may invest in specified loans made for agriculture, business, commercial, or corporate purposes; ***AB 1594 (Floyd)***, which would have repealed the Savings Association Law and abolished DSL on January 1, 1993; ***AB 1593 (Floyd)***, which would have transferred the licensing and regulatory functions of DSL, the State Banking Department, and the regulation of credit unions by the Department of Corporations to a Department of Financial Institutions, which the bill would have created; ***AB 1596 (Floyd)***, which would have amended the California Public Records Act's exemption for records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions; ***SB 893 (Lockyer)***, which would have authorized the establishment of the California Financial Consumers' Association to inform, advise, and represent consumers on financial service matters; and ***AB 2026 (Friedman)***, which would have expanded the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions (*see supra* AB 3469).

LITIGATION:

On April 6, the U.S. Supreme Court refused to review the Ninth Circuit's decision in ***Spiegel v. Ryan***, No. 90-55942 (Oct. 11, 1991), which upheld OTS' statutory authority to issue a temporary cease and desist order requiring a former officer of a savings and loan association to make restitution pending an administrative hearing to determine whether a permanent cease and desist order should issue. *[12:1 CRLR 129]* In his petition for certiorari, former Columbia Savings and Loan CEO Thomas Spiegel argued to the Supreme Court that the order deprived him of his property "in contravention of the most fundamental principle of due process." However, the Ninth Circuit's decision noted that the Supreme Court has allowed outright seizure without opportunity for a prior hearing if specified conditions exist; finding that all such conditions were present in the instant matter, the Ninth Circuit found that due process does not entitle Spiegel to a predeprivation hearing.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director: Steven Jablonsky (916) 322-3640

California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140–49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. The current members of OSB are Jere Ingram, Chair, John Baird, James Grobaty, John Hay, and William Jackson. At this writing, OSB continues to function with two vacancies—an occupational safety representative and a labor representative.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

Cal-OSHA Proposes HIV/HBV Exposure Prevention Regulations. On April 10, OSB published notice of its intent to add section 5193 to Title 8 of the CCR, to provide procedures and controls to reduce the potential for exposure to occupational incidents involving bloodborne infectious disease in general, and both the human immunodeficiency virus (HIV) and hepatitis B virus (HBV) in particular. These proposed changes are intended to bring California into compliance with federal OSHA standards concerning occupational exposure to bloodborne pathogens (29 C.F.R. Part 1910.1030 (Dec. 6, 1991)).

Among other things, proposed section 5193 would require each employer having an employee or employees with occupational exposure potential (reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties) to establish a written Exposure Control Plan which incorporates specified procedures for handling blood, blood products, body fluids, or other potentially infectious material to reduce the potential for exposure. Among many other settings, the section would apply to offices of physicians and dentists, nursing homes, hospitals, medical and dental laboratories, home health and hospice care settings, hemodialysis centers, government clinics, drug rehabilitation centers, medical equipment repair facilities, and especially research

laboratories and production facilities engaged in activities involving human pathogens. The Exposure Control Plan is the basic tool of the employer to ensure the protection of employees, and must address the potential for exposure, a schedule for the implementation of the Plan, a schedule for periodic review of the Plan, and each of the applicable subsections of the standard (*e.g.*, methods of compliance, post-exposure evaluation and follow-up, communication of hazards to employees, and recordkeeping). The section also proposes the provision of hepatitis B vaccinations to exposed employees, medical evaluations and counseling, and post-exposure follow-up for all employees after an occupational exposure incident.

OSB was scheduled to conduct a public hearing on the proposed adoption of section 5193 on May 28 in Los Angeles.

DIR/DOSH Propose Regulatory Revisions. On January 3, DIR published notice of its intent to amend section 336, Title 8 of the CCR, regarding its proposed penalty procedure, and section 339, Title 8 of the CCR, regarding its hazardous substances list. The amendments to section 336 would implement, interpret, and make specified changes imposed by AB 1545 (Friedman) (Chapter 599, Statutes of 1991), which increased penalties for occupational safety and health violations in a manner consistent with the federal Omnibus Budget Reconciliation Act of 1990, which in part increased maximum civil penalties assessed by Fed-OSHA. *[11:4 CRLR 148]* For example, the maximum penalty for general (non-serious) and regulatory violations was increased from $1,000 to $7,000; the maximum penalty for serious violations was increased from $2,000 to $7,000; and the maximum penalty for willful or repeated violations was increased to $70,000 for each violation, but in no case less than $5,000 for each willful violation. On April 24, the Office of Administrative Law (OAL) approved the proposed amendment to section 336.

