whose disclosure would be counterproductive to the regulatory purpose for which they are used. This bill is pending in the Assembly Governmental Organization Committee.

SB 893 (Lockyer), as introduced March 7, would, among other things, authorize the establishment of the California Financial Consumers' Association, a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue on behalf of members in regard to any financial service matter, and take related actions. This bill is pending in the Senate Banking Committee.

AB 2026 (Friedman). Existing provisions of the Savings Association Law prescribe various criminal offenses and penalties for violations thereof, and provide for forfeiture of property or proceeds derived from these violations. As introduced March 8, this bill would, among other things, expand the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions. This bill is pending in the Assembly Public Safety Committee.

LITIGATION:

On March 26 in *U.S. v. Gaubert*, No. 89-1793, the U.S. Supreme Court held that the federal government may not be sued for damages when efforts by regulators to rescue troubled savings and loan associations go awry. Thomas Gaubert, former owner of Independent American Savings Association (IASA), brought a $25 million suit against federal regulators under the Federal Tort Claims Act (FTCA), alleging that their management led to IASA's failure. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 105-06 for background information.) The government argued that it is immune from suit for its activities in operating the failed thrift under the "discretionary function" exception to the FTCA in 28 U.S.C. section 2680(a); the trial court agreed, but the Fifth Circuit reversed, finding that the regulators' actions were not "policy decisions" which fall into the exception, but "operational actions."

The Supreme Court reversed, holding that "[d]iscretionary conduct is not confined to the policy or planning level....Day-to-day management of banking affairs, like the management of other businesses, regularly requires judgment as to which of a range of permissible courses is the wisest."

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 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:

Implementation of Proposition 65. In July 1990, in *California Labor Federation, et al. v. Cal-OSHA*, No. A048574, the First District Court of Appeal held that the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) is a state law governing occupational safety and health pursuant to the State Occupational Safety and Health Plan Initiative (Proposition 97), and ordered Cal-OSHA to incorporate into its California State Plan for Occupational Safety and Health (State Plan) standards which provide the protections of Proposition 65 to all employees covered by that initiative. In October 1990, the California Supreme Court denied Cal-OSHA's petition for review, thus paving the way for Cal-OSHA to comply with the appellate court's order and Proposition 65. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 109; Vol. 10, No. 4 (Fall 1990) p. 133; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 154 for extensive background information.)

During OSB's April 18 business meeting, Executive Director Steve Jablonsky reported on staff's progress in developing regulations to implement and apply Proposition 65 to the workplace. Staff had held several meetings with legal counsel, and had convened an advisory committee on April 16; however, no consensus had been reached regarding a regulatory proposal. Jablonsky also reported that the California Labor Federation submitted a draft Proposition 65 regulation and petitioned OSB to adopt it on an emergency basis at the April meeting.

Jablonsky also noted that Stephen Berzon, attorney for petitioners, indicat-

ed in a letter to OSB's attorney that the Board's delay in adopting Proposition 65 regulations was unconscionable, and that OSB's failure to adopt a regulation at the April 18 meeting would leave his client with no choice but to return to the court of appeal to obtain judicial enforcement of the peremptory writ of mandate. However, at the April meeting, OSB Chair Mary-Lou Smith stated that the Board was not prepared to adopt a regulation, and directed Board staff to research the issue further and, if appropriate, develop the necessary documentation to be considered by the Board at its May meeting.

Among other things, Proposition 65 added section 25249.6 to the Health and Safety Code, which provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in section 25249.10." The proposition requires the Governor to establish a scientific advisory panel, which must publish a list of all chemicals known to the state to cause cancer or reproductive toxicity; once listed, the "clear and reasonable warning" requirement is triggered.

