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REPORTER

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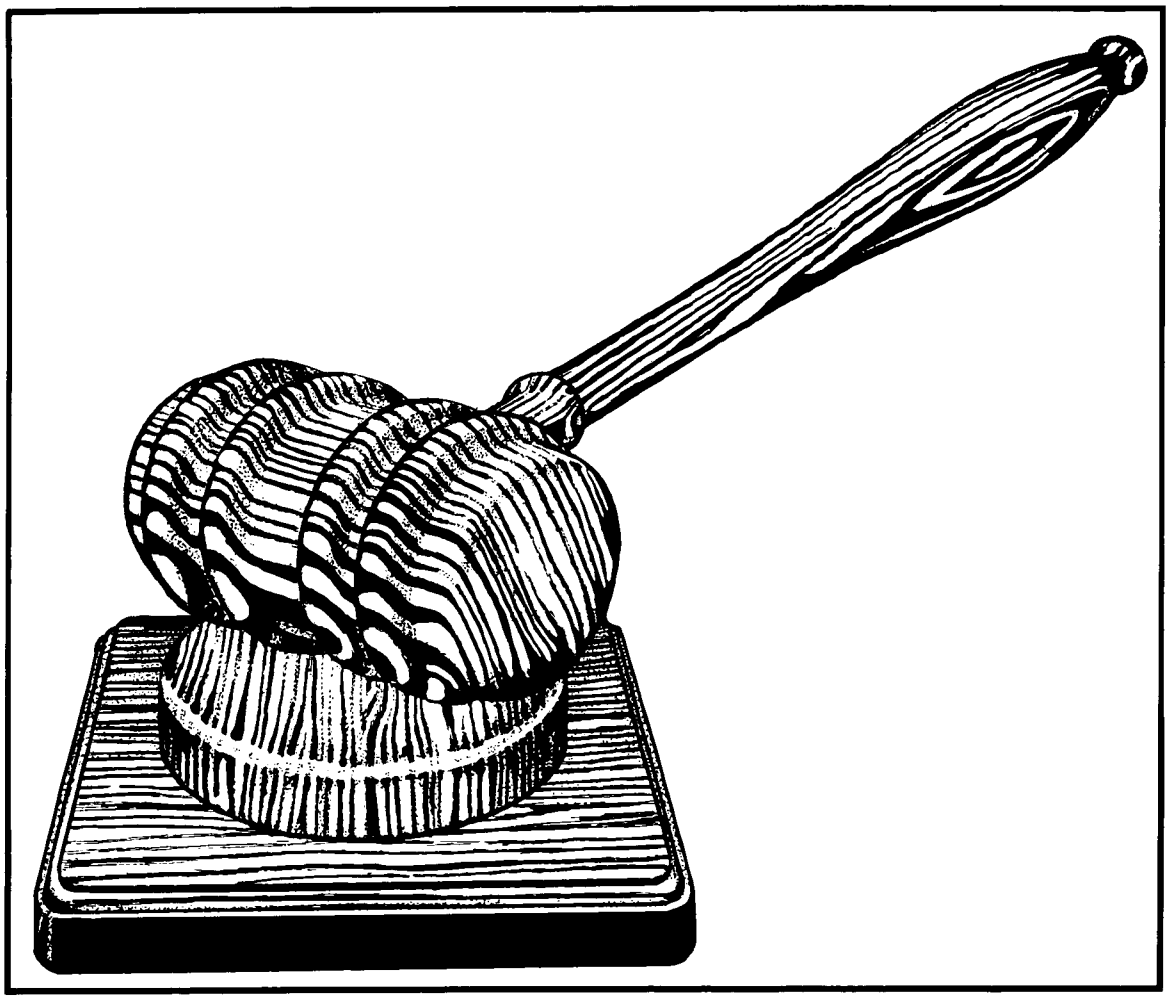

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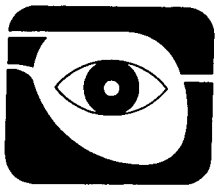

HAS THE SUN SET ON SUNSET?: A POSTMORTEM IN CALIFORNIA

by Gene Erbin

"The great creative work of a federal agency must be done in the first decade of its existence if it is to be done at all. After that it is likely to become a prisoner of bureaucracy and of the inertia demanded by the establishment of any respected agency. This is why I told F.D.R. over and over again that every agency he created should be abolished in 10 years. And since he might not be around to dissolve it, he should insert in the basic charter of the agency a provision for its termination. Roosevelt would always roar with delight at that suggestion, and of course never did do anything about it."

Justice William O. Douglas
Go East, Young Man

WHAT IS SUNSET?