Labor Code section 6360 *et seq.* requires the DIR Director to establish and at least every two years review a list of the substances which the Director has concluded are potentially hazardous when present occupationally. DIR's proposed amendments to section 339 would—among other things—add 389 new entries to the list and delete seven existing substances. On May 8, OSB published notice of its intent to amend section 339 pursuant to the DIR Director's proposal; OSB was scheduled to conduct a public hearing on the proposed amendments on June 25.

On January 3, DOSH published notice of its intent to permanently adopt amendments to sections 344(a), 344.1, and 344.2, Title 8 of the CCR, relating to its inspection fee schedule for boiler and tank permits; these amendments were originally adopted on an emergency basis in November 1991. *[12:1 CRLR 132]* On February 19, DOSH conducted a public hearing on the proposed amendments, which would—among other things—increase the fee for inspections from $85 to $105 per hour to enable it to recover its costs of performing these inspections. On April 29, DOSH readopted the regulations on an emergency basis. At this writing, OSB's adoption of the amendments on a permanent basis was expected to be approved by OAL in early June.

On March 27, DOSH published notice of its intent to adopt new section 341.15, Article 2.6, Title 8 of the CCR, regarding certification of asbestos consultants and site surveillance technicians. Among other things, section 341.15 would provide that any individual who intends to perform services as an asbestos consultant or site surveillance technician, as defined, must apply for and obtain a certification from DOSH; state the fees for certification and renewal of certification for asbestos consultants and site surveillance technicians; set forth the time limits within which DOSH must process applications for certification; and set forth the circumstances under which an application for certification may be denied or a certification may be suspended or revoked. On May 11, DOSH conducted a public hearing on proposed new section 341.15; at this writing, the section awaits adoption by DOSH and review and approval by OAL.

On May 15, DOSH published notice of its intent to amend sections 343, 344.10, and 344.30, Title 8 of the CCR, regarding various fee schedules. Specifically, amendments to section 343 would increase the fee for field permit inspections of tramways from $86 per hour to $125 per hour or any part thereof. Also, new section 343(a)(3) would establish per item reinspection fees for tramways. Amendments to section 344.10 would increase the fee for field permit inspections of amusement rides from $96 per hour to $125 per hour or any part thereof. Finally, amendments to section 344.30 would increase the fees for inspections of various specified elevators and other associated inspection activities to $110 per hour or any part thereof. DOSH was scheduled to conduct a public hearing on these proposals on June 30.

Regulatory Proposal Regarding Stairways and Ladders Used in the Construction Industry. On January 10, OSB published notice of its intent to amend sections 1504, 1620, 1629, 1675, 3276, and 3277, Title 8 of the CCR, concerning stairways and ladders used in the construction industry. Bureau of Labor Standards accident data indicate that, of the 4.5 million construction workers nationwide, as many as 36 fatalities and 25,000 injuries occur annually due to falls from stairways and ladders used in construction. Because Fed-OSHA recently revised and reorganized its safety standards regarding stairways and ladders, OSB proposes to amend its regulations to bring them into compliance with the federal standards. Among other things, the rulemaking package includes the following revisions:

–OSB would add definitions of the terms "handrail," "ladder, job-built," "ladder, single-rail," and "ladder, step stool" to section 1504, which contains definitions which specifically apply to construction, demolition, trenching, alteration, painting, repairing, construction maintenance, removal, and wrecking of any fixed structure;

–amendments to section 1620 would require temporary handrails to have a minimum clearance of three inches between the handrail and other objects;

–amendments to section 1629 would prohibit the installation and use of spiral stairways on construction sites, except where spiral stairways are a part of the permanent structure;

–OSB would amend section 1675 to—among other things—require all fixed ladders used in construction to be designed and installed in accordance with the requirements of section 3277 of the General Industry Safety Orders;

–amendments to section 3276 would prohibit the use of single-rail ladders; and

–amendments to section 3277 would require that all fixed ladders installed after July 1, 1992 be designed and used in accordance with American National Standards Institute specification A14.3-1984.

On February 27, OSB conducted a public hearing on this rulemaking proposal; there were no public comments about the proposed amendments. On April 16, OSB adopted the amendments, which await review and approval by OAL.

OSB Proposes Window Cleaning Safety Rules. On January 10, OSB published notice of its intent to amend sections 3281–3289 and 3291–3292, Article 5, Title 8 of the CCR, and 8501–8505, Title 24 of the CCR, regarding window cleaning safety rules. Among other things, OSB proposes to amend section 3281 to add the definitions of numerous terms,

such as "ground rigged," "roof rigged," "free fall," "guide button," "personal fall arrest system," and "working platform"; amend section 3282 to clarify which industries are covered by Article 5; amend section 3283 to—among other things—require employees to travel between stationary panels using one of the methods described in the regulation; amend section 3284 to delineate what type of safety belts are regulated in the section, and to provide specific guidelines by which belts are to be approved for use by window cleaners; amend section 3285 to specify the date when new permanent scaffold installations must comply with the provisions of Article 6, Title 8 of the CCR; amend section 3286 to eliminate gender-specific references; amend section 3287, regarding ladders, to include a reference to plastic reinforced ladders; amend section 3288, regarding rolling scaffolds, to delete an existing reference to "metal" in the section title; amend section 3289 to repeal existing language regarding elevating work platforms, vehicle mounted elevating and rotating work platforms, and instead relocate the contents of existing section 3291 into section 3289, retitling the section "Tools"; and renumber existing section 3292 as section 3291 and make a number of other changes to the language of current section 3292.