At the Board's May 16 meeting, staff presented an emergency rulemaking proposal amending section 5194, Cal-OSHA's "hazard communication" regulation, to incorporate the protections of Proposition 65. Section 5194 currently requires all employers to provide information to their employees about hazardous substances to which they may be exposed by means of a hazard communication program, labels, material safety data sheets, and information and training. The proposed emergency amendment to section 5194 requires employers, before they knowingly and intentionally expose their employees to chemicals listed under Proposition 65, to provide a clear and reasonable warning. When the exposure is one to which both the preexisting hazard communication standard and Proposition 65 apply, the employer must satisfy Proposition 65 by complying with the hazard communication standard. When only Proposition 65 applies because the exposure and/or chemical concentration level is lower than the hazard communication standard levels, or because the chemical and/or its usage is exempt from the hazard communication standard, the employer can comply with Proposition 65 warning requirements by complying with the hazard communication standard or by complying with the Proposition 65 warning regulations adopted by the Health and Welfare Agency in Title 22 of the CCR, and reprinted as new Appendix E of section 5194.

At the May 16 public hearing on the proposed adoption of the emergency Proposition 65 regulations, the Board received considerable testimony from manufacturers and other employers in opposition to the proposed regulatory changes. A representative from the Chemical Manufacturers Association opined that no "emergency" or urgency situation justified the adoption of an emergency regulation. Attorney Berzon, who represented the coalition of labor, environmental, and public interest organizations which challenged Cal-OSHA's refusal to implement Proposition 65, noted that the initiative was enacted in 1986, that the court of appeal took immediate jurisdiction over the lawsuit (instead of referring it to superior court), that the court of appeal had ruled against Cal-OSHA in July 1990, and that OSB has had since October 1990 (the date of the Supreme Court's denial of Cal-OSHA's petition for review) to come up with Proposition 65 regulations in compliance with the court order. Berzon also noted that the regulatory language before the Board was not the language proposed by the California Labor Federation, but was compromise language which had been worked out by Board staff in conjunction with numerous interested parties, and that his clients believe the compromise proposal is "legally satisfactory and an effective way to proceed in this matter."

Following the comments, staff recommended that the Board adopt the proposed regulatory changes with minor modifications; staff confirmed that the proposal represented general agreement among the petitioners, DOSH, the Health and Welfare Agency, the California District Attorney's Association, and the Environmental Law Section of the California Attorney General's Office. OSB voted 4-1 to adopt—on an emergency basis—the proposed Proposition 65 regulations as sections 5194(b)(6) and 5194(k)(3), Title 8 of the CCR.

The Office of Administrative Law (OAL) approved these regulatory changes on May 31; they are effective until September 30. OSB is scheduled to hold a public hearing on the permanent adoption of these regulatory changes on August 20.

VDT Standards: State Politicians Try Again. Despite recommendations by its own Ad Hoc Expert Advisory Committee, OSB consistently refuses to adopt exposure standards for video display terminals (VDTs) in the workplace. In spite of an increasing number of VDT-related injuries, Cal-OSHA continues to study the problem (as it has for three years). Last September, a legislative attempt to adopt VDT exposure standards—AB 955 (Hayden)—was vetoed by Governor Deukmejian. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 106; Vol. 10, No. 4 (Fall 1990) pp. 130-31; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152 for background information.) Once again, the legislature is considering legislation which would require Cal-OSHA to adopt various VDT standards. (*See infra* LEGISLATION.)

While the legislature attempts to resolve the VDT issue, the state's attention is focused on San Francisco, the only local government to have imposed its own VDT standards. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 106 for background information.) The ordinance covers city workers and businesses with fifteen or more employees, and requires employers to provide adjustable work stations, regular breaks, and training on the safe use of VDTs. Employers have four years to make the required changes. However, in March, the law firm of Littler, Mendelson, Fastiff & Tichy announced that it has prepared a lawsuit charging that only Cal-OSHA may regulate worker safety. At this writing, the firm has not yet filed the suit, but indicates that it is prepared and awaiting final approval from its clients.

In a related matter, the National Institute of Occupational Safety and Health (NIOSH) has released the results of a six-year study which indicate that pregnant women who work all day at VDTs run no more risk of a miscarriage than women in similar jobs without terminals. However, the study does not address the potential risks associated with extremely low-frequency (ELF) radiation; ELF radiation emissions are not unique to VDTs and are also caused by power lines, electrical wires in the home and office, electric blankets, and household appliances.

