



agent in connection with the sale, transfer, encumbering, or leasing of real or personal property. In response to the Assembly's request, the Department is proposing to adopt, amend, and repeal numerous regulations in Articles 1, 2, 3, 4, and 5 of Subchapter 10, Chapter 2, Title 10 of the California Code of Regulations. The public comment period on the proposed changes ended on April 11.

*Court Upholds S&L Refund Claim to Taxes.* On January 20, Los Angeles Superior Court Judge Vernon G. Foster signed a judgment in favor of California Federal Savings and Loan of Los Angeles requiring the City of Los Angeles to refund almost \$7.5 million in local taxes which the savings and loan paid between 1982 and 1984. The judge ruled that state law preempts the City of Los Angeles from imposing a business tax on savings and loan associations and other financial institutions. As a result of the ruling, Los Angeles alone could be refunding more than \$102 million in taxes and interest.

Michael Groynzka, the trial attorney for California Federal, contended in the suit that the city's imposition of the business license taxes on financial institutions was unlawful because section 23182 of the state Revenue and Taxation Code prohibits the imposition of any local tax or license on financial institutions other than that tax imposed by the state under the Bank and Corporation Tax Law.

The *Los Angeles Daily Journal* quoted Judge Foster as saying "there can be no uncertainty concerning the Legislature's intention in enacting section 23182 to preempt the field of taxation of financial corporations....In circumstances of conflicts between claims by charter cities and the Legislature as to whether under Article XI, section 5 of the [California] constitution the subject of legislation is of local or statewide concern, the issue is for the court to determine under the facts of each case, but the findings of the Legislature are entitled to great deference."

Los Angeles City Chief Administrative Officer Keith Comrie emphasized that the city will appeal. Assistant Los Angeles City Attorney Myrtle Dankers said, "it's a very important issue. In addition to the funds involved, what is at stake is the basic premise of whether the state can preempt charter cities' taxing authority in any situation."

Prior to section 23182, California law exempted banks from local tax action, while other financial institutions such as savings and loan associations

were being taxed. With the enactment of section 23182, cities were prohibited from taxing any financial institutions, but were promised refunds through a program called the Financial Aid to Local Agencies (FALA). In 1982, one year after Los Angeles promised to waive its business tax on financial institutions, the legislature repealed the FALA program and the state began keeping all the taxes collected by the cities. In response to this legislative action, Los Angeles refused to again waive its tax on financial institutions and the struggle for tax dollars began.

*Regulations Approved.* DSL's amendments to sections 107.600-107.603, Subchapter 7, Article 6, Title 10 of the California Code of Regulations, were approved by OAL and became effective in March. (For a detailed discussion of these changes, see CRLR Vol. 8, No. 1 (Winter 1988) p. 83.)

#### LEGISLATION:

*AB 2855 (Bane)*, as amended on March 23, would revise existing law with respect to savings associations as follows: revise certain requirements with respect to the articles of incorporation; authorize the Savings and Loan Commissioner to enforce any statute or regulation of the Federal Deposit Insurance Corporation; revise provisions of existing law which provide that without the prior approval of the Commissioner no association shall acquire the assets or savings accounts liability from another financial institution, to instead provide that no association shall acquire all or

substantially all of the assets or savings account liability of a branch or branches of another financial institution; revise certain net worth requirements with respect to the computation of total assets; authorize an association to permit an organization which is maintained primarily for political purposes to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties; make revisions with regard to the authorized securities in which an association may invest pursuant to existing law; specify certain other authorized investments in bonds and securities; provide loan to value ratio guidelines for real estate loans; authorize the reorganization of mutual associations as mutual holding companies; require the board of directors of every association to establish standards for the maintenance of hazard insurance considered necessary to protect the institution's interest in real estate security for its loans; and revise specified provisions with respect to conservatorships and receiverships. At this writing, this bill is pending in the Assembly Committee on Finance and Insurance.

*AB 2664 (Costa)* was a two-year bill which died in committee. The bill would have exempted a person who performs the duties of a director of a savings association from liability based on alleged failure to discharge his/her obligations as a director, and would have authorized further limitations of, or indemnification for, such personal liability in the association's articles of incorporation or bylaws.



## DEPARTMENT OF INDUSTRIAL RELATIONS

#### CAL-OSHA

*Director: Ronald T. Rinaldi*  
(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 government employees at the state and local levels.

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 re-

ceives some funding from, the federal OSHA.