On February 27, OSB conducted a public hearing on this rulemaking package, at which the Board received testimony from a number of participants. Many of the window washing industry representatives were especially supportive of proposed amendments to section 3282(p) which would require building owners to provide the employer with written assurance, before use, that all of the owner's safety devices and equipment meet the applicable safety standards, and which prohibit employers from permitting their employees from using any building safety devices or equipment prior to receiving such written assurance.

At this writing, the proposed changes await adoption by OSB and review and approval by OAL.

In a related rulemaking package, OSB published notice on February 7 of its intent to amend sections 3292–3298 and adopt new section 3299 and new Appendices A–D, Article 6, Title 8 of the CCR, and amend sections 8510–8315, and adopt new sections 8520–8522 and Appendices A–B, Title 24 of the CCR, regarding powered platforms for exterior building maintenance. In this proceeding, OSB proposes to incorporate the provisions of recently-revised 29 C.F.R. Part 1910.66 into the CCR. In addition to numerous nonsubstantive, editorial, grammatical, and gender revisions, the rulemaking file proposes to accomplish the following: amend section 3292 to specify which work processes are regulated by the requirements of Article 6; amend section 3293 to indicate where the definitions that affect Article 6 are located; amend section 3294 so that it pertains to powered platform installations and affected parts of buildings; amend section 3295 so that it pertains to powered platform installations and equipment; amend section 3296 so that it pertains to inspections and tests; amend section 3297 so that it pertains to maintenance; amend section 3298 to provide for employee training and safe work practices while on powered platforms; and adopt new section 3299 to require employees on platforms to use fall protection meeting specified requirements. Similar changes are proposed for the applicable sections of Title 24.

On March 26, OSB conducted a public hearing on the proposed revisions, at which the Board received testimony from a number of industry representatives. Staff is currently in the process of reviewing the comments; at this writing, the rulemaking file awaits adoption by OSB and review and approval by OAL.

Removal of Materials or Tools From Buildings or Structures. On May 8, OSB published notice of its intent to adopt new section 1513(g), Title 8 of the CCR, regarding the removal of materials or tools from buildings or structures. Section 1513(g) would prohibit employers from having waste, materials, and/or tools thrown from buildings or structures, unless adequate safety precautions have been taken to protect employees working below. OSB was scheduled to hold a public hearing on this proposed action on June 25.

Warning Garments for Flaggers and Other Employees. On May 8, OSB published notice of its intent to amend sections 1598 and 1599, Title 8 of the CCR, regarding traffic control for public streets and highways and flaggers, respectively. Among other things, the proposed amendments to section 1598 would require that traffic controls be in accordance with the updated version of the *Manual of Traffic Controls for Construction and Maintenance Work Zones—1990.* Amendments to section 1599 would specify that the placement of warning signs, among other things, also be in accordance with the Manual; one effect of this revision would be that the distance between the sign and the flagger would not be determined by the speed formula but rather the traffic approach speed and the physical conditions at the work site, as indicated in the Manual. Section 1599 would also require that flaggers be outfitted with reflectorized garments with retroreflective materials of certain colors. OSB was scheduled to conduct a public hearing on these proposals on June 25.

Body Belts/Safety Straps Revision Proposed. On February 28, OSB published notice of its intent to amend section 2940.6(c)(1) and Appendix A, Article 36, Title 8 of the CCR, which addresses various procedures concerning tools and protective equipment, such as body belts, safety straps, and lanyards, used when working with high voltage electricity. Among other things, OSB's proposal would delete the reference to lanyards and the specific prohibitions of additional metal hooks and tool loops. On April 16, OSB conducted a public hearing on the proposed amendments. At this writing, the rulemaking file awaits adoption by OSB and review and approval by OAL.