Finally, although it refuses to adopt blanket rules which apply to employers statewide, Cal-OSHA continues to handle complaints regarding VDT use on a case-by-case basis. On April 9, Cal-OSHA entered into an agreement with the Union-Tribune Publishing Company; the agreement requires the company to provide workers with adjustable VDT keyboards and screens, adequate space under the terminal, and some adjustable chairs. Further, the company agreed that for every hour of continuous typing on a VDT, employees will be given a "rest break or perform other work activity for up to five minutes." Cal-OSHA agreed

to cancel an order it issued against the company last year mandating that the company make specified changes. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 131 for background information.)

Upgrading Worker Safety in Installing Structural Wood Framing Systems. At an April 18 public hearing, OSB heard testimony regarding proposed revisions, additions, and deletions to section 1721, Article 29, Title 8 of the CCR (Construction Safety Orders), to address the hazards involved in the installation of structural wood framing or panelized roof systems.

Article 29, Erection and Construction, contains occupational safety regulations specific to employee safety during the erection of multi-storied skeleton or multi-tiered steel frame buildings, cast-in-place or prefabricated concrete buildings, and tilt-up wall constructed buildings. Employers, specifically those in tilt-up construction, are involved with the construction of buildings having large open floor areas, free from columns or other vertical members. Because these buildings are normally used for warehousing or manufacturing, ceilings or roofs may be higher than 15 feet above the ground or level below. Large beams are used to span the open expanses. These beams are used to support the structural wood framing system or, as it sometimes referred to, the panelized roof system. Roof panels consisting of sheets of plywood are attached to 2-inch x 4-inch or larger lumber pieces called purlins. Until the first course of roof panels has been set in place, it is not possible to install guardrails or attach lifelines to provide employees with fall protection. Compliance with the present provisions of the Construction Safety Orders is not practical nor does it provide a degree of safety equal to or greater than the procedures developed by the structural wood framing industry.

In February 1987, OSB received a petition from Mr. Robert D. Peterson, acting on behalf of California Safety Services Group, requesting the Board to adopt new section 1721 of the Construction Safety Orders. This new regulation would address the hazards involved in the installation of structural wood framing or panelized roof systems. The Board granted the petition to the extent that it directed staff convene an advisory committee to consider the petitioner's proposal and, if appropriate, draft regulations to be presented before OSB at a future date. Proposed section 1721 is specific to the unique hazards related to the structural wood framing industry and will permit alternative fall protection methods and procedures.

For example, proposed section 1721(c) would contain references to the acceptable types of fall protection contained in the Construction Safety Orders *(e.g.,* safety belts, safety harnesses, guardrails) to clearly indicate to employers the options permitted during the erection and installation of structural wood framing or panelized roof systems. The proposed changes would also permit the use of lift trucks or elevated platforms under specified circumstances; require that any floor or roof openings which exist because of the structure's design or construction process be guarded as soon as the construction process permits by a cover or standard railing; and require that the erection procedure for a structural wood framing system be approved by a California-registered civil or structural engineer.

OSB received a number of comments on these proposed amendments at its April 18 public hearing. Robert Downey of the Associated General Contractors of California (AGCC) expressed concern over the requirement of approval by a structural or civil engineer. According to Mr. Downey, many contractors do not have an engineer on staff and AGCC is concerned that the requirement may create a financial burden. Mr. Downey stated that roof structures are repetitive work, and recommended that a general erection plan be used so that approval is not required each time.

The Board advised those who presented public testimony that staff would take their recommendations under consideration. At this writing, OSB has taken no action on the proposed amendments to section 1721.

Industrial Truck Tagging Requirements. On March 21, OSB held a public hearing on proposed revisions to section 3650, Title 8 of the CCR (General Industry Safety Orders). Existing section 3650 contains various requirements for powered industrial trucks, such as ANSI design and construction requirements, approval tags or labels, identification plates, and use of front-end attachments. The proposed revisions would replace the term "powered industrial" with the phrase "low lift and high lift"; this revision would also specifically require high and low lift trucks to be constructed to ANSI B56.1 design and construction safety standards which apply to high and low lift trucks. Proposed subsection (c) would require other types of industrial trucks manufactured after September 1, 1991, other than high or low lift trucks, to have a permanent legible tab or label stating compliance with the applicable NFPA, UL, or ANSI B56 industrial truck standards.

