



ment of Personnel Administration, a representative of the California State Employees Association, and personnel experts from various state departments.

■ LEGISLATION

SB 1604 (Hart). Existing law provides that the Governor shall appoint five of the thirteen members of the Little Hoover Commission, the legislature appoints four members, and the balance of the membership is comprised of two Senators and two Assemblymembers. As introduced February 22, this bill would have made the gubernatorial appointments subject to Senate confirmation. On July 9, Governor Wilson vetoed the bill, stating that "[b]y limiting the number of members from the same political party and dividing the appointments between the legislature and Governor, current law provides a balance to ensure the independence of the Little Hoover Commission. This misguided measure would undermine, not enhance, that balance and independence."

DEPARTMENT OF CONSUMER AFFAIRS

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The Department of Consumer Affairs (DCA) oversees the activities of 37 administrative agencies which regulate 180 diverse professions, occupations, and industries. The primary function of DCA and its constituent agencies is to protect consumers from incompetent, dishonest, or impaired practitioners.

Most of the multi-member boards under DCA's jurisdiction are relatively autonomous of DCA control. However, the DCA Director is authorized to review and reject regulatory changes proposed by all DCA agencies; only a unanimous vote of the agency's board will override the Director's rejection. Additionally, the Department may intervene in matters regarding its boards if probable cause exists to believe that the conduct or activity of a board, its members, or its employees constitutes a violation of criminal law.

DCA maintains several divisions and units which provide support services to its constituent agencies, including a Legal Unit whose attorneys advise DCA boards at meetings and regulatory hearings; a Di-

vision of Investigation whose investigators gather evidence in complaint cases filed against the licensees of some DCA agencies; a Legislative Unit which assists agencies in drafting language for legislation and regulations affecting DCA agencies and their licensees; an Office of Examination Resources (formerly the Central Testing Unit) whose psychometricians analyze and assist in validating licensure examinations used by DCA agencies; and a Budget Office whose technicians assist DCA agencies in assessing their fiscal status and preparing budget change proposals for legislative review.

In addition to its functions relating to its various boards, bureaus, and examining committees, DCA is also charged with administering the Consumer Affairs Act of 1970. In this regard, the Department educates consumers, assists them in complaint mediation, and advocates their interests before the legislature, the courts, and its own constituent agencies.

The DCA Director also maintains direct oversight and control over the activities of several DCA bureaus and programs, including the following:

• **Bureau of Automotive Repair**—*Chief: James Schoning; (916) 255-4300; Toll-Free Complaint Number: (800) 952-5210.* Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), DCA's Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. BAR's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). BAR's other duties include complaint mediation, routine regulatory compliance monitoring, investigating suspected wrongdoing by auto repair dealers, oversight of ignition interlock devices, and the overall administration of the California Smog Check Program, Health and Safety Code section 44000 *et seq.*, which provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which request inclusion in the Program. BAR licenses approximately 16,000 smog check mechanics who will check the emissions systems of an estimated nine million vehicles this year. Testing and repair of emissions systems is conducted only by stations licensed by BAR.

• **Bureau of Security and Investigative Services**—*Chief: James C. Diaz; (916) 445-7366.* The Bureau of Security and Investigative Services (BSIS) regulates six industries: private security services (security guards and private patrol

operators) (Business and Professions Code section 7544 *et seq.*), repossessors (Business and Professions Code section 7500 *et seq.*), private investigators (Business and Professions Code section 7540 *et seq.*), alarm company operators (Business and Professions Code section 7590 *et seq.*), security guard training facilities (Business and Professions Code section 7552 *et seq.*), and locksmiths (Business and Professions Code section 6980 *et seq.*). BSIS' purpose is to protect the health, welfare, and safety of those affected by these industries. To accomplish this, the Bureau regulates and reviews these industries by its licensing procedures and by the adoption and enforcement of regulations. For example, BSIS reviews all complaints for possible violations and takes disciplinary action when violations are found. The Bureau's primary method of regulating, however, is through the granting or denial of initial/renewal license or registration applications.

