



BUSINESS, TRANSPORTATION AND HOUSING AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh
(916) 445-6811

The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department established in 1955 (section 22 of Article XX, California Constitution). The Alcoholic Beverage Control Act, Business and Professions Code sections 23000 *et seq.*, vests the Department with the exclusive power to regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages in California. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC also has the exclusive authority to issue, deny, suspend, and revoke alcoholic beverage licenses. Approximately 77,000 retail licensees operate under this authority. ABC's regulations are codified in Divisions 1 and 1.1, Title 4 of the California Code of Regulations (CCR). ABC's decisions are appealable to the Alcoholic Beverage Control Appeals Board. Further, ABC has the power to investigate violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in liquor industry trade publications such as the *Beverage Bulletin* and *Beverage Industry News*.

The Director of ABC is appointed by, and serves at the pleasure of, the Governor. ABC divides the state into two divisions (northern and southern) with assistant directors in charge of each division. The state is further subdivided into 21 districts, with two districts maintaining branch offices.

ABC dispenses various types of licenses. "On-sale" refers to a license to sell alcoholic beverages which will be bought and consumed on the same premises. "Off-sale" means that the licensee sells alcoholic beverages which will not be consumed on the premises. Population-based quotas determine the number of general liquor licenses issued each year

per county. No such state restrictions apply to beer and wine licenses.

MAJOR PROJECTS

ABC Continues to Rebuild. Following the enactment of AB 432 (Floyd) (Chapter 900, Statutes of 1992) and AB 2858 (Floyd) (Chapter 838, Statutes of 1992), ABC received approximately \$23 million in funding for fiscal year 1992-93. [13:1 CRLR 76] At this writing, the Department expects to be back to its pre-1990 level of 392 employees by September.

Although the Department is expected to bring in a record \$39.2 million in revenues during fiscal year 1993-94, much of that money will be transferred to the state's general fund; at this writing, ABC officials are concentrating on ensuring that the 1993-94 state budget maintains the Department's funding at its current level.

ABC Begins to Issue Interim Licenses. Pursuant to AB 2858 (Floyd), ABC is authorized, in its discretion, to issue an interim retail permit to an applicant for any retail license to operate the premises during the period an application for a license at the premises is pending, subject to specified conditions. [12:4 CRLR 137] Following enactment of AB 2858, ABC developed the following basic standards it will consider in issuing temporary liquor licenses:

- the investigation has been completed with a positive ABC recommendation that it is more likely than not that any protest will not be upheld;

- there must be no objection from official sources such as the local police agency, the city, or health department;

- the conditional use permit, if one is required and which can involve a long list of conditions, must be in place; and

- there must be agreement by the applicant on the conditions for permanent licensing.

ABC began issuing interim permits at the beginning of 1993, soon after the legislation became effective; the Department expects to receive about 375 requests for temporary permits annually.

Proposed Initiative Would Increase Tax on Alcohol. The California Deficit Reduction Act of 1994, a proposed ballot initiative which would amend the state constitution, would impose a \$0.30 per

unit tax on beer, wine, and liquor, and require that 38% of the proceeds be used to fund the local and state judiciary at least at the 1991-92 budget level. Additionally, some of the tax money would be earmarked for local prosecutors, state and local police agencies, emergency medical and trauma services, treatment and prevention programs for alcoholism, AIDS, and child abuse, housing for the homeless, and schools and colleges, among other programs. The proposal's sponsor, Taxpayers Against Deficits, contends that the alcohol tax would raise about \$4.8 billion in its first year alone; the group has until January 1994 to collect the necessary 615,000 signatures to place the measure on the June 1994 ballot.

ABC Launches New LEAD Program. In December, ABC received a \$640,000 grant to launch a second phase of its Licensee Education on Alcohol and Drugs (LEAD) program; the first phase began in January 1991 under a \$800,000 grant from the federal Office of Traffic Safety. [11:2 CRLR 113] The server training program will focus on the following areas:

- License applicants and their employees will be invited to attend a three-hour free server training program held at various locations around the state.

- Problem licensees with a repeat history of serving to minors and/or obviously intoxicated persons or with a history of disorderly operations will receive a special invitation to have a four-hour training session for employees conducted at their place of business; attendance is voluntary.

- Problem areas in the state—that is, those with a high alcohol-related crime problem or a high driving-under-the-influence problem—will have special training programs hosted by law enforcement but put on by ABC trainers.