DBCP Regulation Amendment Proposed. Also on February 28, OSB published notice of its intent to amend section 5212, Article 110, Title 8 of the CCR, which currently provides that existing safety standards regarding exposure to 1,2-Dibromo-3-Chloropropane (DBCP) do not apply to exposures to DBCP which resulted from the application or use of DBCP as a pesticide. OSB's proposed amendment would provide that such exposures are governed by the California Department of Health Services for low-level DBCP concentrations in water and the California Environmental Protection Agency for direct pesticide application or use. On April 16, OSB conducted a public hearing on the amendments; there were no comments on the proposal. At this writing, the rulemaking file awaits adoption by OSB and review and approval by OAL.

Board Proposes Seat Belt Revision. On January 16, OSB conducted a public hearing on its proposal to amend section 3653, Title 8 of the CCR, which addresses seat belt design criteria and usage on all equipment where a rollover protective structure is installed. Currently, a requirement for employee instruction is included and Society of Automotive Engineers (SAE) requirements are referenced for seat belt anchorage, seat mounting, and related design criteria to include webbing requirements and seat adjuster mechanism performance based on floor/seat deformation. OSB's proposed amendment would update the referenced SAE standard to the most current version. At its February 27 meeting, OSB adopted by proposed amendment, which was approved by OAL on March 24.

Lift-Slab Construction Amendments Disapproved. Although not published in the *California Regulatory Notice Register*, OAL apparently disapproved OSB's proposed amendments to sections 1504 and 1722.1, Title 8 of the CCR, regarding the use of lift-slab construction, on December 23. *[12:1 CRLR 133]* Following OSB's March 27 resubmittal, OAL again rejected the package on May 7, opining that the regulatory action failed to satisfy the clarity and consistency standards of Government Code section 11349.1. For example, OSB proposed to amend section 1722.1(a) to provide that lift-slab operations "shall be designed and planned by a civil engineer currently registered in California experienced in lift-slab construction." In its first rejection, OAL contended that a person directly affected by this regulation would not know what level and amount of "experience" would qualify a civil engineer to design and plan lift-slab construction. OSB responded to this contention by asserting that "the registered civil engineer, as a professional engineer, determines if the acquired experience will be adequate to assume responsibility and liability for lift-slab operations." According to OAL, this self-certification standard is not apparent from the text of the regulation itself, and the language must be clarified in order to reflect OSB's intention. At this writing, OSB has not indicated whether it will resubmit the package to OAL.

Regulatory Update. The following is a status update on numerous regulatory proposals which were described in detail in recent issues of the *Reporter*:

–Standards for Use of Plastic Pipe in Compressed Air Systems. On April 8, OAL approved OSB's proposed revisions to sections 453 and 462, Title 8 of the CCR (Unfired Pressure Vessel Safety Orders), which establish minimum safety standards pertaining to the design and performance of plastic pipe used in compressed air service. *[12:1 CRLR 130–31]*

–Elevator Safety Orders and Wheelchair Access Lifts. On April 16, OSB adopted its proposed amendments to section 3000, Title 8, and section 7-3000, Title 24 of the CCR, which would permit the public to install vertical wheelchair lifts with rises up to twelve feet, inclined wheelchair lifts, and inclined stairway chairlifts as required by local entities for the purpose of providing barrier-free access for the physically disabled without applying to OSB for a permanent variance. *[12:1 CRLR 131]* At this writing, the proposal awaits review and approval by OAL.

–Cranes and Other Hoisting Equipment. At this writing, OSB staff is still reviewing comments received regarding its proposed amendments to sections 4884, 4885, 4924, 4929, 4965, and 4966, and the adoption of new section 5029, Title 8 of the CCR, regarding cranes and other hoisting equipment. *[12:1 CRLR 131]*

–Framing and Concrete Forms. On January 16, OAL approved OSB's proposed amendments to section 1713, Title 8 of the CCR, which address safeguards to be used during the erection of framing and concrete forms; the amendments require employers to comply with section 1713 during all phases of operations, including dismantling or removal of the framing and concrete forms. *[12:1 CRLR 132]*

–Process Safety Management Standards. At its May 28 meeting, OSB was scheduled to consider the adoption of new section 5189, Title 8 of the CCR, which would establish process safety management standards for refineries, chemical plants, and other specified manufacturing facilities. *[12:1 CRLR 132]*

–Maintenance of Specified Equipment. On December 23, OAL approved OSB's amendments to section 3314, Title 8 of the CCR (Cleaning, Repairing, Servicing and Adjusting Prime Movers, Machinery and Equipment), which incorporate federal regulations contained in 29 C.F.R. Part 1910.147 to specify requirements for the maintenance of machines or equipment in which the unexpected energization, start-up, or release of stored energy could cause injury to employees. *[12:1 CRLR 133]*

–Exposure to Asbestos. On January 21, OAL approved OSB's amendments to section 1529, Title 8 of the CCR, which establish minimum safety and health standards for exposure to asbestos in construction. *[12:1 CRLR 133]*