• **Bureau of Electronic and Appliance Repair**—*Chief: Curt Augustine; (916) 445-4751.* Created in 1963, the Bureau of Electronic and Appliance Repair (BEAR) registers service dealers who repair major home appliances, electronic equipment, cellular telephones, photocopiers, facsimile machines, and equipment used or sold for home office and private motor vehicle use. Under SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993), BEAR also registers and regulates sellers and administrators of service contracts for the repair and maintenance of this equipment. BEAR is authorized under Business and Professions Code section 9800 *et seq.*; its regulations are located in Division 27, Title 16 of the CCR. The Electronic and Appliance Repair Dealer Registration Law requires service dealers to provide an accurate written estimate for parts and labor, provide a claim receipt when accepting equipment for repair, return replaced parts, and furnish an itemized invoice describing all labor performed and parts installed.

• **Bureau of Home Furnishings and Thermal Insulation**—*Chief: K. Martin Keller; (916) 574-2040.* The Bureau of Home Furnishings and Thermal Insulation (BHFTI) regulates the home furnishings and insulation industries in California. The Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, BHFTI is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings and insulation industries; BHFTI is also responsible for toy safety testing for the state of California. The Bureau is established in



Business and Professions Code section 19000 *et seq.*

BHFTI establishes rules regarding furniture and bedding labeling and sanitation. The Bureau enforces the law by conducting extensive laboratory testing of products randomly obtained by BHFTI inspectors from retail and wholesale establishments throughout the state. To enforce its regulations, which are codified in Division 3, Title 4 of the CCR, BHFTI has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. BHFTI may also revoke or suspend a licensee's registration for violation of its rules.

• **Tax Preparer Program**—*Administrator: Jacqueline Bradford; (916) 324-4977.* Pursuant to Business and Professions Code section 9891 *et seq.*, the Tax Preparer Program registers approximately 19,000 tax preparers in California. The Program's regulations are codified in Division 32, Title 16 of the CCR. Registrants must be at least eighteen years old; have a high school diploma or pass an equivalency exam; and must have completed sixty hours of instruction in basic personal income tax law, theory, and practice within the previous eighteen months or have at least two years' experience equivalent to that instruction. Prior to registration, tax preparers must deposit a bond or cash in the amount of \$5,000 with the Program. Members of the State Bar, accountants regulated by the state or federal government, and those authorized to practice before the Internal Revenue Service are exempt from the Program's registration requirement.

MAJOR PROJECTS

“Sunset” Bill to Require Regular Performance Review of All DCA Boards. On September 26, Governor Wilson signed SB 2036 (McCorquodale), which—for the first time—applies the “sunset” review concept to many of California's occupational licensing agencies. The bill is the result of Fall 1993 hearings by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale. [14:2&3 CRLR 17-19; 14:1 CRLR 17-19] Calling the McCorquodale bill “landmark legislation,” the Governor noted that “some of these boards have been in effect for over 80 years without reevaluating whether the public still needs their oversight. We must hold our government structure accountable and ask the necessary questions to ensure these boards can justify their existence.”

Under SB 2036, “sunset” dates (either July 1, 1997; July 1, 1998; or July 1, 1999) will be inserted into the enabling acts of all DCA boards. Approximately 18 months before its sunset date, each board will be required to produce specified information, documentation, and descriptions of its activities; the board will have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulatory mechanism consistent with the public health, safety, and welfare. A new Joint Legislative Sunset Review Committee will conduct a hearing and review of the agency's performance under 11 specified criteria. If the Committee believes the agency should continue to exist, it will recommend to the legislature that the board's sunset date be extended for four years; if the Committee believes the board or its licensing program is unnecessary or should be adjusted to better serve the public interest, it may recommend either that the legislature allow the sunset date to pass (in which case the board will cease to exist) or that the legislature amend the board's enabling act. (See LEGISLATION for related discussion of SB 2036.)

Legislature Revises the Composition of Accountancy Board and Defunds Cemetery/Funeral Directors Boards. In SB 2038 (McCorquodale), another bill which resulted from the Fall 1993 hearings of the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions and was signed by the Governor, the legislature revised the composition of the Board of Accountancy (BOA) to remove two certified public accountants from the Board. Effective July 1, 1997, BOA will consist of five CPAs, one public accountant, and four public members (see LEGISLATION and agency report on BOA for related discussion).