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 government 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



# REGULATORY AGENCY ACTION

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:

*Update on Past Regulatory Changes.* The Office of Administrative Law (OAL) approved proposed changes to the California Code of Regulations resubmitted by OSB which affect sections 6003, 6003(f), 6004 and Appendix A of Title 8 (Accident Prevention Signs and Tags). (See CRLR Vol. 7, No. 4 (Fall 1987) p. 82 for details on OAL's initial disapproval.) OAL also approved changes to the following regulations: sections 450-467 of Articles 1-4, Title 8; and sections 5-1601(a)-(g) of Part 5, Title 24; Part 6, Articles 1, 5, and 7, sections T8-453, T8-4750, T8-480, T8-481, T8-484, T8-485, T8-492, T8-493, T8-543, and T8-544, Title 24 (Unfired Pressure Vessels). OAL approved changes adopted at the September 24 OSB meeting to sections 8600-18, Title 8 (Telecommunications Safety Orders), and section 5214, Title 8 (General Industry Safety Orders).

## LEGISLATION:

*AB 2884 (Margolin)* would require

OSB to revise the California Code of Regulations to include any carcinogens on the Governor's list of chemicals known to cause cancer or reproductive toxicity. At this writing, AB 2884 is pending in the Assembly Ways and Means Committee.

*AB 2888 (Floyd)*, as amended on March 7, would give the chairperson and members of Occupational Health and Safety Appeals Board a \$100 per diem for each meeting instead of the current annual salaries of \$57,000 for the chairperson and \$55,000 for members. This bill would also repeal the provision requiring each member to devote his/her full time to the performance of his/her duties. AB 2888 is pending in the Assembly Committee on Labor and Employment.

*AB 2901 (Floyd)* would require that video display terminals and peripheral equipment used in any place of employment conform with design and ergonomic standards of the American National Standards Institute. The bill's provisions apply only to equipment manufactured on or before January 1, 1990. AB 2901 is also pending in the Assembly Committee on Labor and Employment.

*AB 1160 (Floyd)* was signed by the Governor on February 1 (Chapter 5, Statutes of 1988). AB 1160 requires the Labor Commissioner to hold an employee complaint hearing within ninety days of the date of determination that a hearing will be held.

*AB 2433 (Klehs)*, previously reported in CRLR Vol. 8, No. 1 (Winter 1988) p. 85, has been amended and no longer affects Cal-OSHA.

*AB 867 (Floyd)*, as amended, would require that Cal-OSHA once again enforce worker safety standards in the private sector. AB 867 would require the Director of the Department of Industrial Relations to advise the U.S. Department of Labor that California intends to continue the operation of the Cal-OSHA private sector enforcement program. The Director would be further required to take all steps necessary to secure matching funds to enforce Cal-OSHA in the private sector, in accordance with the plan approved pursuant to the federal Occupational Health and Safety Act of 1970. AB 867 has passed the Assembly and is currently pending in the Senate Committee on Industrial Relations.

*SB 1858 (Green)*, introduced February 1, would restore funding for Cal-OSHA through the 1988-89 fiscal year by putting \$7 million into the state

budget for the new fiscal year, which would support a full Cal-OSHA program. This bill would declare that it is to take effect immediately as an urgency statute. SB 1858 is currently pending on the Senate floor.

The following bills, discussed in detail in CRLR Vol. 7, No. 3 (Summer 1987) pp. 106-07, died in committee: *SB 419 (Rosenthal)*, regarding standards for indoor air pollution in commercial buildings; *SB 513 (Rosenthal)*, regarding permits for construction sites; *SB 1359 (Royce)*, regarding DOSH's safety provisions relating to mines and tunnels; and *AB 2317 (Waters)*, regarding amusement park ride inspections.

## LITIGATION:

At this writing, no date for oral argument before the California Supreme Court has yet been scheduled in *Ixta, et al. v. Rinaldi*, No. C002805 (Third District Court of Appeal). In appellate proceedings, the Third District unanimously ruled that Governor Deukmejian exceeded his authority when he vetoed \$7 million in Cal-OSHA funding from the state budget in 1987. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 85; Vol. 7, No. 4 (Fall 1987) pp. 80-81; and Vol. 7, No. 3 (Summer 1987) p. 106 for background information.)

## RECENT MEETINGS:

During OSB's December 17 meeting in Sacramento, the Board adopted several proposed safety orders: section 3384 of Title 8 (General Industry Safety Orders) dealing with hand protection; and sections 8345 through 8399, Appendix A and B, Articles 1-10 of Title 8 (Ship Building, Ship Repairing, and Ship Breaking Safety Orders). The changes to section 3384 were filed with OAL on January 12 and the changes to sections 8345 through 8399 were filed with OAL on January 22.

Permanent variances from the requirements of section 3000(d)(11) of Title 8 (Elevator Safety Orders) were granted to Vacuum Parts, Inc., Crescenta Valley Temple Association, and Placencia Residence Associates.