–Exposure to Airborne Contaminants. On April 7, OAL approved OSB's amendments to section 5155, Title 8 of the CCR, which establish requirements for controlling employee exposure to airborne contaminants. *[12:1 CRLR 133]*

–Installation of Wood Framing. On January 21, OAL approved OSB's revisions to section 1716.1 (originally misnumbered as section 1721), Title 8 of the CCR (Construction Safety Orders), addressing hazards involved with the installation of structural wood framing. *[12:1 CRLR 133]*

LEGISLATION:

SB 1742 (Petris). Existing law entitles any employee who is discharged, threatened with discharge, demoted, suspended, or in any manner discriminated against in the terms and conditions of employment by his/her employer because the employee has made a bona fide oral or written complaint to DOSH, other governmental agencies, as specified, or his/her employer or representative, of unsafe working conditions or work practices at the employee's workplace, or has participated in an employer-employee occupational health and safety committee, to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. As introduced February 20, this bill would additionally entitle an employee to recover all other damages of any kind, including costs and reasonable attorneys' fees, or the sum of $500, whichever is greater, the sum of which shall be trebled, caused by the acts or omissions of the employer. *[S. Floor]*

SB 1794 (Hart). Existing law requires every physician providing treatment to an injured employee for pesticide poisoning, or a condition suspected to be pesticide poisoning, to file a complete report with DIR's Division of Labor Statistics and Research. As amended March 24, this bill would additionally provide that the physician shall not be compensated unless the report to the Division of Labor Statistics certifies that a copy of the report was also filed with the County Agricultural Commissioner. *[A. L&E]*

SB 1931 (B. Greene), as introduced February 21, would require DOSH, notwithstanding any other provision of law, if it determines that an alleged violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of appeal proceedings should not suspend the running of the period for abatement, to so direct in the citation issued to the employer. This bill would also authorize an employer who receives a citation described above to file a motion with the Occupational Safety and Health Appeals Board, concurrent with the timely initiation of an appeal, requesting that the running of the period for abatement be suspended during the pendency of the appeal. The bill would require the Appeals Board, in a case where the motion is filed, to expedite the consideration and decision of the employer's appeal, and would authorize the Appeals Board, in its decision on the appeal, to modify the citation's direction that the period for abatement not be suspended. *[S. Appr]*

SB 1935 (B. Greene), as introduced February 21, would—among other things—require that any decision by OSB not to adopt, modify, or revoke a proposed order or standard be accompanied by a written statement of the Board of its

reasons for not doing so, and would provide that any statement issued by the Board indicating its reasons for not adopting, modifying, or revoking a proposed order or standard shall be subject to review in the courts in an action brought by any person who may be adversely affected by the Board's decision. The bill would provide that any determination by OSB with respect to a proposed order or standard shall be set aside if found by the court to be arbitrary, capricious, or an abuse of the Board's discretion, or otherwise not in accordance with existing law. *[S. Floor]*

AB 2277 (Burton). Existing law with respect to occupational safety and health generally provides for the assessment of civil penalties against employers, with the exception of employers that are governmental entities, for violations of certain occupational safety and health provisions. As introduced January 6, this bill would elimination the exemption of the assessment of these civil penalties for employers that are governmental entities. *[S. IR]*

AB 2968 (Horcher). Existing law requires the manufacturer of any hazardous substance listed pursuant to a specified statute to prepare and provide purchasers of the hazardous substance with a material safety data sheet containing specified information with regard to hazards or other risks associated with the use of or exposure to the hazardous substance. Existing law provides that, for purposes of compliance with the above requirements, the provision of a federal material safety data sheet or equivalent shall constitute prima facie proof of compliance. As amended April 21, this bill would eliminate the above provision with regard to the provision of a federal material safety data sheet as prima facie proof of compliance. *[A. W&M]*

AB 3386 (Alpert). Existing law requires DOSH to establish and maintain a safety inspection and permitting program for all tower cranes, and prescribes civil penalties for violations of crane safety standards, orders, and special orders. For purposes of this provision, existing law defines the term "crane" and excludes certain machines used to lift, lower, and move loads, as specified, from the definition. As amended April 23, this bill would also exclude from the definition of a "crane," for purposes of the above provisions, straddle type mobile boat hoists, as defined. *[S. IR]*

AB 2667 (T. Friedman). The Occupational Safety and Health Act of 1973, administered and enforced by DOSH, prohibits any employer from occupying or maintaining any place of employment that is not safe and healthful; it also provides, under specified circumstances, for misdemeanor penalties with respect to violations of the Act. As introduced February 13, this bill would additionally prohibit any employer from permitting, or any person from engaging in, the smoking of tobacco products in an enclosed space at a place of employment. *[A. L&E]*

AB 3616 (Knowles), SB 2023 (Leslie), and ***SB 1747 (Maddy)*** all would have repealed or severely restricted the provisions added by SB 198 (B. Greene) (Chapter 1369, Statutes of 1989), an important bill which requires employers to establish, implement, and maintain an effective injury and illness prevention program. *[11:1 CRLR 107; 10:4 CRLR 131]* AB 3616 was rejected by the Assembly Committee on Labor and Employment on April 8; SB 2023 died in committee; and SB 1747 was rejected by the Senate Industrial Relations Committee on March 25.