And in the most unusual move of the year, the legislature essentially abolished the Cemetery Board (CB) and the Board of Funeral Directors and Embalmers (BFDE)—not through a bill passed by the legislature and signed by the Governor, but through the budget process. Both boards have long been criticized by the legislature, the Wilson administration, consumer groups, and the press as cartels which protect the industry rather than the consumer.

As amended June 29, SB 2037 (McCorquodale) would have merged CB and BFDE into a single board; prior versions of the bill would have merged the two boards into a single bureau operating under the direct supervision of the DCA Director, but the boards and the death ser-

vices industry trade associations succeeded in convincing the Senate Business and Professions Committees to create a merged board instead of a bureau. [14:2&3 CRLR 45-46, 55-56] During the budget process, the legislature agreed to allocate both boards enough funding to last them until January 1, 1995, and to transform SB 2037 into a budget trailer bill carrying both the merger provision and the remainder of fiscal year 1994-95 funding for the merged board—with the continuation funding contingent on the merger; Governor Wilson signed the budget bill on July 8. Once the bill reached the Assembly, the death services industry turned up the pressure and demanded retention of both boards, and the Assembly Consumer Protection Committee amended the bill to remove the merger provision. However, the Senate refused to concur in the Assembly's amendment, and the entire bill—which included not only continuation funding for both boards beyond January 1 but also a merger of the Speech-Language Pathology and Audiology Examining Committee with the Hearing Aid Dispensers Examining Committee, the abolition of the Tax Preparer Program, and a provision exempting bid callers from the requirement that auctioneers file a bond with the Secretary of State—died. As a result, both CB and BFDE will likely be forced to shut down operations by the end of the year. At this writing, DCA's Division of Investigation (whose investigators are authorized to enforce the provisions of the Business and Professions Code) will likely take over the enforcement programs of both boards, and DCA will work with the legislature to craft legislation creating a new entity to carry out the licensing function of both boards. (See COMMENTARY on page 4 and agency reports on CB and BFDE for related discussions.)

BEAR Service Contractor Rulemaking. BEAR recently published notice of its intent to adopt new Article 5.5 (sections 2755-2760), Title 16 of the CCR; the new rules implement SB 798 (Rosenthal) (Chapter 1265, Statutes of 1993) by establishing a system for the registration and regulation of service contractors in California. [14:1 CRLR 19-20; 13:4 CRLR 22]

Among other things, the proposed regulations would specify the information and documentation which must be provided to BEAR by an applicant seeking registration as a service contractor; provide a procedure for the registration, as a service contract seller, of a person who is not an obligor on a service contract but sells such service contract on behalf of another person who is an obligor on the



service contract; interpret existing statutory law requiring service contractors to demonstrate financial responsibility by, *inter alia*, the establishment of an escrow account equal to 25% of the deferred revenues from service contracts in force or to have a net worth greater than the amount of deferred revenues from service contracts in force; specify records which must be kept by service contractors; specify the procedure by which service contractors must file their service contract forms with BEAR; and provide that the initial registration and annual renewal fee shall be \$60 for each place of business operated in California by a service contractor.

At this writing, BEAR is scheduled to hold a public hearing on the proposed service contractor regulations on November 10 in Sacramento.

BAR Rulemaking. In late September, BAR announced proposed regulatory changes to section 3340.30, Title 16 of the CCR. Specifically, BAR proposes to amend subsections (a) and (f) of section 3340.30 to establish a \$65 initial examination fee and renewal examination fee for Smog Check Program technicians; and to delete subsection 3340.30(c), which currently limits technicians to taking BAR's qualification examination no more than three times in any 12-month period. At this writing, BAR is accepting written comments on these proposed regulatory changes until November 10.

Tax Preparer Program Rulemaking Update. According to the Tax Preparer Program, the Office of Administrative Law (OAL) approved TPP's proposed amendments to section 3230, Title 16 of the CCR, reducing the registration and renewal fees for tax preparers from \$50 to \$40 on November 23, 1993; however, OAL has yet to codify these changes in the California Code of Regulations. [14:2&3 CRLR 19; 14:1 CRLR 20]