- County fairs and major special events with a master alcohol serving plan can have server training provided with emphasis on avoiding sales to minors and to obviously intoxicated persons.

According to Project Director Lauren Tyson, the main difference between LEAD I and LEAD II is that ABC will no longer routinely go to establishments with no history of problems to provide server training. Starting in May, the goals for LEAD II during 1993 and 1994 are to conduct 260 applicant training sessions, 288 remedial sessions, 42 problem-area sessions, and 164 fair/special event training programs.

Governor Appoints New Appeals Board. In late December, Governor Wilson replaced all three members on the ABC Appeals Board. Now serving on the Board are Ray Blair of El Cajon, a partner



in the management consulting firm Williams & Blair and former San Diego city manager; Ed Davis of Chatsworth, former state senator and Los Angeles police chief; and John Tsu of Millbrae, president of the Asian-American Political Education Foundation. All three appointees are Republicans who serve at the pleasure of the Governor; the appointments require Senate confirmation.

ABC Continues Work on Regulatory Revisions. In December 1991, ABC published notice of its intent to amend sections 52, 53, 55.5, 59, 59.5, 106, and 107, and adopt new sections 53.5 and 101, Title 4 of the CCR; all of the proposed amendments, with the exception of section 107, are moving forward. [12:4 CRLR 136] Because ABC did not complete the rulemaking process within the one-year maximum period as provided in Government Code section 11346.4, ABC renounced its intent to pursue the charges on March 12. The highlights of these revisions and how they change existing regulations are as follows.

—Amended section 52, concerning the offering of samples of alcoholic beverages, would provide that licensees or officers, agents, or employees of licensees may make gifts of alcoholic beverages to non-licensees for personal use, provided such gifts are not made in connection with the sale or distribution of an alcoholic beverage and not otherwise prohibited by statute.

—Section 53 currently provides that winetastings sponsored by licensees must be conducted without charge. ABC's proposed amendments would allow winetastings to be conducted for a fee and repeal a provision requiring prior Departmental approval for specified winetastings.

—New section 53.5 would implement the statutory privilege of holding beer tastings, which are presentations of samples of one or more beers, representing one or more beer manufacturers or industry labels, to a group of consumers for the purpose of acquainting the tasters with the characteristics of the beer(s) tasted. Beer tastings may even be held for charge and will no longer require advance approval by ABC. However, no student organization, college fraternity, or college sorority will be allowed to sponsor a beer tasting.

—Amended section 55.5 would provide that each on-sale beer and wine boat licensee and each on-sale general boat licensee may designate ten commercial docks from which it will be allowed to sell alcoholic beverages, in addition to the boat's home port dock.

—Amended section 59, regarding temporary beer or wine licenses, and section

59.5, regarding daily on-sale general licenses, would provide that a temporary beer license, a temporary wine license, and/or a daily on-sale general license may be revoked summarily by ABC if, in the opinion of ABC or the local law enforcement agency, such action is necessary to protect the safety, welfare, health, peace, and morals of the people of California.

—In response to a petition from the Distilled Spirits Council of the United States, ABC's proposed adoption of new section 101 would require brand sales reporting in California; according to ABC, such statistical information would aid industry members in marketing, advertising, planning, and evaluating the general situation in the California liquor industry.

—Amended section 106, regarding the advertising and merchandising of alcoholic beverages, would provide that a supplier may furnish, give, lend, rent, or sell promotional materials for alcoholic beverages sold by him/her to a retailer for use within off-sale premises in the same manner and under the same terms and conditions as the supplying of signs or displays pursuant to section 106, so long as the promotional material has no intrinsic value other than as advertising. Further, amendments to section 106 would provide that "drink nights," "bar nights," or similar promotional events conducted for the purpose of promoting a specific brand(s) of alcoholic beverage products may be sponsored by suppliers on licensed retail premises, under specified circumstances.

ABC conducted a public hearing on these proposals on May 7; at this writing, the actions await adoption by the Director and review and approval by the Office of Administrative Law.