AB 3487 (T. Friedman). Existing law requires DOSH to require a permit for employments or places of employment that by their nature involve a substantial risk of injury, limited to (a) the construction of trenches or excavations; (b) the construction or demolition of any building structure, falsework, or scaffolding more than a specified height; and (c) the underground use of diesel engines in work in mines and tunnels. As introduced February 21, this bill would add lead-related work to the list of employments or places of employment that require the issuance of a permit; require DOSH to propose a regulation containing specified requirements relating to lead-related work to OSB for its review and adoption; and require the owner or specified persons to inspect any building, structure, or soil before any contract is bid or entered into or any work begins, for the presence of dangerous amounts of lead.

Existing law requires that an application for a permit for employments or places of employment that by their nature involve a substantial risk of injury include a provision that the applicant has a knowledge of occupational safety and health standards and will comply with those standards. This bill would require that every application for any of those permits include proof of coverage for workers' compensation, proof of health insurance coverage, a copy of the employer's written injury and illness prevention program, and proof of the employer's proficiency or access to the necessary equipment to do the work safely. *[A. W&M]*

AB 3462 (Speier), as amended May 12, would require any supplier of any chemical containing a reproductive toxicant to disclose the health hazard(s) of the toxicant in a label containing specified information and affixed to every container of the chemical that it supplies. This bill would require the employer in every workplace using a chemical in which any ingredient or contaminant is a reproductive toxicant to ensure that every container or the chemical bears such a label. This bill would also require the employer in any workplace using a chemical containing a reproductive toxicant to provide specified training and disclosure regarding the toxicant to employees that may be or have been exposed to the toxicant above the "no significant risk" level; require the employer to conduct personal exposure monitoring in the breathing zone of the employee reasonably determined to have the highest potential exposure to a reproductive toxicant in the workplace; and, for any pregnant employee, the employer would be required to conduct this monitoring in the breathing zone of that employee for the reproductive toxicants to which the employee may be exposed. The results of this monitoring would be required to be provided in writing to the affected employees. *[A. W&M]*

AB 1544 (T. Friedman), as amended May 14, would create the Agricultural Enforcement Unit within DIR's Division of Labor Standards Enforcement; and provide that it is unlawful for any employer of an agricultural worker to retaliate against, intimidate, threaten, coerce, or otherwise discriminate against the worker or a member of his/her immediate family in the terms and conditions of employment because that worker has filed a complaint against the employer for violation of these provisions, or exercised any other right to which the worker is entitled by law. *[S. IR]*

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at pages 133–34:

SB 520 (Petris) would prohibit any employer from engaging in, or causing any employee to engage in, the dispersed use of extremely toxic poisons, except as authorized by the DIR Director, where the Director finds that certain conditions of economic hardship are met. *[A. L&E]*

SB 509 (Mello), as amended March 4, is no longer relevant to Cal-OSHA.

AB 1313 (Friedman) is currently a spot bill which its sponsors intend to amend in order to prevent an anticipated effort to repeal the Corporate Criminal Liability Act of 1990 (Chapter 1616, Statutes of 1990). *[11:3 CRLR 142] [S. Jud]*

AB 644 (Hayden) would require that every computer video display terminal (VDT) and peripheral equipment acquired or placed into service in any place of employment, on or after January 1, 1993, be in conformance with all applicable design standards adopted by the American National Standards Institute. *[S. inactive file]*

AB 147 (Floyd) would amend existing law to provide that nothing in the California Occupational Health and Safety Act shall have any application to, be considered in, or be admissible into evidence in any personal injury or wrongful death action against the state, and would provide that evidence pertaining to inspections or investigations by DOSH and citations for violations of any provision of the California Occupational Safety and Health Act shall not be admissible in any wrongful death or personal injury action, except as between an employee, as specified, and his/her own employer. *[S. Jud]*

AB 198 (Elder), as amended April 1, is no longer relevant to DIR or Cal-OSHA.