Other DCA Rulemaking. In July, DCA repealed the regulations of two DCA agencies which no longer exist. Specifically, on July 21, DCA repealed sections 500-560, the regulations of the former Board of Dry Cleaning and Fabric Care, which was abolished effective January 1, 1987 by AB 183 (Johnson) (Chapter 478, Statutes of 1986). [6:4 CRLR 35] On July 25, DCA repealed sections 2802-2898.1, Title 16 of the CCR, the regulations of the former Bureau of Personnel Services, which was abolished effective January 1, 1990 by AB 2113 (Johnson) (Chapter 704, Statutes of 1989). [9:4 CRLR 74-75]

LEGISLATION

AB 2384 (Committee on Ways and Means), as amended July 1, confers, not-

withstanding other provisions of law, specific powers on the DCA Director relative to budgeting, including the ability to classify, establish, and revise Departmental-specific established classifications, execute contracts, procure goods and services, and negotiate leases. This bill authorizes a pilot program related to pre-qualifying minority-, women-, and disabled veteran-owned small business enterprises and prepaying these vendors. This bill also makes specified statements relative to affirmative action. These provisions will be repealed as of June 30, 1995. This bill was signed by the Governor on July 9 (Chapter 150, Statutes of 1994).

AB 3760 (Speier). Existing law imposes various safety requirements affecting children and infants, including playground safety requirements and requirements for child safety warning labels on industrial containers. As amended August 24, this bill prohibits a commercial user from remanufacturing, selling, leasing, or placing in the stream of commerce, among other things, a full-size or non-full-size crib that is unsafe for any infant using the crib; expresses the legislature's intent that informational materials regarding baby crib safety be available to consumers through DCA; and provides that a full-size or non-full-size crib is unsafe when it does not conform to certain regulatory standards, or when it has specified dangerous features or characteristics. This bill was signed by the Governor on September 29 (Chapter 1176, Statutes of 1994).

SB 1490 (Johnston). Under Executive Order W-66-93, Governor Wilson created a Joint Enforcement Strike Force for purposes of addressing problems of the underground economy. As amended August 25, this bill provides for the Joint Enforcement Strike Force on the Underground Economy pursuant to that Executive Order, under the Director of Employment Development and including representatives of the Employment Development Department, DCA, the Department of Industrial Relations, and the Office of Criminal Justice Planning, with powers and duties as specified. The Strike Force will be required to report to the Governor and the legislature annually, commencing February 1, 1995, regarding its activities. This bill was signed by the Governor on September 28 (Chapter 1117, Statutes of 1994).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 19-22:

SB 2036 (McCorquodale), SB 2037 (McCorquodale), SB 2038 (McCorquodale), and **SB 2039 (McCorquodale)** all resulted from the Fall 1993 oversight hearings held by the Senate Subcommittee on Efficiency and Effectiveness in State Boards and Commissions, chaired by Senator Dan McCorquodale. During the hearings, the Subcommittee focused on developing a set of criteria under which it could evenhandedly evaluate the need for and performance of DCA occupational licensing agencies, and examined specific pairs of DCA regulatory programs to determine whether they should be abolished, merged, or restructured. [14:2&3 CRLR 17-18; 14:1 CRLR 17-19]

• **SB 2036 (McCorquodale)**, as amended August 26, creates a "sunset" review process for all DCA occupational licensing boards, requiring all DCA boards to be comprehensively reviewed every four years (*see* MAJOR PROJECTS). "Sunset" is an action-forcing mechanism which enables the legislature to more effectively oversee the agencies to which it has delegated authority; the concept has been successfully applied in numerous other states since the mid-1970s and was urged for enactment in California by the Little Hoover Commission in 1989. [9:4 CRLR 32-34] SB 2036 imposes a "sunset" date in the statute creating each occupational licensing board within DCA. The bill also creates a Joint Legislative Sunset Review Committee within the legislature, which will review the performance of each DCA board approximately 18 months prior to its sunset date; the bill specifies 11 categories of criteria under which an agency and its performance will be evaluated. Following review of the agency and a public hearing, the Committee will make recommendations to the legislature on whether the board should be abolished, restructured, or redirected in terms of its statutory authority and priorities. The legislature may then either allow the sunset date to pass (in which case the agency at issue would cease to exist and all powers and duties of the former agency would transfer to DCA) or pass legislation extending the sunset date for another four years. This bill was signed by the Governor on September 26 (Chapter 908, Statutes of 1994).