■ LEGISLATION

SB 113 (Thompson), as amended April 15, would authorize a licensed winegrower to sell or serve beers, wines, and brandies on premises, either in a bona fide eating place, as defined, or to guests during private events or private functions not open to the general public. [S. Floor]

SB 182 (Hughes). Existing law permits ABC to refuse to grant an alcoholic beverage license to a club if the club discriminates on specified grounds. As amended May 6, this bill would prohibit the licensure of any club that restricts membership or the use of services or otherwise discriminates on specified grounds, and provide for the suspension or revocation of licensure for those clubs. This bill would exempt specified clubs from these provisions. [A. GO]

AB 159 (T. Friedman), as amended March 29, would prohibit on and after

January 1, 1994, the issuance or renewal, and would provide for the revocation, of any club license of a club, as defined, with specified exceptions, that denies any person entry or membership, or unreasonably prevents the full enjoyment of the club, on the basis of the person's color, race, religion, ancestry, national origin, sex, disability, or age. [S. GO]

SB 184 (Maddy), as introduced February 3, would provide that, with respect to beer sold by a licensed wholesaler to a retailer, delivery shall be made only at a retail premises licensed to the retailer or from a loading area at the wholesaler's licensed premises. [S. Floor]

SB 283 (Dills). Existing law prohibits the issuance of a wholesale license to any person who does not in good faith actually carry on or intend to carry on a bona fide wholesale business by sale to retail licensees of the alcoholic beverages designated in the wholesale license. As introduced February 16, this bill would require beer wholesalers to own or lease licensed warehouse space for each location where the wholesaler stores or sells beer; offer to sell and deliver all of the brands of beer it handles, except private label brands, to retailers generally, rather than a selected few retailers; service for the purpose of quality control all the beer it sells to retailers; and comply with specified requirements. [S. Floor]

SB 814 (Greene). Existing "tied-house" restrictions prohibit a manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, and wholesaler, and any officer, director, or agent of any of those persons, from having specified relationships with an on-sale alcoholic beverage licensee, with limited exceptions. As amended April 22, this bill would provide additional exceptions to those restrictions by authorizing any licensee or officer, director, employee, or agent of a licensee that holds no more than eight on-sale licenses to hold not more than 16.67% of the stock of a corporation that holds beer manufacturer licenses that are located in Sacramento, Placer, El Dorado, Marin or Napa counties, and to serve on the board of directors and as an officer or employee of that corporate licensed beer manufacturer. That on-sale licensee would be prohibited from purchasing alcoholic beverages for sale in this state other than from a licensed wholesaler or winegrower. Senator Greene is carrying this measure for the owners of the Sudwerk Brewery and the Old Spaghetti Factory Restaurants, who wish to combine resources to construct a microbrewery and a restaurant at the same location [A. GO]



SB 1022 (Thompson), as amended May 18, would require each licensed winegrower or wine blender and each importer of wine to pay to ABC prescribed annual fees to be deposited in the Wine Safety Fund established by this bill, and would continuously appropriate the fund, in trust, to the state Department of Health Services (DHS) for the purposes of better enabling it to carry out and supervise a program to ensure that levels of lead in wine sold in this state remain within applicable tolerances, for the benefit of the California wine industry. This fee requirement would be repealed as of January 1, 2000. This bill would also specify that wine may be deemed adulterated food by DHS if it contains prescribed levels of lead, or has a metal foil capsule containing prescribed levels of lead attached to its container, except as prescribed. *[S. Appr]*

SB 1156 (Watson), as introduced March 5, would require on-sale licensees to install and maintain coin-operated vending machines which dispense affordable, high quality latex condoms. *[S. GO]*

ACA 6 (Tucker), as amended May 19, would provide that if there is probable cause to believe a licensee has sold an alcoholic beverage to a person under the age of 21, the California constitution does not prohibit the use of persons under the age of 21 by peace officers as decoys to catch persons who sell alcoholic beverages to persons under the age of 21, and provide that a person under the age of 21 who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase alcoholic beverages (see LITIGATION). *[A. ER&CA]*

AB 8 (Connolly), as amended April 26, would require every retail licensee in this state who sells keg beer for consumption off the licensed premises to place an identification tag on that beer keg and require the signing of a receipt identifying the purchaser's name, address, and driver's license number or equivalent identification, for purposes of identifying individuals who purchase kegs for consumption by minors at "keg parties." The retail licensee would be required to retain a copy of the receipt for six months, and have receipt records available for inspection by ABC or other authorized law enforcement agency. The bill would authorize ABC to charge a fee not to exceed the actual cost of supplying receipt forms and identification labels, which fees would be deposited in the Alcohol Beverage Control Fund. *[S. GO]*