Dale Muhlenkamp, representing the Industrial Truck Association (ITA), made a number of suggestions regarding the proposal, including the recommendation that the term "permanent" be changed to "durable, corrosion resistant" in reference to the required tags and labels. He also expressed ITA's concern that the regulation require conformity with the ASME/ANSI B56 design and construction requirements that are effective at the time of truck manufacturing. OSB staff will review the testimony received and present the regulatory action to the Board for adoption at a future meeting.

Storage Access Aisles. Also on March 21, OSB held a public hearing on proposed amendments to 3656(f), Title 8 of the CCR (General Industry Safety Orders). Section 3656(f) currently requires warehouse picking aisles to be equipped with a means of preventing order pickers, stock pickers, or side loaders from colliding with storage racks or stored material. The proposed revisions would replace the term "picking aisles" with "storage access aisles" as defined in section 3207, Title 8 of the CCR, in order to limit the application of section 3256(f) to storage access aisles in which only order pickers, stock pickers, and side loaders are used. According to OSB staff, the term "picking aisles" has not been adequately defined and has been broadly interpreted, creating confusion among both the regulated public and enforcement personnel.

During the public hearing, Dale Muhlenkamp of ITA suggested that the phrase "reduce the risk of vehicle colliding" replaced the phrase "prevent the vehicle from colliding."

Staff reviewed the public comments received and presented the unmodified regulatory proposal to OSB for adoption at its May 16 meeting. OSB adopted the proposed revisions; at this writing, the rulemaking package awaits review and approval by the Office of Administrative Law (OAL).

Wild Animal Keeper Regulations Considered. After conducting an investigation, Cal-OSHA reported in mid-April that there was no violation of an existing safety order in the March 13 death of San Diego Wild Animal Park elephant keeper Pamela Orsi. According to witnesses, Orsi was attending to one elephant when another caught her off guard and trampled her; she apparently died from blunt-force head injuries caused during the incident. Don Amos, district director for Cal-OSHA, stated that a second person could have warned Orsi.

Presently, there are no Cal-OSHA orders governing safety procedures for

wild animal keepers. Amos has indicated that Cal-OSHA should develop safety orders to cover all wild animal keepers in the state; such a recommendation is expected to be presented to Cal-OSHA officials for consideration.

Update on Other Proposed Regulatory Changes. Following is a status update on other proposed regulatory changes considered and/or approved by OSB and discussed in detail in previous issues of the *Reporter:*

-At its March 21 meeting, OSB adopted proposed amendments to Title 8, section 1596(a) of the Construction Safety Orders, and section 6309(h) of the Logging and Sawmill Safety Orders, regarding the use of seat belts in certain types of equipment outfitted with rollover protective structures; the amendments to section 6309(h) were approved by OAL on April 22. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 132; Vol. 11, No. 1 (Winter 1991) p. 108; and Vol. 10, No. 4 (Fall 1990) p. 131 for background information.)

-On March 25, OAL approved OSB's new section 5191, Title 8 of the CCR, which incorporates the provisions of a new federal regulation (29 C.F.R. Part 1910.1450) relating to control of occupational exposures to hazardous chemicals in laboratories. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131; Vol. 11, No. 1 (Winter 1991) p. 109; and Vol. 10, No. 4 (Fall 1990) p. 132 for background information.)

-On May 16, OSB conducted a public hearing regarding its proposed amendments to sections 1504, 1539, 1540, 1541, 1541.1, 1542, 1543, 1544, 1546, 1547, Plate C-22, and Plates C-24a through C-24e of the Construction Safety Orders, Title 8 of the CCR, concerning excavations, trenches, and earthwork. The proposed language is identical to the federal standard contained in 29 C.F.R. Part 1926, Subpart P. The majority of comments received were supportive of OSB's plan to adopt the federal standard, although many parties in attendance suggested various clarifications. Staff will review the comments received and present the regulatory action to the Board for adoption at a future meeting. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131 for background information.)

-At its April 18 meeting, OSB adopted proposed amendments to section 3041 and 3071, Title 8, and section 7-3071, Title 24 of the CCR (Elevator Safety Orders). The proposed amendments would extend the photoelectric tube by-pass switch and medical emergency elevator requirements to hydraulic elevators. At this writing, the proposed amendments await review and approval by OAL. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131 for background information.)