• **SB 2037 (McCorquodale)**, as amended August 30, would have—among other things—abolished the Cemetery Board and the Board of Funeral Directors and Embalmers, and created in their place a single Board of Funeral and Cemetery Services under the supervision of the DCA Director; merged the Hearing Aid Dispensers Examining Committee and the Speech-Language Pathology and Audiology Committee into a single board under



the jurisdiction of the Medical Board of California; and eliminated the Tax Preparer Program, but maintained the existing requirement that tax preparers file a \$5,000 surety bond. This bill died on the Senate floor (see MAJOR PROJECTS and COMMENTARY on page 4 of this issue).

• **SB 2038 (McCorquodale)**, as amended August 18, reduces the size of the Board of Accountancy from eight licensees and four public members to five certified public accountants, one public accountant, and four public members effective July 1, 1997. The bill also requires the Attorney General's Office to provide itemized statements of services rendered to DCA agencies to which it provides legal representation. This bill was signed by the Governor on September 30 (Chapter 1273, Statutes of 1994).

• **SB 2039 (McCorquodale)**, as amended August 25, requires the Board of Psychology and the Board of Behavioral Science Examiners to revoke the license of any licensee who is found to have engaged in any act of sexual contact, as defined, with a patient, or with a former patient in described circumstances. The bill imposes the same requirement on the Medical Board's Respiratory Care Examining Committee as to its licensees, changes the name of the Committee to the "Respiratory Care Board of California," and revises certain licensing requirements and other provisions related to respiratory care practitioners. This bill was signed by the Governor on September 30 (Chapter 1274, Statutes of 1994).

• **SB 2101 (McCorquodale)**, as amended July 7, makes several revisions to the enabling acts of various DCA boards and agencies. Among other things, this bill provides that a disciplinary action taken by another state, any agency of the federal government, or another country, that is substantially related to the practice regulated by a license issued by any DCA board, may be grounds for disciplinary action by that licensing board; revises the requirements for issuance of a license by BSIS in any fictitious business name; prohibits an institution, firm, or individual from offering a certified firearms course unless the institution, firm, or individual has received a Firearm Training Facility Certificate from BSIS; prohibits a person from instructing a BSIS-approved firearms course unless that person has received a Firearms Training Instructor Certificate issued by BSIS; prohibits an institution, firm, or individual from offering BSIS' certified baton course unless that institution, firm, or individual has received a Baton Training Facility Certifi-

cate from BSIS; prohibits a person from instructing a BSIS-approved baton course unless that person has received a Baton Training Instructor Certificate issued by BSIS; requires all BEAR service dealers that renew expired registrations to pay all accrued and unpaid delinquency and renewal fees; revises the information that is required to be submitted with forms from each service dealer and service contractor; authorizes BEAR to advise a service dealer or service contractor of certain complaints, and requires investigation only of those complaints of which the dealer or contractor has been advised; and requires BEAR to design and approve a sign that is required to be placed in all electronic and appliance repair locations operated by a service dealer. This bill was signed by the Governor on September 30 (Chapter 1275, Statutes of 1994).

• **SB 1288 (Calderon)**. Existing provisions of the Unruh Civil Rights Act and related provisions prohibit various types of discrimination by business establishments. Existing law further provides for the civil liability of a person who denies, aids or incites a denial of these rights, or makes any discrimination contrary to these provisions and sets actual damages at a minimum of \$250. As amended August 26, this bill instead provides for actual damages at a minimum of \$1,000. The bill also directs DCA, by June 1, 1995, to provide notice to licensees of the Board of Barbering and Cosmetology that California state law prohibits gender-based pricing, as provided. The bill requires DCA, by June 1, 1998, to submit to the legislature, upon request, a summary of the number and subject of any inquiries or comments by licensees in response to that notice, and requires DCA to develop, by June 1, 1995, and to make available to the public, consumer information on the problem of gender-based price discrimination.

Additionally, this bill makes it an unlawful employment practice for an employer to refuse to permit an employee to wear pants on account of the gender of the employee. The bill does not prohibit an employer from requiring employees in a particular occupation to wear a uniform, and permits the Fair Employment and Housing Commission to exempt an employer from these provisions for good cause shown. This bill was signed by the Governor on September 11 (Chapter 535, Statutes of 1994).

