



amendment to BAE's regulations; at this writing, notice of the proposed amendment has not been published in the *California Regulatory Notice Register*.

■ LEGISLATION

SB 842 (Presley), as amended April 13, would permit BAE to issue interim orders of suspension and other license restrictions against architects; the bill would require notice and hearing on the proposed issuance of an interim order, except where it appears that serious injury would result to the public before the matter is heard on notice. [A. CPGE&ED]

AB 1807 (Bronshvag), as amended May 3, would authorize BAE to establish by regulation a category of inactive licensure. [A. W&M]

AB 295 (Eastin), as amended May 11, would specify that architects and other specified design professionals contracting on or after January 1, 1994 for public or private works of improvement are entitled to payments due under the contract from the project owner thirty days after written demand, except as to amounts in good faith dispute; violations would be subject to a penalty of 2% per month on the amount wrongfully withheld, to a maximum of 12% of the total amount due. [A. Floor]

■ RECENT MEETINGS

BAE welcomed new public member Betsy Weisman at its January 22 meeting; appointed by Governor Wilson on December 18, Weisman has been senior planner for the City of San Diego since 1987, and served as an urban planner for New Horizons Planning Consultants.

Also at its January 22 meeting, BAE noted that under Governor Wilson's proposed 1993-94 fiscal year budget, it would have an expenditure authorization of \$3.7 million, an increase of \$500,000 over the Board's expected operating budget of \$3.2 million for fiscal year 1992-93. According to staff, BAE would be able to meet its obligations with actual expenditures of \$3.5 million during 1993-94.

Also in January, the Board reviewed preparations for the administration of the June 1993 ARE, scheduled for June 14-17 in San Jose, Pasadena, Pomona, and San Diego. The San Jose location represents a consolidation of three Bay Area sites used in 1992; this modification will save BAE approximately \$80,000 in site rental costs.

Also at the January meeting, BAE elected its officers for 1993: Betty Landess will serve as president, Dick Wong will serve as vice-president, and Paul Robinson will serve as secretary. All three are architect members of the Board.

■ FUTURE MEETINGS

To be announced.

ATHLETIC COMMISSION

Executive Officer:
Richard DeCuir
(916) 920-7300

The Athletic Commission is empowered to regulate amateur and professional boxing and contact karate under the Boxing Act (Business and Professions Code section 18600 *et seq.*). The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members each serving four-year terms. All eight members are "public" as opposed to industry representatives. The current Commission members are Willie Buchanon, William Eastman, Ara Hairabedian, H. Andrew Kim, Jerry Nathanson, Carlos Palomino, Kim Welshons, and Robert Wilson.

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

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

■ MAJOR PROJECTS

Commission's Budget Problems Continue. At the Commission's January 15 and February 26 meetings, Executive Officer Richard DeCuir reported that the Commission's dire fiscal situation is not improving, and estimated that the Commission could face a \$225,000 deficit at the end of the fiscal year. [13:1 CRLR 21] The Commission's budget woes have already resulted in the closure of its Los Angeles office, lay-offs of most of its professional staff, and an inability to conduct gym inspections, implement its martial arts regulations, develop a program for the management of its pension fund monies [12:4 CRLR 56-57] and afford to pay Attorney General counsel to advise it at

meetings. Further, the Commission expects to receive an additional \$200,000 budget cut as of July 1. In light of this possibility, the Commission asked for a \$225,000 loan, partially from its neurological exam account and partially from the Bureau of Automotive Repair; DeCuir reported on February 26 that the Department of Finance had approved the loan, based on DeCuir's ongoing efforts to produce a plan which will provide a fiscal solution for the Commission.

On January 15, the Commission issued a press release to publicize the Commission's serious budget problems. Among other things, the release stated that the proposed budget cut will require the Commission to cease operations unless legislation is enacted to increase its licensing fees and derive funds from pay-per-view boxing.

At the Commission's April 16 meeting, DeCuir reported that two bills had been introduced to help alleviate the Commission's budget crisis: AB 2275 (Tucker) would raise licensing fees and AB 2313 (Cortese) would authorize the Commission to regulate all martial arts studios and schools (*see* LEGISLATION). If both are enacted, the Commission could receive an additional \$250,000 per year in revenue. DeCuir noted that he could not find any legislator willing to carry the pay-per-view legislation.