AB 107 (Tucker). Existing law permits the transfer of off-sale general alco-

holic beverage licenses from one county to another subject to various restrictions on the number of licenses that may be issued in a county, and subject to a requirement that a \$6,000 fee be paid. As amended March 22, this bill would permit the transfer of any off-sale general license issued prior to April 29, 1992, located within certain census tracts in Los Angeles County to another county without regard to those limitations, and would provide that the transfer fee is \$100. *[S. GO]*

AB 330 (Baca). Existing law requires an out-of-state beer manufacturer to have an out-of-state beer manufacturer's certificate in order to ship beer manufactured outside the state to licensed importers in the state. Existing law also requires an out-of-state vendor shipping beer into the state to hold a certificate of compliance. An applicant for an out-of-state beer manufacturer's certificate or a certificate of compliance must agree to comply with all laws and regulations of this state relating to the sale of alcoholic beverages. As amended April 27, this bill would require these applicants to agree to comply with all laws and regulations of this state relating to the sale of alcoholic beverages to the same extent as licensees. *[S. GO]*

AB 374 (Statham). Existing law limits the number of on-sale general alcoholic beverage licenses which may be issued in any county based on the ratio of licenses to the specific number of inhabitants in the county. The law provides that premises owned by the state, any incorporated city, county, city and county, airport district, or other district or public corporation of the state, or premises leased to any city or county, shall be exempt from the limitation, provided the premises are operated as a bona fide public eating place, with specified exceptions. Existing law also provides that the original application fee for these licenses shall be a specified percentage of the average price paid for the same type of license in the county during the previous fiscal year, as determined by ABC, but no less than \$12,000 in case of an original on-sale general license or original off-sale general license or \$9,000 in the case of certain seasonal licenses. As amended February 24, this bill would instead provide that those premises shall be subject to an original license application fee of \$6,000. *[S. GO]*

AB 379 (Conroy). Existing law generally prohibits a manufacturer of alcoholic beverages and a winegrower from paying, crediting, or compensating a retailer for advertising, paying, or giving anything of value for the privilege of placing a sign or advertisement with a retail licensee. It authorizes, as an exception, the holder of a

beer manufacturer's or winegrower's license to purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to specified conditions, including that the on-sale licensee is the owner of an outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in a county of the eighth class. As introduced February 9, this bill would expand that exception to include the Ogden Corporation, an on-sale licensee which will operate the Anaheim Arena, currently being built in Orange County for use by the Mighty Ducks, a new National Hockey League franchise. *[S. Floor]*

AB 463 (Tucker). Existing law requires beer manufacturers, importers, and wholesalers to file and maintain on file with ABC a schedule of selling prices charged by the licensee for beer. As amended April 12, this bill would require the licensee, unless exempted as specified, to mail or deliver written notice of any new or changed wholesale price to all retail licensees within a specified territory, and to maintain a record of the mailing or delivery, including an affidavit or declaration executed under penalty of perjury. This bill would provide that, alternatively, the licensee may notice the new or changed wholesale price for each affected brand by advertisement in a publication intended for circulation to retail licensees. *[A. Inactive File]*

AB 987 (Tucker). Existing law authorizes the exchange of an on-sale license issued for a bona fide public eating place for a similar license for public premises, and the exchange of a license issued for public premises for a similar license for a bona fide public eating place, upon the payment of an exchange fee which is deposited directly in the general fund rather than in the Alcohol Beverage Control Fund. As introduced March 1, this bill would instead provide for the deposit of that fee amount directly into the Alcohol Beverage Control Fund. *[S. GO]*

AB 988 (Tucker). Existing law authorizes and regulates certain fair trade contracts and the filing of price lists with ABC, as specified. As introduced March 1, this bill would delete those provisions. *[S. GO]*

AB 1047 (Epple). Existing law requires ABC agents to successfully complete the four-week course on narcotics enforcement approved by the Commission on Peace Officer Standards and Training by June 1, 1993. As introduced March 1, this bill would extend the completion date to June 1, 1995. *[A. Floor]*

AB 1208 (Tucker). Existing law provides that a California winegrower's agent



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licensee may be authorized to post, file, and establish prices of wine and brandy to retailers and consumers and may be authorized to execute and file trade contracts on behalf of the winegrower and brandy manufacturer represented. As introduced March 2, this bill would delete this provision. [A. GO]