• **SB 1586 (Craven)**. Existing law requires that, unless he/she holds other specified licenses, an upholstered-furniture retailer must hold a retail furniture dealer's license from BHFTI, and a bedding retailer must hold a retail bedding dealer's

license from BHFTI. As amended April 4, this bill exempts from these provisions an individual or firm whose sole business is designing and specifying for interior spaces, and who purchases, on behalf of a client, specific amenable upholstered furniture items or specific amenable bedding items, as applicable, from an appropriately licensed wholesaler or retailer. This bill was signed by the Governor on August 31 (Chapter 410, Statutes of 1994).

• **SB 1713 (Hart)**, as amended June 28, declares legislative intent that armed security guards not be required to meet the same standards required of peace officers. The bill requires BSIS, with the technical assistance of the Commission on Peace Officer Standards and Training, to develop minimum selection, competence, and training standards for armed security guards by July 1, 1995, and requires implementation of these standards through regulations by January 1, 1996. This bill was signed by the Governor on September 28 (Chapter 1091, Statutes of 1994).

• **AB 3413 (Conroy)**, as amended August 8, requires each state agency, as defined, to develop and maintain an index of the names or titles of all fees, license fees, fines, and penalties administered or collected by the agency, except for fees collected from a governmental agency. This bill was signed by the Governor on September 24 (Chapter 784, Statutes of 1994).

• **AB 3291 (McPherson)**. The Private Investigator Act provides for the licensing and regulation of private investigators, private patrol operators, armored contract carriers, firearms and baton training facilities, and employees of those licensees. As amended August 9, this bill repeals those provisions and reenacts, reorganizes, and revises those provisions; enacts the Private Investigator Act for the licensing and regulation of private investigators and the Private Security Services Act for the licensing and regulation of private patrol operators, armored contract carriers, and firearms and baton training facilities. This bill was signed by the Governor on September 30 (Chapter 1285, Statutes of 1994).

• **AB 1392 (Speier)**, as amended August 17, now applies to only two DCA agencies (see agency reports on CEMETERY BOARD and BOARD OF FUNERAL DIRECTORS AND EMBALMERS for information on this bill).

• **AB 1926 (Peace)**, as amended August 26, revises the membership of the Advisory Committee on Automobile Insurance Fraud within the Department of Insurance's Bureau of Fraudulent Claims to include the Chief of the Bureau of Fraudulent Claims, a representative from the Department of



Justice, the Department of Motor Vehicles, DCA's Division of Investigation, the California Highway Patrol, DCA's Bureau of Automotive Repair, the State Bar of California, the Medical Board of California, two representatives from local law enforcement agencies (one of whom shall be a prosecutor), and representatives of three insurers, as specified. This bill was signed by the Governor on September 30 (Chapter 1247, Statutes of 1994).

AB 2182 (Lee), as amended August 26, would have required BHFTI to establish, by regulation, standards for the simulation of accelerated aging of insulation. This bill was vetoed by the Governor on September 30.

The following bills died in committee: **AB 3517 (Bronshvag)**, which would have declared legislative intent that DCA contract, by December 31, 1995, with the University of California or California State University to conduct a study of the need for regulation of health and fitness instructors; **AB 2857 (Ferguson)**, which would have exempted from BHFTI's licensing requirements persons who sell upholstered furniture that is solely gym equipment; **AB 1456 (Katz)**, which would have specifically authorized any state agency to revise its hours of service for transacting business in order to ensure that the agency may adopt policies providing for flexible work hours ("flextime") with specified exceptions; **AB 3333 (Speier)**, which would have repealed the third-party dispute resolution provisions of the Tanner Consumer Protection Act, substantially revised related provisions, established a comprehensive "lemon law arbitration program" in DCA, and required DCA to contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between buyers and sellers; **AB 652 (Speier)**, which would have enacted the Quality in Government Act, requiring all state departments and agencies (including the legislature) to identify their external and internal customers, collect information regarding the provision of services to their customers, and disseminate this information to suppliers of products and services in order to improve service quality; **AB 1287 (Moore)**, which would have required the Judicial Council and DCA to jointly establish a task force to assist them in conducting a comprehensive statewide study to identify all "nonlawyer providers" (also known as "legal technicians" or "independent paralegals") and to assess their pro per services; **SB 394 (Deddeh)**, which would have required any person engaged in the business of collecting claims for others or conducting the activities of a collection

agency, as defined, to record a verified certificate of operation as a collection agency with the recorder's office of the county of the collection agency's principal place of business; and **SB 8 (Lockyer)**, which would have made it a misdemeanor for any towing service or any employee thereof to accept or agree to accept any money or anything of value from an auto repair shop, and for any repair shop or any employee thereof to pay or agree to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair.

