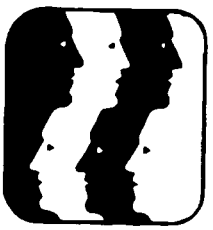

The Reporter summarizes below the activities of those entities within state government which regularly review, monitor, investigate, intervene, or oversee the regulatory boards, commissions, and departments of California.

OFFICE OF ADMINISTRATIVE LAW

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

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

In August, Governor Wilson announced his appointment of John D. Smith as Director of OAL; Smith was previously OAL's Deputy Director and served as Acting Director since May 1991. As OAL Director, Smith will be paid $95,052 a year. The appointment requires Senate confirmation.

MAJOR PROJECTS

OAL Proposes Amendments to Its Regulations. In May, OAL published notice of its intent to amend section 100, Title 1 of the CCR, and section 51000, Title 2 of the CCR. Section 100 provides that agencies may adopt revisions to regulations published in the CCR without complying with the rulemaking process set forth in the Administrative Procedure Act whenever the revisions have no regulatory effect. OAL's proposed amendment to section 100 would provide that the term "changes without regulatory effect" shall include—among other things—a change which makes a regulation consistent with a statutory change when the regulation must be consistent with the statute and the adopting agency has no discretion to adopt a provision which differs in substance from the provision chosen. OAL also proposes to revise section 100 to provide that OAL shall determine whether changes submitted are "changes without regulatory effect" within thirty working, instead of calendar, days of their receipt.

OAL's proposed amendments to section 51000 would revise the list of employee positions subject to its conflict of interest code and make technical changes to the code. Specifically, the changes would reclassify the Deputy Director as Deputy Director/Chief Counsel; add Assistant Chief Counsel; delete Administrative Officer; delete Legal Counsel/Staff counsel and add Senior Staff Counsel-Specialist, Senior Staff Counsel-Supervisor, and Senior Counsel; delete Chief, Regulations Management and Analysis Division; and reclassify Data Processing Analyst as Information Systems Analyst.

OAL accepted public comment on these proposed changes until June 30; no public hearing was scheduled. At this writing, the changes have not yet been incorporated into the CCR.

AB 1013 Determinations. The following determinations were published in the *California Regulatory Notice Register* in recent months:

–April 7, 1993, OAL Determination No. 2, Docket No. 90-017 (published June 25, 1993). In May 1990, the Alliance of Trades and Maintenance requested a determination regarding the Department of Parks and Recreation's Departmental Notice No. 90-12, which required employees of the agency to report to their supervisors any warrants for arrest, criminal investigations, physical arrests, convictions, administrative actions, or other violations related to moral turpitude, theft, or illegal drugs. According to OAL, the challenged rule has general application, since it is not limited to a closed group of employees and would be applicable to all persons entering the affected group at a later date. OAL also concluded that the challenged rule pertains to various statutes which the Department enforces or administers, including specific statutes identified by the requester. However, OAL noted that "[w]hether it implements, interprets, or makes specific these particular statutes or whether it implements, interprets or makes specific some other statute concerning employee discipline, which the Department enforces or administers, is of no consequence." Accordingly, OAL concluded that the challenged rule is a regulation and is legally unenforceable unless adopted pursuant to the APA.

–April 8, 1993, OAL Determination No. 3, Docket No. 90-018 (published July 9, 1993). In April 1990, John F. Ornelas, administrator of a community care facility licensed by the Department of Social Services (DSS), requested that OAL determine whether DSS may legally enforce its policy that a licensee may not charge a client for any damages caused by the client, except on a one-time basis, without adopting that rule pursuant to the APA. OAL concluded that DSS intends the challenged rule to apply generally, throughout the state, to all operators of licensed community care facilities. OAL also found that the underlying policy prohibiting compensation and its one-time exception interpret and make specific the law DSS administers in two ways: (1) the underlying rule interprets the law as prohibiting licensed community care facility operators from charging residents for damages they cause; and (2) the one-time portion of the rule further interprets and implements the law by creating an exception to the prohibition which permits recovery for the first instance of damages only. Accordingly, OAL concluded that the challenged rule—both the basic policy prohibiting community care facility operators from recovering from residents for damages

and the "one-time only" exception to the rule—is a regulation and thus legally unenforceable unless adopted pursuant to the APA.

–April 9, 1993, OAL Determination No. 4, Docket No. 90-019 (published July 9, 1993). In May 1990, Robert Miller of the Southern California Rehabilitation Services Client Assistance Program requested that OAL determine whether policies set forth in a Department of Rehabilitation memorandum constitute regulations; the memorandum stated that a freeze has been placed on the purchase of accountable equipment if general funds are used, and defined the term "accountable equipment" as any item which has a normal useful life of at least four years and a unit acquisition cost of at least $500. The memo also instructed employees to place a specified statement on all purchase estimates or on the procurement audit statement for certain purchases indicating that the purchase does not involve general fund expenditures.

OAL concluded that the memorandum constitutes a rule of general application, as it sets forth a procedural requirement meant to apply to all persons who fill out all purchase orders regarding equipment which fits the definition in the memorandum; OAL also found that, in a very limited sense, the memorandum implements, interprets, or makes more specific the general mandate to provide specified services to eligible clients. However, OAL also found that to any extent that the challenged rule is a regulation, it falls within the "internal management" exception to the APA, which provides that the term "regulation" does not include a rule which relates only to the internal management of the state agency. Because the memorandum "simply instructs the Department's employees on the agreed-upon method to assure that purchase orders fulfilling the Department's statutory duties will go smoothly through the process and not be delayed because of a freeze of state funds, while federal funds are still available to carry out the Department's regulatory and statutory duties," OAL concluded that the rule does not violate the APA.

LEGISLATION

AB 969 (Jones), as amended August 31, requires a state agency proposing to adopt or amend any administrative regulation to assess the ability of California businesses to compete with businesses in other states in its adverse economic impact statement. This bill was signed by the Governor on October 10 (Chapter 1038, Statutes of 1993).

SB 726 (Hill), as amended July 13, requires a state agency, as of January 1, 1994, when proposing to adopt or amend a regulation that affects small businesses, to adopt a "plain English" policy statement overview regarding each proposed regulation containing specified information; draft the regulations in plain English, as defined; and make available to the public a noncontrolling plain English summary of a regulation, if the regulation is technical in nature. This bill was signed by the Governor on October 6 (Chapter 870, Statutes of 1993).

SB 513 (Morgan), as amended September 3, requires all state agencies to assess, when proposing the adoption or amendment of any administrative regulation, the potential impact the proposed change may have on California jobs and business expansion, elimination, or creation, and require that the result of this assessment accompany the notice of proposed action. This bill was signed by the Governor on October 10 (Chapter 1063, Statutes of 1993).

AB 1144 (Goldsmith), as amended August 17, requires state agencies, where proposed state regulations are substantially different from federal requirements, to include in the notice of adoption, amendment, or repeal a brief description of the significant differences and a summary of agency efforts minimizing duplication and conflicts. The bill also requires departments, boards, and commissions within the California Environmental Protection Agency, the Resources Agency, and the Office of the State Fire Marshal to implement any federal standard, rule, or regulation that has been adopted by a federal agency, to the extent permitted by state law and to the extent possible within the adoption process, unless these entities find that differing state regulations are authorized by state law or the burden created by the new local standard rule or regulation is justified by the benefit to human health, public safety, public welfare, or the environment. This bill was signed by the Governor on October 10 (Chapter 1046, Statutes of 1993).

AB 64 (Mountjoy), as amended March 3, would prohibit any regulation adopted, amended, or repealed by a state agency, as defined, pursuant to the APA from taking effect unless and until the legislature approves the regulation by statute within 90 days of its adoption, amendment, or repeal by the state agency. *[A. CPGE&ED]*

SCA 6 (Leonard), as amended February 16, would authorize the legislature to repeal state agency regulations, in whole or in part, by the adoption of a concurrent resolution. SCA 6, which would not be applicable to specified state agencies, would require the concurrent resolution to specify the regulation to be repealed or specific references to be made, as indicated, and would subject those resolutions to the same procedural rules as those required of bills. The measure would also require every regulation to include a citation to the statute or constitutional provision being interpreted, carried out, or otherwise made more specific by the regulation. *[S. Rls]*

AB 633 (Conroy), as amended April 12, would require the California Environmental Protection Agency to establish a moratorium on the adoption of any new or proposed regulations until January 1, 1995; require that agency to examine the effect on the economy of all regulations adopted since January 1, 1992, if any; and require the agency to identify all regulations that are more stringent than required under federal law, and permit the agency to revise a regulation to make it less stringent than under federal law without the approval of OAL. *[A. CPGE&ED]*

AB 1807 (Bronshvag), as amended September 8, would authorize regulatory agencies within the Department of Consumer Affairs to provide required written notices, including rulemaking notices, orders, or documents served under the APA, by regular mail. *[A. Inactive File]*

BUREAU OF STATE AUDITS

State Auditor: Kurt Sjoberg
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Created by SB 37 (Maddy) (Chapter 12, Statutes of 1993), the Bureau of State Audits (BSA) is an auditing and investigative agency under the direction of the Commission on California State Government Organization and Economy (Little Hoover Commission). SB 37 delegated to BSA most of the duties previously performed by the Office of Auditor General, such as examining and reporting annually upon the financial statements prepared by the executive branch of the state, performing other related assignments (such as performance audits) that are mandated by statute, and administering the Reporting of Improper Governmental Activities Act, Government Code section 10540 *et seq.* BSA is also required to conduct audits of state and local government requested by the Joint Legislative Audit Committee (JLAC) to the extent that funding is available. BSA is headed by the State Auditor, appointed by the Governor to a four-year term from a list of three qualified individuals submitted by JLAC.

The Little Hoover Commission reviews reports completed by the Bureau and makes