-On April 18, OSB also adopted proposed amendments to sections 3360, 3364, and 3366, Title 8 of the CCR (General Industry Safety Orders). The proposed changes would require all employers to provide toilet facilities on location or readily available transportation to such facilities. These amendments were approved by OAL on May 9. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 131 for background information.)

The following regulatory proposals, reported in CRLR Vol. 11, No. 2 (Spring 1991) at pages 131-32, have yet to be adopted by OSB and/or submitted to OAL for approval:

-the proposed adoption of section 5192, Title 8 of the CCR (General Industry Safety Orders), regarding hazardous waste operations and emergency response;

-proposed revisions to Title 8, sections 3000, 3001, 3002, 3009, 3021, 3022, and 3041 (Elevator Safety Orders); Title 24, sections 7-3000, 7-3001, 7-3002, 7-3009, 7-3021, and 7-3041 (State Elevator Safety Regulations); and Title 24, section 5103 (California Building Code);

-proposed changes to Title 8, section 336 (regarding civil penalties and assessments);

-proposed amendments to sections 341, 341.1, and 341.3, Title 8, regarding permits for excavations, trenches, construction, and demolition; and sections 344(a) and 344.1, Title 8, regarding boiler and tank permit inspections schedules; and

-proposed amendments to section 3212(d), Title 8 of the CCR, and section 1711(h), Title 24 of the CCR, which would require that guardrail protections be provided for employees working within six feet of the edge of a roof and when employees are required to approach within six feet of the edge of the roof.

LEGISLATION:

SB 520 (Petris), as amended May 20, 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. This bill passed the Senate on May 23 and is pending in the Assembly Labor and Employment Committee.

SB 509 (Mello), as introduced February 26, would require OSB to promulgate revised regulations with respect to hospital elevator safety, consistent with specified standards. This bill is pending in the Senate Industrial Relations Committee.

AB 1674 (Margolin), as amended May 9, would require 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. This bill is pending in the Assembly Ways and Means Committee.

AB 1313 (Friedman), as amended May 30, 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 (Act) (Chapter 1616, Statutes of 1990). (See CRLR Vol. 10, No. 4 (Fall 1990) p. 132 for background information on the Act.) This Act, the first of its kind in the nation, makes it a felony criminal offense for a corporation or corporate manager to knowingly fail to disclose a serious concealed danger which may cause death or serious bodily injury. Possible hazards to workers must be disclosed to them, and possible hazards to workers or consumers must be disclosed to Cal-OSHA, which is then authorized to pass that information on to the regulatory agency with jurisdiction over that type of hazard. Assemblymember Friedman, who authored the Act as AB 2249 in 1990, is carrying AB 1313 in order to accommodate possible amendments to the Act. Both Friedman and the sponsors of the Act are afraid that the California Manufacturers Association and other opponents of the Act may succeed in repealing this law unless a more moderate version is enacted. Hence, it is expected that AB 1313 will define "serious concealed danger" in a somewhat more limited fashion in order to meet these objections and preserve the Act. AB 1313 is pending on the Assembly floor.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at pages 132-33:

AB 2110 (Friedman), as introduced March 8, would, among other things, declare that it is the public policy of this state to provide employees who work on video display terminals (VDTs) with a safe and healthy work environment;

require 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; require 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. This bill is pending in the Assembly Committee on Labor and Employment.

AB 644 (Hayden), as amended May 15, would require that every computer 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; provide that, on or before January 1, 1995, every employer shall modify and upgrade each operator's VDT workstation to conform to those standards; and require every employer, on or after January 1, 1994, to provide 15-minute work breaks, as specified, to employees who routinely perform repetitive keyboard motions four hours or more per shift. This bill is pending in the Assembly Ways and Means Committee.

AB 2104 (Bane), as introduced March 8, would require OSB, on or before July 1, 1992, to review existing research studies and other information on the effects of continuous exposure to low-frequency magnetic radiation, and to promulgate standards for safe levels of exposure to radiation emitted from VDTs, including personal computer screens and all other computer display monitors. This bill would also require that any of those types of VDTs sold or manufactured in this state after January 1, 1993, be in conformance to the standards promulgated by OSB. This bill passed the Assembly on May 30 and is pending in the Senate Industrial Relations Committee.