AB 1230 (Conroy). Existing law authorizes ABC to impose reasonable conditions upon a retail alcoholic beverage licensee or any licensee in exercise of retail privileges, upon request of the licensee or an applicant for a license, in specified situations. Existing law also specifies the subject matter to which these conditions may relate, including the personal conduct of the licensee. As amended April 15, this bill would provide that a condition concerning the personal conduct of the licensee, placed upon a license issuance or renewal which forbids or limits the installation, placement, or use of coin-operated video games on the premises shall not be imposed without a hearing. [A. W&M]

AB 1666 (Hoge). Existing law provides that a winegrower or beer manufacturer may give, sell, or give and sell wine or beer, respectively, at prices other than those contained in schedules filed with ABC, to nonprofit charitable corporations or nonprofit incorporated trade associations exempt from payment of income taxes under the Internal Revenue Code. As amended May 13, this bill would extend this exception to a nonprofit charitable corporation or incorporated trade association exempt from payment of income taxes under specified provisions of the California Revenue and Taxation Code, and certain nonprofit corporations or associations exempt from payment of income tax under federal and state law, as specified, subject to specified conditions. [A. Floor]

AB 1932 (Quackenbush). Existing law provides that beer and wine upon which excise taxes have been paid to the state may be stored by or for any licensee without the necessity of any license by the person furnishing the storage space or any special additional license by the licensee. As amended May 18, this bill would limit this provision to wine. The bill would also provide that, with respect to beer sold by a licensed wholesaler to a retailer, delivery shall be made only at a retail premises licensed to the retailer from a loading area at the wholesaler's licensed premises or to a warehouse approved by ABC. [A. GO]

SB 1938 (Statham). Existing tied-house provisions of the Alcoholic Beverage Control Act generally prohibit an on-sale alcoholic beverage licensee from having an ownership interest in an alcoholic

beverage manufacturer, and establish a limited exception to these restrictions in a county of the first class. As amended May 13, this bill would authorize the holder of no more than six on-sale licenses to (1) own a corporate licensed beer manufacturer that produces 60,000 barrels or less a year, and (2) serve on the board of directors and as an officer or employee of that manufacturer. The bill would specify that it does not apply to a county of the first class. [A. Floor]

AB 1974 (Horcher). Existing law provides that when licensed premises have been destroyed by fire, act of God, or other force beyond the control of the licensee, the licensee may carry on the business for limited periods of time at a neighboring location and afterwards at the former premises when reconstructed or repaired. As amended April 15, this bill would provide that any licensee whose premises for which a license has been issued have been destroyed or rendered unusable as a result of the civil disturbances in Los Angeles on April 29, 1992, and following days shall be entitled to carry on his/her business under his/her existing license upon the former premises when they have been repaired or rebuilt, without the need or necessity of any additional licenses or permits. [A. Floor]

AB 611 (Cortese). Existing law generally prohibits a manufacturer, winegrower, manufacturer's agent, California winegrower's agent, rectifier, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of that person from, among other things, providing a licensee alcoholic beverages as free goods as a part of any sale or transaction involving alcoholic beverages, or furnishing anything of value to a licensee for specified purposes. However, existing law authorizes any winegrower, California winegrower's agent, importer, or any director, partner, officer, agent, or representative of that person, to conduct or participate in an instructional event for consumers held at a retailer's premises featuring wines produced by or for the winegrower or imported by the importer, subject to certain specified conditions. One condition provides that no alcoholic beverages shall be given away in connection with the instructional event; however, wine taken from barrels or from tanks, that is used in blending the wines being featured, may be sampled at the instructional event. As amended April 29, this bill would specify that the term "importer" as used in that provision means a wine importer. The bill would modify the above condition to delete the requirement that the wine to be sampled at the instructional event be wine

that is used in blending the wines being featured. [A. Floor]

S. 674 (Thurmond) is federal legislation to enact the Sensible Advertising and Family Education Act which would, among other things, require specified health warnings to be included in alcoholic beverage advertisements. This bill is pending in the Senate Commerce, Science, and Transportation Committee.

LITIGATION

In *Proviso Corporation v. Alcoholic Beverage Control Appeals Board* and *Lucky Stores v. Alcoholic Beverage Control Appeals Board*, Nos. A058137 & No. A058534 (Jan. 27, 1993), the First District Court of Appeal addressed the constitutionality of the use of underage youths as decoys in the enforcement of the prohibition against selling alcohol to minors. [13:1 CRLR 77] In both cases, ABC filed accusations charging petitioners with selling alcohol to minors; the minors who purchased the alcoholic beverages were working in a decoy program for their respective police departments. Petitioners argued that the use of underage police agents to purchase alcoholic beverages is unconstitutional and requires dismissal of the charges; petitioners also raised the defense of entrapment and violation of due process in the failure of the local police departments to follow ABC guidelines for a decoy program. After license suspension by ABC, petitioners pursued their arguments in appeals to the Alcoholic Beverage Control Appeals Board (Board), which interpreted the constitutional provision that "no person under the age of 21 years shall purchase any alcoholic beverage" to exclude persons in decoy programs supervised by ABC or other law enforcement agency.

