



The *Reporter* summarizes below the activities of those entities within state government which regularly review, monitor, investigate, intervene, or oversee the regulatory boards, commissions, and departments of California.

OFFICE OF ADMINISTRATIVE LAW

Director: John D. Smith
(916) 323-6221

The Office of Administrative Law (OAL) was established on July 1, 1980, during major and unprecedented amendments to the Administrative Procedure Act (APA) made by AB 1111 (McCarthy) (Chapter 567, Statutes of 1979). OAL is charged with the orderly and systematic review of all existing and proposed regulations against six statutory standards—necessity, authority, consistency, clarity, reference, and nonduplication. The goal of OAL's review is to "reduce the number of administrative regulations and to improve the quality of those regulations which are adopted...." OAL has the authority to disapprove or repeal any regulation that, in its determination, does not meet all six standards. OAL is also authorized to review all emergency regulations and disapprove those which are not necessary for the immediate preservation of the public peace, health and safety or general welfare. The regulations of most California agencies are published in the California Code of Regulations (CCR), which OAL is responsible for preparing and distributing.

Under Government Code section 11347.5, OAL is authorized to issue determinations as to whether state agency "underground" rules which have not been adopted in accordance with the APA are regulatory in nature and legally enforceable only if adopted pursuant to APA requirements. These non-binding OAL opinions are commonly known as "AB 1013 determinations," in reference to the legislation authorizing their issuance.

MAJOR PROJECTS

OAL Rulemaking Update. On June 22, OAL approved new section 4, Title 1 of the CCR, to implement SB 726 (Hill) (Chapter 870, Statutes of 1993). [14:2&3 CRLR 11; 14:1 CRLR 14; 13:4 CRLR 16]

Section 4 requires state agencies proposing rulemaking actions that affect small business to adopt a plain English policy statement overview of the regulation. Among other things, section 4 requires an agency adopting such a regulation to prepare and submit to OAL with the notice of proposed action either the express terms of the proposed action written in plain English or, if that is not feasible due to the technical nature of the regulation, a noncontrolling plain English summary of the regulation; requires the agency to include in the rulemaking file either a statement that the agency has drafted the regulation in plain English, or a statement confirming that the agency has determined that it is not feasible to draft the regulation in plain English and a noncontrolling plain English summary of the regulation; and requires agencies which have determined that a proposed regulatory action does not affect small business to include "a brief explanation of the reason(s) for the agency's determination."

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 11-12:

AB 2531 (Gotch), as amended June 28, revises and reorganizes specified provisions of the APA. Among other things, AB 2531 changes the name of the rulemaking portion of the APA from "Office of Administrative Law" to "Administrative Regulations and Rulemaking"; reorganizes, consolidates, and renumbers articles and sections of the APA; reorganizes the procedural requirements of the APA; consolidates all provisions on assessing the impact of proposed regulations on business and the economy; clarifies existing law to provide that the rulemaking portion of the APA (not just the article setting forth rulemaking procedures) applies to the exercise of all quasi-legislative power conferred on a state agency by statute; deletes a provision regarding Fair Political Practices Commission regulations

to conform the statute to a judicial ruling [12:2&3 CRLR 44; 11:2 CRLR 44]; deletes an obsolete reference to publishing notice of regulations in a newspaper; and makes technical conforming changes. This bill was signed by the Governor on September 29 (Chapter 1039, Statutes of 1994).

The following bills died in committee: **AB 3674 (Johnson)**, which would have—among other things—required all state agencies proposing to adopt or amend any administrative regulation to estimate the cumulative impact of all regulations on specific private sector entities that may be affected by the proposed adoption or amendment of the regulation, and to include this estimate in the notice of proposed action; **SB 2104 (Leslie)**, which would have required the Department of Fish and Game (DFG) and the state Water Resources Control Board (WRCB), in addition to any other requirements contained in the APA, to hold at least one public hearing, in accordance with prescribed procedures, at which oral or written presentations may be made prior to adopting a new or increased fee for specified services, and prohibited DFG and WRCB from adopting a new or increased fee in an amount that exceeds the amount required to provide the service for which the fee is proposed to be adopted; **AB 3412 (Conroy)**, which would have revised the APA to permit a small business, as defined, to elect to arbitrate a decision adopted by an agency after hearing, as specified, in lieu of the procedure for judicial review; and **SCA 6 (Leonard)**, which would have authorized the legislature to repeal state agency regulations, in whole or in part, by the adoption of a concurrent resolution.

BUREAU OF STATE AUDITS

State Auditor: Kurt Sjoberg
(916) 445-0255

Created by SB 37 (Maddy) (Chapter 12, Statutes of 1993), the Bureau of State Audits (BSA) is an auditing and investigative agency under the direction of the Commission on California State Government Organization and Economy (Little Hoover Commission). SB 37 delegated to BSA most of the duties previously performed by the Office of Auditor General, such as examining and reporting annually upon the financial statements prepared by the executive branch of the state, performing other related assignments (such as performance audits) that are mandated by statute, and administering the Reporting of Improper Governmental Activities Act,