AB 1723 (Bane), as introduced March 8, would provide 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. This bill is pending in the Assembly Labor and Employment Committee.

AB 147 (Floyd), as introduced December 14, would amend existing law to provide that evidence of 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. This bill passed the Assembly on April 25 and is pending in the Senate Judiciary Committee.

AB 581 (Floyd), as amended April 24, would require every person, including a flag person, flagger, construction traffic controller, and supervisor, who directs and controls moving traffic or who immediately supervises the selection, placement, and maintenance of traffic control devices on any public street or highway where construction work is occurring, to complete a specified training course and be registered by DOSH in accordance with specified registration procedures. This bill would require OSB to promulgate safety standards, orders, rules, and regulations for the safe control of moving traffic on a public street or highway where construction work is occurring. This bill, which would also exclude various governmental entities and any employee thereof from its coverage, passed the Assembly on May 29 and is pending in the Senate Industrial Relations Committee.

AB 1184 (Floyd), as introduced March 6, would repeal Labor Code section 6434, which imposes specified civil penalties on employers, except those that are governmental entities or any employer for first-instance violations of occupational safety and health provisions (other than serious, willful, or repeated violations) resulting from the inspection of the employer's establishment or workplace, unless the establishment or workplace is cited, on the basis of the inspection, for ten or more violations. This bill passed the Assembly on May 16 and is pending in the Senate Industrial Relations Committee.

AB 1545 (Friedman). Existing law prohibits DOSH from imposing civil penalties against any employer for first instance violations of any standard, rule, order, regulation, other than serious, willful, or repeated violations, resulting from the inspection of the employer's establishment or workplace, unless the establishment or workplace is cited, on the basis of the inspection, for ten or more violations. As amended May 20, this bill would delete this prohibition on the imposition of civil penalties. This bill, which would also increase the dollar amounts of civil and criminal penalties which may be assessed for violations of certain occupational safety or health laws or regulations, passed the Assembly on May 30 and is pending in the Senate Industrial Relations Committee.

AB 1495 (Tanner), as amended May 30, would require an employer's injury prevention program to contain specific provisions which include, among the employees covered by the program, all of the employer's employees and all other workers who the employer controls or directs on the job. This bill is pending on the Assembly floor.

AB 1718 (Boland). Existing law permits DOSH to issue elevator permits based upon a certificate of inspection by any qualified elevator inspector of any municipality, upon proof of its satisfaction that the safety requirements of the municipality equal the minimum safety requirements for elevators adopted by OSB. As introduced March 8, this bill would permit the operation of an elevator if a permit for its operation is either issued by, or in behalf of, DOSH, in conformance with these provisions. This bill passed the Assembly on May 9 and is pending in the Senate Industrial Relations Committee.

AB 1980 (Horcher), as amended May 13, would extend to 45 days from the date of filing the time within which OSB is to act upon a petition for reconsideration before the petition is deemed to have been denied. This bill is pending in the Assembly Ways and Means Committee.

AB 198 (Elder), as introduced January 7, would require DIR's Division of Labor Statistics to include in its 1992 annual report an analysis of the rate and frequency of injuries to oil refinery and chemical plant workers as compared to other industrial occupational categories. This bill is pending in the Assembly Labor and Employment Committee.

AB 383 (Tucker). Existing law imposes criminal penalties on every employer or employee having direction, management, control, or custody of any place of employment or employee who violates or fails or refuses to comply with any occupational safety or health standard, order, or law, or who directly or indirectly, knowingly induces another to do any of those acts. As amended April 2, this bill would make those criminal penalties applicable to every employer, whether or not the employer of an employee potentially exposed because of specified occupational safety or health violations, 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. This bill was rejected by the Assembly Ways and Means Committee on April 24; however,

the Committee granted the bill reconsideration on that same day.