On appeal, the First District noted that although constitutional and statutory provisions covering the prohibition against buying alcohol contain no express exception for persons working in a law enforcement capacity, the Board has interpreted the constitutional provision, and apparently related statutory provisions as well, as containing an exception for minor decoys. Petitioners contended that such an exception may not be inferred to vary the clear and unambiguous language of the provisions.

According to the court, words used in a constitutional provision should be given the meaning they bear in ordinary use, and noted that the constitutional provision under consideration here states that "[n]o person under the age of 21 shall purchase any alcoholic beverage." According to the court, the language of the constitution is



clear and unambiguous: anyone under the age of 21 is forbidden to buy alcoholic beverages, with no exceptions. The court also noted that no exception has been created by statute.

ABC contended that even assuming the minor decoy programs are unconstitutional, it may still discipline licensees who sell alcohol to an underage decoy. The court disagreed, holding that the use of an unconstitutional enforcement procedure is analogous to police conduct which gives rise to an entrapment defense, and noted that the remedy in administrative disciplinary proceedings should be the same—that is, a defense to revocation or suspension of a license. The court concluded that if the use of underage decoy buyers in enforcement of ABC's licensing regulations is to be deterred, it must be by requiring ABC to abide by the constitutional restriction against the purchase of alcohol by minors.

On April 29, the California Supreme Court granted ABC's petition to review both cases.

BANKING DEPARTMENT

Superintendent:

James E. Gilleran

(415) 557-3232

Toll-Free Complaint Number:

1-800-622-0620

Pursuant to Financial Code section 99 *et seq.*, the State Banking Department (SBD) administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation, and discontinuance of various types of offices of these entities; and the establishment, operation, relocation, and discontinuance of various types of offices of foreign banks. The Department is authorized to adopt regulations, which are codified in Chapter 1, Title 10 of the California Code of Regulations (CCR).

The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor. The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity, and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the capital is adequate; the proposed name does not so closely resemble as to cause confusion with the name of any other bank or trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office; the establishment, relocation, or discontinuance of branch offices and ATM facilities; and the establishment, discontinuance, or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue money orders or travelers checks unless licensed.

The superintendent examines the condition of all licensees when necessary, but at least once every two years. The Department is coordinating its examinations with the Federal Deposit Insurance Corporation (FDIC) so that every year each agency examines certain licensees. New and

problem banks and trust companies are examined each year by both agencies.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees security pools that cover the deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS

LAO Recommends Major Changes to SBD. In its *Analysis of the 1993-94 Budget Bill*, the Legislative Analyst's Office (LAO) noted that California's regulation of financial services programs (including investments, checking, savings, lending, accounting, and other similar financial operations) for individuals and institutions in the business of lending money and providing related financial services is scattered among SBD, the Department of Savings and Loan (DSL), the Department of Corporations (DOC), and the Department of Real Estate (DRE). LAO explained that prior to 1982, state-chartered lenders were restricted by law to providing specific lending activities and related financial services; thus, the state's regulatory framework reflected the segmented nature of the lenders and the services they provided. However, in 1982 and 1983, the federal and state governments deregulated the lending and related financial services industry [10:4 CRLR 1], virtually eliminating the functional differences which previously existed among lenders. Despite the changes brought about by deregulation, the state's regulatory programs have not been reorganized, and remain scattered among the four departments.

According to LAO, the fragmented regulation limits the effectiveness of the departments by hindering timely and effective coordination of regulatory activities; LAO believes that consolidation of the financial regulatory programs into one department would improve regulatory coordination and result in the more effective and efficient administration of the programs. For example, LAO states that consolidation would promote close coordination and sharing of regulatory information on a timely basis; result in a more uniform application and enforcement of regulatory laws; provide consistency in program management as well as policy development and interpretation; allow for effective and efficient use of staff as regulatory workload fluctuates among the programs under the department; reduce manage-