Neurological Examination Update. At the Commission's January 15 meeting, Executive Officer DeCuir updated the Commission on the proposed joint neurological study involving the Commission and Johns Hopkins University; the study would involve the University's review and evaluation of the Commission's neurological data on approximately 300 California professional boxers collected over the next four to five years, in order to more accurately assess the risk of chronic brain damage as a result of participation in professional boxing. [12:4 CRLR 56] DeCuir reported that Drs. Walter Stewart and Barry Gordon of Johns Hopkins' Department of Epidemiology will be submitting a \$1.5 million grant proposal to the National Institutes of Health; the doctors also requested that the Commission establish an external advisory committee which could provide assistance in setting policies for the study. In response, the Commission appointed Commissioners Eastman and Welshons, Executive Officer Richard DeCuir, and Dr. Richard Drew, the Commission's psychologist, to an external advisory committee to assist in the administration of the study.

At its February 26 meeting, the Commission discussed possible changes to its



embattled neurological exam program which might result in cost savings, such as certifying a large number of neurologists to administer the exam, allowing boxers to choose any Commission-certified neurologist, and having the boxer pay that neurologist directly. In response to this proposal, DeCuir and Department of Consumer Affairs (DCA) legal counsel Greg Gorges noted that the Commission must be concerned with exam security, since—unlike the physical and ophthalmological exams—the neurological exam is administered like a pencil-and-paper test. Some Commissioners objected to modifying the exam simply to increase revenues for the Commission; other Commissioners questioned whether any cost savings resulting from such actions would actually be directed to the Commission, or if they would be diverted to the general fund. Following much discussion, the Commission agreed by a 4-3 vote to direct Commissioners Eastman and Buchanon, Executive Officer DeCuir, and legal counsel Greg Gorges to review the Commission's legal ability to access any savings which might result from changes to the neurological exam program, among other alternatives.

At the Commission's April 16 meeting, DeCuir noted that he had proposed that the exam be required on a biennial, instead of annual, basis; however, DeCuir reported that the California Medical Association (CMA) resisted such a change. Accordingly, DeCuir asked CMA to provide him with recommendations on how the Commission can improve its exam and who should administer it; as of the April meeting, DeCuir had not received a response from CMA. Following discussion, the Commission passed a motion directing staff to draft DeCuir's proposed amendment; this amendment was subsequently amended into AB 2275 (see LEGISLATION).

Commission Continues to Tackle HIV Issue. At its February 26 meeting, the Commission continued its discussion of the possibility of testing boxers for the human immunodeficiency virus (HIV) as a condition of licensure. [13:1 CRLR 20] Commission Kim Welshons presented the Medical Advisory Committee's recommendation that the Commission require all applicants for licensure and all licensees seeking relicensure to submit proof of their negative HIV status as a condition of licensure; the Committee also recommended that the Commission require a licensed boxer to submit new proof of negative HIV test results every six or twelve months, and require that referees, physicians, trainers, and others wear gloves and change gloves between

rounds. Following discussion, the Commission passed a motion requiring boxers to submit proof of HIV negative testing yearly and at the time of relicensing, and that the cost of such testing be borne by the applicant or licensee; the Commission also directed staff to determine a proposed commencement date for administration of this policy and to make its recommendation at the Commission's next meeting.

At the Commission's April 16 meeting, DeCuir noted that legislation must be enacted authorizing the Commission to require applicants to submit to and pay for HIV testing.

Commission Proposes Drug Screening Regulation. On January 8, the Commission published notice of its intent to adopt new section 280(c), Title 4 of the CCR, to provide that any applicant for a license or renewal of a license who has been convicted of a crime that is a violation of any California or federal statute or rule regulating dangerous drugs or controlled substances shall be required to undergo screening for the presence of any dangerous drugs or controlled substances as a part of the application process at a time and place to be designated by the Commission. [13:1 CRLR 21]. Although the Commission was scheduled to conduct a public hearing on the proposal on February 26, the hearing was postponed and has not been rescheduled at this writing.