LITIGATION:

In *Los Angeles Unified School District v. State of California,* No. B046357 (Apr. 19, 1991), the Second District Court of Appeal held that the school district is not entitled to be reimbursed approximately $45,000 which it spent to comply with certain provisions of Cal-OSHA regulations which required the school district to repair and modify several buildings. The court held that Article XIIIB, section 6 of the California Constitution, permits but does not mandate the reimbursement to local governments for expenditures pursuant to a statute enacted prior to January 1, 1975; however, the Cal-OSHA regulations in question were adopted to implement legislation enacted in 1973. The court added that because the District failed to establish that the costs were incurred as a result of anything other than the pre-1975 Cal-OSHA legislation, its costs are unreimbursable. (See Vol. 10, No. 1 (Winter 1990) p. 116 for related litigation.)

RECENT MEETINGS:

At OSB's March 21 meeting, D.A. Swerrie of Swerrie, Inc., presented Petition No. 286, requesting the Board to amend section 3001(b)(5), Title 8 of the CCR (Elevator Safety Orders), which currently requires elevators in multi-unit residential buildings serving no more than two dwelling units to comply with applicable provisions of ANSI/ASME A17.1-1984, Parts V and XXI. According to Cal-OSHA Director Steve Jablonsky, the petitioner, a safety consultant, believes that recent revisions to section 3001(b)(5) are not in the best interest of the people of California. Swerrie contends that the ANSI/ASME A17.1 Part XX regulations should be the referenced standard for section 3001(b)(5) rather than Part XXI, which is intended to apply to private residences.

At the meeting, OSB staff acknowledged that the petition has merit and agreed that section 3001(b)(5) should be amended regarding the referenced standard concerning elevators in multi-unit residential buildings. Following a discussion, OSB granted the proposed petition; staff will initiate the necessary regulatory procedures to implement this change.

At OSB's April 18 meeting, the Board discussed the cost implications of proposed regulations on inspection and testing of fire department metal aerial ladders and elevating platforms. According to OSB staff, the amendments constitute the first regulatory proposal on this subject since the court in *Carmel Valley Fire Protection District, et al. v. State of California,* 109 Cal. App. 3d 521 (1987), held that such regulations require state reimbursement for compliance costs. However, the Department of Finance has indicated that it would not recommend approval for the costs that would be incurred by the state in implementing OSB's proposed standard. A California Firefighter Foundation (CFF) representative stated that CFF recognizes the state's serious financial condition, but contends that this situation should not hinder the improvement of health and safety standards for firefighters. CFF offered its assistance to OSB in attempting to draft and adopt these regulations; OSB requested that CFF acquire the information and facts necessary to pursue the regulatory changes and present them to the Board at its August meeting.

At its April 18 meeting, OSB adopted staff's recommendation to deny Kimberly Kay Rowley's petition (File No. 287) to eliminate the use of gas-treated poles by utility companies, and to adopt regulations requiring that a lift be used for outside line construction performed o gas-treated poles. Petitioner contende that the number of accidents associate with gas-treated poles increases annual ly; in fact, Ms. Rowley sustaine injuries when she fell from a gas-treat ed utility pole.

The Division's evaluation repor found that gas-treated poles, as oppose to "liquid treated" poles, have a harde pole surface, which results in climbin gaffs not properly penetrating the pole. However, DOSH reported that these poles are no longer being used, and tha if hard or unsafe poles are encountered many utility companies instruct thei linepeople to call for a bucket truck o lift to avoid climbing the pole. Finally the Division received insufficient writ ten documentation to justify new o revised regulations. As a result, staf recommended—and OSB agreed—tha no regulatory revisions are necessary and the petition should be denied.

FUTURE MEETINGS:

September 26 in Los Angeles.
October 24 in San Francisco.
November 21 in San Diego.
December 19 in Sacramento.

DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE
Director: Henry Voss
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The California Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of Food and Agricultural Code section 101 *et seq.*, which provides for CDFA's organization, authorizes it to expend available monies, and prescribes various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex. Among other things, CDFA is authorized to adopt regulations to implement its enabling legislation; these regulations are codified in Chapters 1-7, Title 3, Chapters 8-9, Title 4, and Division 2, Title 26 of the California Code of Regulations (CCR).

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the exclusion, control, and eradication of pest harmful to the state's farms, forests, parks, and gardens. The Department alsc works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

CDFA collects information regardin agriculture and issues, broadcasts, and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining, and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director, who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors. In addition to the director's general prescribed duties, he/she may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The executive office oversees the activities of seven operating divisions: