination. As amended July 16, this bill would permit the Division to waive the written examination for renewal of a certifier's license if the applicant has passed the written certification examination on or after January 1, 1992, is currently licensed at the time of application, and has been actively engaged in certifying cranes and derricks for the five preceding years. [*A. Inactive File*]

**AB 1543 (Klehs).** Under existing law, OSB has authority to adopt, amend, and repeal occupational safety and health standards and orders, and to grant variances therefrom under specified conditions; DOSH also has authority to grant temporary variances from any occupational safety and health standard under limited circumstances. As amended April 21, this bill would provide that, notwithstanding these existing authorizations, neither OSB nor DOSH has the authority to make changes in, or grant variances from, specified regulations, if the proposed change or variance may have the effect of subjecting workers to increased exposure to electromagnetic fields in work on conductors or equipment energized in excess of 7500 volts. [*S. IR*]

**SB 555 (Hart).** Existing law requires every physician providing treatment to an injured employee for pesticide poisoning or a condition suspected to be pesticide poisoning to file a complete report with the Division of Labor Statistics and Research. As introduced March 1, this bill would additionally require every physician providing treatment for pesticide poisoning or a condition suspected to be pesticide poisoning to file, within 24 hours of the initial examination, a complete report with the local health officer by facsimile transmission or other means. The bill would provide that the physician shall not be compensated for the initial diagnosis and treatment unless the report to the Division of Labor Statistics and Research is filed with the employer or, if insured, with the employer's insurer, and certifies that a copy of the report was filed with the local health officer. [*A. L&E*]

**AB 13 (T. Friedman),** as amended August 30, would prohibit any employer from knowingly or intentionally permitting, or any person from engaging in, the smoking of tobacco products in an enclosed space at a place of employment. It would specify that, for purposes of these provisions, "place of employment" shall not include hotel, motel, or other lodging establishments and motel guest room accommodations and lobbies, retail or wholesale tobacco shops, private smoker's lounges, cabs of motor trucks or truck tractors, bars and taverns, warehouse facilities, gaming clubs, public convention center facilities, theatrical production sites, and research or treatment sites, as defined. It would also specify that, for purposes of these provisions, an employer who permits any nonemployee access to his/her place of employment on a regular basis has not acted knowingly or intentionally if he/she has taken certain reasonable steps to prevent smoking by a nonemployee. It would allow an employer to permit smoking in designated breakrooms under specified conditions.

This bill would also specify that the smoking prohibition set forth in these provisions shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment, and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment.

This bill would additionally provide that a violation of the smoking prohibition set forth in these provisions is an infraction punishable by specified fines. It would further provide that the smoking prohibition shall be enforced by local law enforce-

ment agencies, as specified, but would specify that DOSH shall not be required to respond to any complaint regarding a violation of the smoking prohibition, unless the employer has been found guilty of a third violation of the smoking prohibition within the previous year. [*S. Jud*]

## RECENT MEETINGS

At its October 21 meeting, OSB considered Petition No. 337, submitted by Terrill McGee and William Bandy, who requested that OSB amend section 5162, Title 8 of the CCR, to require a personal eyeflush system or a kit for quick drenching or flushing of the eyes and face of any person who may be exposed to injurious or corrosive material and where suitable facilities for quick drenching or flushing of the eyes cannot be provided as required in existing section 5162. According to OSB staff, petitioners have developed, patented, and are attempting to market a personal eyeflush system that can deliver a simultaneous flush to both eyes within one second of activation; the system is primarily intended to be used at remote locations that cannot feasibly accommodate a plumbed emergency eyewash/shower unit. Staff also noted that OSB previously granted two petitions requiring DOSH to address the broader issue of providing feasible alternatives to protect workers when plumbed or self-contained units are not readily accessible, and that DOSH had already started advisory committee deliberations in which petitioners were invited to participate; accordingly, OSB denied the petition.

At its November 18 meeting, OSB considered Petition No. 340, submitted by the Southern California Gas Company, which proposes revisions of the Unfired Pressure Vessel Safety Orders concerning natural gas vehicle fueling stations; specifically, petitioner requested that OSB convene an advisory committee to evaluate regulations pertaining to compressed natural gas and liquefied natural gas to assure their consistency, necessity, clarity, and reasonableness. Following discussion, OSB granted the petition to the extent that it directed DOSH to convene an advisory committee to review existing regulations concerning compressed natural gas and liquefied natural gas and to consider petitioner's proposed revisions.

Also at its November 18 meeting, OSB considered Petition No. 338, submitted by Brian Bruckner, requesting that OSB amend section 6880, Title 8 of the CCR, with regard to loading and unloading operations. Petitioner, the manufacturer of a device which is designed to prevent diesel engine runaway, contended that section





6880 inadequately addresses the need for diesel runaway safeguards. OSB staff noted that the U.S. Department of Transportation has jurisdiction over all interstate and intrastate transportation of bulk flammable liquids; further, the California Highway Patrol enforces its own regulations concerning intrastate transportation of flammable liquids. Finding that it lacks jurisdiction to adopt a standard that would require the installation of an automatic diesel runaway shutdown system on trucks that transport products which omit flammable vapors, OSB denied the petition.

At its December 16 meeting, OSB considered Petition No. 339, submitted by David Smith on behalf of Ensign Safety and Health Advisory, requesting that OSB amend section 3203(c)(2), Title 8 of the CCR, to specify a retention period for labor/management safety and health committee meeting records. Noting that section 3203 would soon be amended anyway to comply with recently enacted legislation concerning safety records, OSB denied the petition.

Also at its December 16 meeting, OSB considered Petition No. 341, submitted by David Caldwell, requesting that OSB adopt the state of Washington's fall protection standards with one modification to disallow the use of a safety monitor system as a substitute for a personal fall arrest system, work positioning device, guard-rail system, and catch platform. The Board agreed that revisions are appropriate, but refused to adopt Washington's regulations. Instead, OSB directed DOSH to analyze the Washington Code along with fed-OSHA regulations and ANSI standards and select appropriate language for a new regulation for Cal-OSHA. Accordingly, OSB denied the petition.

## ■ FUTURE MEETINGS

- April 21 in Sacramento.
- May 19 in Los Angeles.
- June 23 in San Francisco.
- July 21 in San Diego.
- August 25 in Sacramento.
- September 22 in Los Angeles.
- October 27 in San Francisco.



## CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

### AIR RESOURCES BOARD

*Executive Officer: James D. Boyd*  
*Chair: Jacqueline E. Shafer*  
(916) 322-2990

Pursuant to Health and Safety Code section 39003 *et seq.*, the Air Resources Board (ARB) is charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solutions to air pollution, and to systematically attack the serious problem caused by motor vehicle emissions, which are the major source of air pollution in many areas of the state. ARB is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Titles 13, 17, and 26 of the California Code of Regulations (CCR).

ARB regulates both vehicular and stationary pollution sources. The California Clean Air Act requires attainment of state ambient air quality standards by the earliest practicable date. ARB is required to adopt the most effective emission controls possible for motor vehicles, fuels, consumer products, and a range of mobile sources.

Primary responsibility for controlling emissions from stationary sources rests with local air pollution control districts (APCDs) and air quality management districts (AQMDs). ARB develops rules and regulations to assist the districts and oversees their enforcement activities, while providing technical and financial assistance.

Board members have experience in chemistry, meteorology, physics, law, administration, engineering, and related scientific fields. ARB's staff numbers over 400 and is divided into seven divisions: Administrative Services, Compliance, Monitoring and Laboratory, Mobile Source, Research, Stationary Source, and Technical Support.

On November 17, Board Chair Jananne Sharpless announced her resignation from ARB effective November 18; her move followed a review of the Board's performance by the Wilson administration, which was pressured by business groups, the auto and trucking industries, and several conservative Assembly Republicans (*see below*). On November 18, Governor Wilson named Jacqueline E. Shafer as ARB's new chair. Although Shafer's ap-

pointment requires Senate confirmation, new appointees may begin to work immediately when the legislature is not in session. Shafer started work as ARB Chair on November 22; the position is full-time and commands an annual salary of \$90,852.

Although Shafer has no experience in California political or environmental issues, she served as administrator of the New York regional office of the U.S. Environmental Protection Agency for two years during the Reagan administration, was Assistant Secretary of the Navy (with oversight of military environmental policies) during the Bush administration, and served from 1984-89 on the White House Council on Environmental Quality.

Also on November 18, Governor Wilson replaced longtime ARB member Betty Ichikawa with Lynne T. Edgerton, vice-president of CALSTART, a nonprofit consortium of California industries and governments working to produce electric cars and other transportation technologies. [12:4 CRLR 20] Edgerton is an attorney who formerly worked for the Natural Resources Defense Council. Ichikawa had been a member of ARB for ten years, and—like Sharpless—tended to favor stringent air pollution controls.

## ■ MAJOR PROJECTS

**Sharpless Resigns Under Pressure.** On November 17, longtime ARB Chair Jananne Sharpless announced her resignation from the Board following a "performance review" by the Wilson administration. The "performance review" was demanded by the auto and trucking industries and several conservative Assembly Republicans who have historically disapproved of ARB's direction under Sharpless' leadership. While his administration insisted that Sharpless' move was mutually agreed upon and that the Governor wanted to retain her recognized expertise in his administration, Wilson reassigned Sharpless to the California Energy Commission and later called for that agency's abolition.

Sharpless, a strong and vocal clean air advocate, chaired the Board for eight years prior to her resignation. Under her leadership, ARB adopted rules in 1988 which limit, effective October 1, 1993, the permissible sulfur content of diesel fuel to 500 parts per million, and restrict the aromatic hydrocarbon content of diesel fuel to 10% by volume. [9:1 CRLR 86] In spite of the five-year lead time, refiners failed