■ LITIGATION

In June, Los Angeles attorney Richard I. Fine filed several class action lawsuits in both state and federal court alleging that the State of California illegally diverted money from the accounts of state special-funded regulatory agencies. "Special-funded agencies" (including all of the regulatory programs in DCA) receive funding support not from the general fund but from licensing and other fees imposed on their licensees and the public; fees assessed against licensees are generally passed on to the consumers of their services in the form of higher prices. In the Budget Acts of 1991-92, 1992-93, and 1993-94, the legislature included numerous provisions which diverted various monies in the accounts of special-funded agencies to the general fund. In his lawsuits, Fine claims that these diversions reduced the total amount in special-funded agencies' funds by 46% (from \$1.569 billion in 1991 to \$848.5 million in 1994). Fine alleges that the funds were collected for consumer protection purposes, and that diverting them to help pay the state's deficit both deprives consumers of protection from incompetent and dishonest practitioners and serves to double-tax taxpayers who are consumers of the services of state licensees. [12:4 CRLR 1]

Fine's lawsuits, which have now been consolidated into *Malibu Video Systems, et al. v. Kathleen Brown, Treasurer of the State of California, et al.*, No. CV942093-RMT(EX) (C.D. Cal.) in federal court and *Malibu Video Systems, et al. v. Kathleen Brown, et al.*, No. BC082830 (Los Angeles County Superior Court) in state court, are similar to a separate action brought by the California Medical Association which challenged another legislative raid on the special fund of one agency—the Medical Board of California. In 1992-93, the Budget Act re-

quired all special-funded agencies to reduce their budgets by 10% and transfer that amount to the general fund on June 30, 1993; in February 1994, the Sacramento County Superior Court ruled that the state violated two separate constitutional provisions in compelling the budget cuts, and ordered the return of those funds to the Medical Board. Following that court's decision, the state agreed to refund the expropriated 10% to all special-funded agencies. [14:2&3 CRLR 22-23] At this writing, U.S. District Judge Robert M. Takasugi is reviewing briefs submitted on the state's motion to dismiss Fine's federal court action; and the state has yet to file a responsive pleading in the state court case.

An important Bagley-Keene Open Meeting Act case is pending in the Third District Court of Appeal at this writing. The Bagley-Keene Act applies to all multi-member boards within DCA and requires them to provide notice of upcoming meetings and the topics to be discussed, prohibits them from taking action on any item not listed on an agenda published ten days in advance of the meeting, and generally requires boards and committees thereof to meet and make decisions in public (with limited exceptions). The case, *Funeral Security Plans, Inc. v. State Board of Funeral Directors and Embalmers*, has been decided twice by the Third District (in March 1993 [13:2&3 CRLR 70-71] and July 1993 [13:4 CRLR 49]), was appealed by both sides to the California Supreme Court—which agreed to hear the case in October 1993 [14:1 CRLR 45], and was then remanded back to the Third District for reconsideration in light of a recent Supreme Court decision in a case involving the Brown Open Meeting Act (which applies to local government agencies). [14:2&3 CRLR 58]

The *Funeral Security Plans* case involves several critical issues: the scope of the "pending litigation" exemption to the open meeting requirement and the procedural requirements accompanying its use; the scope of the attorney-client privilege once the "pending litigation" exemption is properly invoked; the extent to which agencies subject to the Bagley-Keene Act may meet in closed session to discuss and decide whether to adopt an administrative law judge's proposed disciplinary decision, petitions to terminate license probation, petitions to reinstate licenses or reduce penalties, and stipulated settlements; and the legality of closed sessions of two-member advisory committees of state bodies subject to the Bagley-Keene Act. At this writing, the case is again pending in the Third District Court of Appeal; a decision is expected in early October.