The following bills died in committee: ***AB 1674 (Margolin)***, which would have required OSB, within a specified period of time, to revise the CCR to include certain carcinogens and industrial processes listed by the International Agency for Research on Cancer, and substances for which the state Department of Health Services has issued a hazard alert regarding carcinogenicity, unless a carcinogen or industrial process is covered by a separate comparable standard, or the Board exempts a carcinogen which presents no substantial threat to employee health pursuant to a specified statute; ***AB 2110 (Friedman)***, which would have—among other things—declared that it is the public policy of this state to provide employees who work on VDTs with a safe and healthy work environment, required employers to implement certain minimum VDT equipment safeguards, and to modify existing employee workstations so as to protect the safety and health of employees who operate VDTs, and required OSB to adopt regulations requiring employers to maintain certain records and to furnish VDT operators and their supervisors, on an annual basis, with certain information and training regarding the health effects of VDTs, and precautions with respect to the safe use of VDTs; ***AB 1723 (Bane)***, which would have provided that any contractor not required to take a specified asbestos certification examination shall not be required to register with DOSH with respect to any operation which is not anticipated to result in asbestos exposures for the contractor's employees in excess of the permissible exposure limits established by specified state regulations; and ***AB 383 (Tucker)***, which would have made specified criminal penalties applicable to every employer having direction, management, control, or custody of any employment, place of employment, or other employee who violates or fails or refuses to comply with specified standards.

LITIGATION:

In *California Labor Federation, et al. v. Occupational Safety and Health Standards Board*, 221 Cal. App. 3d 1547 (1990), the trial court awarded petitioners $114,266.25 in attorneys' fees pursuant to Code of Civil Procedure section 1021.5 (the private attorney general fee doctrine) and $2,820.30 in costs, based on petitioners' successful pursuit of a writ of mandate compelling OSB to incorporate into the Cal-OSHA State Plan certain health and safety provisions adopted in Proposition 65, the Safe Drinking Water and Toxics Enforcement Act of 1986. *[10:4 CRLR 133]* When petitioners sought payment, OSB contended that the state had established—as part of the Budget Acts of 1990 and 1991—a $125 cap on the hourly fee payable for attorneys' fees awarded pursuant to section 1021.5; on that basis, the state was willing to pay only $55,422.75 of the attorneys' fee award. In ***California Labor Federation AFL-CIO, et al. v. California Occupational Safety and Health Standards Board***, No. A048574 (Apr. 24, 1992), petitioners challenged that action on the basis that the budget provisions on which OSB relied are void because they effect an amendment of existing law in violation of the article IV, section 9 of the California Constitution (the "single subject rule"), which requires that every statute "embrace but one subject, which shall be expressed in its title."

The First District Court of Appeal determined that the "subject" of the Budget Act is the appropriation of funds for government operations, and it cannot constitutionally be employed to expand a state agency's authority, or to substantively amend and change existing statutory law. Whether it effects an amendment of existing law for purposes of this prohibition is determined by an examination and comparison of its provisions with existing law. "If its aim is to clarify or correct uncertainties which arose from the enforcement of the existing law, or to reach situations which were not covered by the original statute, the act is amendatory, even though in its wording it does not purport to amend the language of the prior act."

The Budget Act provisions in question place a cap of $125 per hour on fee award payments and condition payment on acceptance of this amount in "full and final satisfaction" of the fee claim. Comparing these provisions to existing law, the court noted that although section 1021.5 contains no express limitation on the size of the award, it has been universally understood to permit a "reasonable" award in light of factors derived from the statute's history and purpose. According to the court, the limitation to a reasonable fee is so inherent and essential to section 1021.5 that it must be considered necessarily implied, noting that the "statute limits fee awards to a 'reasonable' sum as surely as if it said so." Because the budget provisions purport to impose a different limitation, the court determined that they seek to effect an outright alteration of section 1021.5. Further, if section 1021.5 is viewed as ambiguous with respect to the amount of fees allowed, the court stated that the Budget Act provisions are still amendatory in that they purport to supersede the judicial resolution of that ambiguity with a legislative "clarification" set forth as an appropriation. The court concluded that although the legislature may limit attorneys' fees awards under section 1021.5, it may not "grant a substantive right to fees, as it has done in section 1021.5, and then retract or impair the right thus granted through amendments masquerading as Budget Act provisions. To hold otherwise would deny the people the legislative accountability they sought to secure by adopting article IV, section 9. The provisions under scrutiny violate the single subject rule and are void."

Finally, the court rejected OSB's contention that, whether or not the budget provisions are void, the court may not direct payment of the full award because to do so would infringe legislative prerogatives and transgress the separation of powers doctrine. The First District explained that although the separation of powers doctrine has generally been viewed as prohibiting a court from directly ordering the legislature to enact a specific appropriation, it is equally well established that once funds have already been appropriated by legislative action, a court transgresses no constitutional principle when it orders the state controller or other similar official to make appropriate expenditures from such funds.