LEGISLATION

AB 2275 (Tucker), as amended April 28, would create the Athletic Commission Fund and direct that assessments previously deposited in the Boxer's Neurological Examination Account be deposited in the Athletic Commission Fund. This bill would also provide that moneys deposited in the Boxers' Pension Account and the Disability Insurance Program Account in the general fund instead be deposited in those accounts in the Athletic Commission Fund.

This bill would require the mandatory neurological examination of an applicant for a boxing license or renewal of a boxing license every two years, and would require the cost of the examination to be paid by managers and professional boxers. This bill would also revise, as specified, the licensing, registration, and other fees of specified athletic professions and vocations. The bill would also impose licensing fees for booking agents, sparring permits, and amateur martial arts studios, as specified.

Existing law requires persons who conduct boxing contests or wrestling exhibitions to pay the Commission a 5% tax of the amount paid for admission, and of

the gross price for the sale, lease, or other exploitation of broadcasting or television rights, provided that the tax shall not be less than \$50. This bill would characterize the 5% tax as a fee and would provide that the fee shall not be less than \$1,000, except that the minimum fee shall not apply to amateur contests or exhibitions.

Existing law provides that no tax is due in the case of a person admitted free of charge. This bill would provide, in addition, that if the number of persons admitted free of charge to specified contests or exhibitions exceeds 25% of the total number of spectators, then an additional fee of \$1 per complimentary ticket or pass shall be paid to the Commission for each complimentary ticket or pass that exceeds the numerical total of 25% of the total number of spectators. [A. Floor]

AB 2313 (Cortese), as amended April 27, would authorize the Commission to register and establish minimum safety and equipment standards for all martial arts studios or schools; require a specified form of application for registration of a martial arts studio or school, to be accompanied by a registration fee; and delete the exemption from regulation for light and noncontact kickboxing and martial arts, and for kickboxing and martial arts instruction and schools, and instead provide an exemption only for light and noncontact martial arts tournaments, or martial arts studios and schools. [A. Floor]

RECENT MEETINGS

At its January 15 meeting, the Commission reelected Bill Eastman to serve as Chair and Willie Buchanon to serve as Vice-Chair during 1993.

At its February 26 meeting, the Commission approved the following pay scale for amateur kickboxing officials: referees will be paid \$60; judges will be paid \$40; timekeepers will be paid \$35; and physicians will be paid \$100.

Also at the February meeting, the Commission discussed the possibility of allowing an optometrist, instead of an ophthalmologist, to perform the required eye exams for boxers and referees. Medical Advisory Committee Chair Dr. Robert Karns suggested that the Commission continue to require boxers to be examined by ophthalmologists, but allow referees to have their visual acuity tested by any physician as part of the required, regular physical exam; Commission Chair Eastman requested that the minutes reflect "the will of the Commission" to adopt Dr. Karns' recommendations.

Also in February, the Commission discussed the types of arrangements that are entered into between boxers and promot-



ers. Legal counsel Greg Gorges explained that it is common for a boxer and promoter to enter into a long-term, exclusive arrangement under which the promoter will promote and control the boxer's career; according to Gorges, the Commission previously approved a form for this purpose, and any such promotional contract must be attached to and made a part of the standard contract between the parties. [10:2&3 CRLR 69; 9:4 CRLR 43] Gorges also noted that a second type of agreement is called an option agreement; however, the Commission has not adopted any guidelines or form regarding such agreements. Following discussion, the Commission passed a motion stating that the Commission may approve a standard contract with an addendum which may be either an option or promotional contract; any such approval given by the Commission will be subject to the approval of the Commission's staff and legal counsel, which will be completed within five working days of the Commission's action.

■ FUTURE MEETINGS

September 17 (location undecided).
November 5 (location undecided).

BUREAU OF AUTOMOTIVE REPAIR

Chief: James Schoning
(916) 366-5100

Toll Free Complaint Number:
1-800-952-5210

Established in 1971 by the Automotive Repair Act (Business and Professions Code section 9880 *et seq.*), the Department of Consumer Affairs' (DCA) Bureau of Automotive Repair (BAR) registers automotive repair facilities; official smog, brake and lamp stations; and official installers/inspectors at those stations. The Bureau's regulations are located in Division 33, Title 16 of the California Code of Regulations (CCR). The Bureau'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.