Also in December, the OSB considered a petition brought by Daniel Wilson at its July 1987 public hearing, proposing an amendment to the High Voltage Electrical Safety Orders regarding electric underground utility systems. DOSH had reviewed Wilson's petition to clarify sections 2932, 2940.2, and 2943 of Title 8 (High Voltage Electrical Safety Orders), concluded that amendments were unnecessary, and recommended that the petition be denied. The



Division further pointed out that section 2706(a)(2) provides that the High Voltage Electrical Safety Orders do not apply to installations subject to the jurisdiction of the Public Utilities Commission. With reference to certain possible unsafe work practices in the petitioner's work environment, the Division advised the petitioner to submit a written complaint to Federal OSHA, because the Division is currently not exercising jurisdiction over worksites in the private sector.

At its January 21 meeting in Los Angeles, the OSB adopted several proposed safety orders including revisions to section 2940.9 of Title 8 (High Voltage Electrical Safety Orders) regarding protection from backfeed voltages. This proposal was developed by an advisory committee as a result of a petition by IBEW, Local Union 1245. This safety order addresses the IBEW's concern that electrical workers be isolated from the danger of backfeed voltages. OAL approved this rule change on February 22.

Permanent variances from sections within the California Code of Regulations were granted to the following entities: Harsh Investment Corporation and Prince of Peace Episcopal Church from section 3000(c)(13) of Title 8 (Elevator Safety Orders); City of Fresno Transit Department from section 3037(e)(1)(B) of Title 8 (Elevator Safety Orders); Texaco Trading and Transportation from section 485 of Title 8 (Unfired Pressure Vessel Safety Orders); and California and Hawaiian Sugar Company from section 3099(b)(2)(A) from Title 8 (Elevator Safety Orders).

The proposed decision of the Board panel which heard a December 10 request by Bramalea Pacific for a permanent variance from section 3292(f) of Title 8 (General Industry Safety Orders) was withdrawn. The applicant has filed a motion with the Board to reopen the record in order to amend its application and introduce evidence which was not available at the time of the hearing.

The OSB denied a petition submitted in August 1987 by California and Hawaiian Sugar company which proposed changes to section 3099(b)(2)(A) of Title 8 (Elevator Safety Orders), regarding manlift brakes. The proposed amendment would have added an exception to read: "Exception: Where space is a limitation, the brake may be located between the head pulley and the drive means." OSB Executive Officer Steven Joblonsky indicated that the Elevator Safety Orders were completely revised in 1970, at which time the installation of an overspeed/reverse brake on

the shaft extension opposite the main drive shaft was required. This section of the shaft is not stressed or worked through normal motor and braking action. The Division's report states that the justification for this requirement was based on two fatal accidents caused by drive shaft failure. The Division recommended that the petition be denied and that space limitation problems associated with the installation of new head assemblies on existing manlifts be handled through permanent variance requests.

Also discussed at the January meeting was OAL's disapproval of proposed changes to section 5209, Article 110 of title 8 (General Industry Safety Orders), regarding carcinogens.

During OSB's February 21 business meeting in Sacramento, the Board adopted a proposed safety order, dealing with section 3009, Article 6 of Title 8 (Elevator Safety Orders) and section 3009, Part 7 of Title 24. Because these changes also affect provisions under the authority of the State Building Standards Commission, they must first be approved by the Commission before they may be forwarded to OAL. OSB also adopted a safety order affecting section 525 of Title 8 (Unfired Pressure Vessel Safety Orders)

of the California Regulatory Code. This is a change with no regulatory effect.

Permanent variances from sections within the California Code of Regulations were granted to Acme and Sons from section 3000(c)(13) of Title 8 (Elevator Safety Orders); and to Tosco Corporation from section 770(B) of Title 8 (Boiler and Fired Pressure Vessel Safety Orders).

OSB granted a petition brought by the California Professional Fire Fighters (CPFF). The petition requested that special regulations be adopted in Title 8 (General Industry Safety Orders) to govern the "overhaul" stage of fire fighting. Overhaul is the activity which follows extinguishment of a fire. The CPFF contends that fire fighters spend as much time with overhaul as they do with the actual extinguishment of a fire, and during that time they are exposed to toxic fumes, spilled chemicals, and asbestos. The Division contacted several large fire departments in the state to get their position on the necessity of such regulations.

**FUTURE MEETINGS:**  
To be announced.



## DEPARTMENT OF FOOD AND AGRICULTURE

### DEPARTMENT OF FOOD AND AGRICULTURE

*Director: Jack Parnell*  
(916) 445-7126

The Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of the Agriculture Code which provide for the Department's organization, authorize it to expend available monies and prescribe 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.

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 pests harmful to the state's farms, forests, parks and gardens. The Department also 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.

The Department collects information regarding 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, one of whom serves as legislative liaison and as executive secretary of the Board of Food and Agriculture. In addition to the director's general prescribed duties, he may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.