In ***C&T Management Services, et al. v. San Francisco***, No. 936661 (Feb. 13, 1992), San Francisco Superior Court Judge Lucy Kelly McCabe overturned San Francisco's landmark video display

terminal (VDT) ordinance, which required employers with fifteen employees or more to protect workers from risks associated with VDT use by providing periodic rest breaks, properly designed office furniture, and training on the safe use of VDTs. *[11:4 CRLR 149]* According to Judge McCabe, California law allows only the state, not individual cities, to regulate safety in the workplace. Ironically, the ordinance—the only one of its kind in the nation—was adopted by the City and County of San Francisco following years of inaction on the part of Cal-OSHA and following the 1990 veto by then-Governor George Deukmejian of legislation which would have instituted similar statewide requirements. AB 644 (Hayden), currently pending in the Senate inactive file, would impose similar standards similar to the San Francisco ordinance; however, many observers predict that if the bill is passed by the legislature, Governor Wilson will veto it, focusing on the increased costs to California businesses instead of the existing physical risks to California workers. At this writing, OSB claims to be in the early stages of drafting regulations that would regulate VDT use.

RECENT MEETINGS:

At its January 16 meeting in Los Angeles, the Board considered three separate petitions, submitted by Aerojet Propulsion Division, Emergency Medical Services Authority, and Organization Resources Counselors, Inc., requesting that OSB amend section 5192, Title 8 of the CCR, which addresses the handling of explosives and explosive wastes. OSB granted the petitions to the extent that it will convene an advisory committee to consider the proposals and, if appropriate, develop recommendations for regulatory amendments.

At its February 27 meeting in San Francisco, the Board honored former member and Chair Mary-Lou Smith, who served on OSB for eight years; during that time, Smith conducted 88 public hearings and meetings and served as Board panel member on 116 variance hearings.

Also at the February meeting, the Board considered a petition from Evans Brothers, Inc., a demolition contractor, requesting that section 4941(a), Title 8 of the CCR, be amended to conform with its federal counterpart regarding the weight of demolition balls on cranes. OSB staff noted that although section 4941(a) currently requires a higher level of safety than the federal requirements and should be retained for worker safety, the petition has merit and the section should be reviewed with respect to the inclusion of regulations concerning mechanical demolition. The Board granted the petition to the extent that an advisory committee will review section 4941(a) to determine if amendments are necessary.

Also at the February meeting, staff reported on an evaluation report prepared by Fed-OSHA regarding the operation of Cal-OSHA's approved State Plan. According to the report, the procedures followed in California do not result in the adoption of standards equivalent to new federal standards within the mandatory six-month timeframe. Staff responded by noting that during the three-year period following former Governor Deukmejian's de-funding of Cal-OSHA's private enforcement program, an inordinate amount of federal rulemaking occurred; since that time, OSB has made every effort to catch up on that rulemaking, as well as implement current changes.

At its March 26 meeting in San Diego, OSB considered a petition from Automotive Lift Institute, Inc., requesting amendments to sections 3542 and 3543, Title 8 of the CCR, regarding automotive lifts. OSB granted the petition and requested staff to develop proposed amendments which would amend those sections to reference the most current national consensus standard.

At its April 16 meeting in Sacramento, OSB considered a petition from the California Highway Patrol asking that section 5156, Title 8 of the CCR, be amended to clarify the definition of the term "confined space," and to exclude immediate emergency response personnel from the "confined space" requirements. Noting that Fed-OSHA may soon promulgate a rule regarding confined spaces, OSB granted the petition to the extent that if Fed-OSHA does adopt standards concerning confined spaces by the end of calendar year 1992, OSB staff will convene an advisory committee to determine if amendments are warranted.

Also at its April 16 meeting, OSB considered a petition from the California State Employees Association, Local 1000, which represents employees in 21 correctional facilities in the state, requesting that standards be developed for employers to reduce the risk of employees being infected with tuberculosis (TB). According to CSEA representative Steven Crouch, 19 employees at Susanville State Prison recently tested positive for TB. Crouch urged OSB to consider the adoption of an airborne infectious disease standard to curb the spread of TB, arguing that prison workers are particularly in need of protection due to overcrowding and poor ventilation in state prisons. According to DOSH, unlike most other hazardous agents the Board regulates with regard to employee exposure, the issue surrounding an infectious agent such as TB is not one readily separated into workplace exposure under control by the employer, as opposed to general exposure as a public health issue. Following a lengthy discussion, OSB denied the petition, although stating that the issue of TB in the workplace is of great concern to the Board; OSB also directed DOSH to evaluate recently-proposed regulations by the Department of Health Services to determine the impact on occupational exposure to TB.

FUTURE MEETINGS:

September 24 in Los Angeles.
October 22 in San Francisco.
November 19 in San Diego.
December 17 in Sacramento.