The Smog Check Program was created in 1982 in Health and Safety Code section 44000 *et seq.* The Program provides for mandatory biennial emissions testing of motor vehicles in federally designated urban nonattainment areas, and districts bordering a nonattainment area which re-

quest 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.

Approximately 80,000 individuals and facilities—including 40,000 auto repair dealers—are registered with the Bureau. Registration revenues support an annual Bureau budget of nearly \$34 million. BAR employs approximately 600 staff members to oversee the Automotive Repair Program and the Vehicle Inspection Program.

■ MAJOR PROJECTS

Battle Continues Over New I/M Standards. Last November, in compliance with 1990 amendments to the federal Clean Air Act, the U.S. Environmental Protection Agency (EPA) published new regulatory guidelines setting specific air quality goals and performance standards; included in these goals are enhanced requirements for state inspection and maintenance (I/M) programs. [13:1 CRLR 22] Specifically, the EPA's rules promulgate a two-level system of I/M testing, including a basic system (unchanged from current standards) for less polluted areas and a new enhanced testing regime for serious, severe, and extreme ozone nonattainment areas with urbanized populations of 200,000 or more; carbon monoxide areas that exceed a 12.7 ppm design value with urbanized populations of 200,000 or more; and all metropolitan statistical areas with a population of 100,000 or more in the Northeast Ozone Transport Region. The rules adopted by EPA establish, as part of the enhanced I/M program, a high-tech emissions test able to accurately analyze today's high-tech cars. The regulations require states to submit detailed implementation plans for enhanced I/M testing programs by November 15; failure to comply could result in the reduction or elimination of federal highway funds or federal funding for industry expansion. The EPA standards provide states with some latitude in their implementation; for example, a state may choose annual or biennial testing, as long as overall emissions standards for the state are met. However, this flexibility does not appear to extend to the structure of the testing services; EPA has stated that it knows of no way to make a decentralized test-and-repair program—such as California's—as effective as a centralized test-only program.

Three legislative packages have been introduced in an attempt to bring California's

Smog Check Program into compliance with the federal regulations. The primary bill, SB 119 (Presley), is based on the report of BAR's I/M Review Committee and calls for an enhanced system of centralized test-only stations in the state's most polluted areas, and a basic, decentralized system in the rest of the state. SB 119, generally popular with environmental and public interest groups such as the Sierra Club and the American Lung Association of California, is opposed by the California Service Station and Automotive Repair Association. In response, SB 1195 (Russell) would largely retain the current decentralized system, expand coverage to the entire state, test the fuel evaporative and crankcase ventilation systems, and add a centralized computer database for the Smog Check Program. SB 1195 has widespread support in the auto repair industry. The third bill, AB 1119 (Ferguson), also proposes a two-level testing system, with enhanced testing at test-only stations and electronic filing of certificates of compliance. (See LEGISLATION for more information.)

On April 15, Secretary of Transportation Federico Pena and EPA Administrator Carol Browner, in a joint letter, informed Governor Wilson that none of the bills currently under consideration would satisfy EPA's standards; the officials warned that unless the state approves a program acceptable to the EPA by November 15, the Clinton administration would impose sanctions on California that would be "costly to industry, jobs and the economic growth of [the] state." Thus, the legislature appears to be in the position of having to choose between imposing—at least in part—a centralized testing system with stricter regulations on automobiles, which may result in lost jobs and require millions of dollars to be invested in start-up costs, or facing the loss of millions of dollars in federal funding.

DA Targets Purchasers of Fraudulent Smog Certificates. While the future of the Smog Check Program is being debated, enforcement of the current program continues. For example, the Los Angeles County District Attorney's office has, for the first time, targeted for detection consumers who purchase fraudulent smog certificates rather than the sellers of such certificates. In May, the DA's office filed a civil lawsuit against Bell Cab Co., alleging that half of its cabs are gross-polluting vehicles. Many of Bell's taxis have been documented spewing more than ten times the allowable level of pollutants into the air; others have emission systems that have been disconnected or stripped out. The DA acted on information that many of