Most simply, "Sunset" increases agency accountability by compelling legislative oversight. The typical Sunset law sets a termination date for a program, law or agency. Unless the Legislature acts to recreate the program, law or agency before that date, it expires. The automatic expiration date is the mechanism designed to compel legislative evaluation.

The most typical Sunset approach abolishes both the agency and its organic law. This was the approach of then-Speaker McCarthy's two Sunset bills — AB 3145 and AB 46. (*See infra.*)

The Colorado law, widely considered to be a model Sunset Statute in other respects, originally provided for termination of the agency but not its underlying organic law. Thus, when an agency is abolished the statute requiring licensure remains. However, there is no longer an agency to issue the license. The resulting confusion is testimony to the often careless state legislative process.

A less typical approach is found in this year's California Sunset proposals. AB 24, 54, 143, 975 and SB 26 propose comprehensive abolition of entire Cabinet level agencies, each including many boards and commissions. Each Cabinet level agency is scheduled for wholesale termination every several years. This method would abolish all agencies in State government, but permit the Governor to transfer the duties of terminated agencies to successor agencies by submitting a reorganization plan to the Legislature.

Program review is another, less common, Sunset approach. This method subjects legislative programs, not agencies, to Sunset review. California's most prominent program Sunset law is found in Education Code Section 62000 et seq. and subjects nineteen educational programs to Sunset review and termination. (*See infra.*)

When Sunset was first "discovered" by the Colorado Chapter of Common Cause it was heralded as a panacea for unresponsive, irresponsible and ailing government.[1] It was believed that Sunset would institutionalize legislative branch evaluation and oversight. Sunset would have the additional salutary effect of inducing the executive branch to police itself. Threatened with termination, agencies would introduce their own housecleaning measures. How could it fail?

Sunset specifies that unless the legislature acts to save an agency, the agency expires. Sunset laws uniformly provide legislators with criteria for evaluating an agency to determine if its life should be extended. The evaluative criteria are commonly consumer oriented and clearly shift the burden of proving the need for continued existence to the Sunsetted agency.

In order to institutionalize the Sunset process, the best Sunset laws require periodic review of targeted agencies. No agency has a life of more than 6 to 10 years and each agency is scheduled for termination at the end of that time. Newly-created agencies are scheduled for termination within 6 to 10 years of their creation. It was thought that continuing periodic review would ensure legislative commitment to the Sunset process.

Has it worked? Has Sunset produced the dedicated legislator, committed to lean, efficient government? After the passage of Sunset laws, are legislators more eager to scrutinize agencies and more willing to terminate unneeded agencies?

Apparently not: Sunset has had some limited success, but it has not substantially reduced red tape or terminated wasteful agencies or programs. Sunset has not transformed sedentary legislators into energetic, responsive agency overseers. Nowhere is this more true than in California.

COLORADO: A CASE HISTORY

In 1976, Colorado became the first state to enact a Sunset law. The law, proposed by Common Cause of Colorado, was limited and terminated 39 specific boards and commissions within Colorado's Department of Regulatory Agencies. One-third were scheduled for termination every other year beginning on July 1, 1977.

The statistics of Colorado's first year review indicate substantial success. Four of the first thirteen agencies to be reviewed were terminated (Board of Professional Sanitarians, Board of Shorthand Reporters, Board of Mortuary Science, and the State Athletic Commission); two boards were consolidated (Board of Barber Examiners and Board of Cosmetologists); three agencies were continued with substantial modifications (the State Boards of Passenger Tramway Safety, Collection Agencies and the Racing Commission); and four were extensions of their termination dates (The State Boards of Institutions for the Aged, Nursing Home Administrators, the Public Utilities Commission and the Division of Insurance).

However, statistics alone, particularly those contained in government press releases, are often misleading. The Board of Mortuary Science was allowed to expire, but the Colorado Legislature voted to recreate the Board a year later. The Colorado Legislature extended the termination date of four agencies. Two of the extended agencies were the large Division of Insurance and the even larger Public Utilities Commission. Subsequent actions by the Colorado Legislature found many functions of the few remaining terminated agencies assumed by others. Further, reviews in subsequent years have followed a trend of increasingly routine approval of agency continuation.

This trend is the product of three widely recognized phenomena. First, indisputably necessary agencies such as the PUC are included in the sunsetted category. There are natural monopolies in Colorado requiring a PUC of some sort. Partial deregulation is a legitimate goal, but the Sunset formula mandates a "yes or no" where only a "yes" is possible. The result is a dilution of Sunset review, and possibly routine oversight of the agency. Second, the failure of legislators to oversee agencies in general gives the agencies a chance to dominate information flow during the Sunset proceedings. Many agencies are "special funded," funded entirely from fees generated from licensees; thus even the budget hearings are ten minute affairs. Agency oversight hearings are rare and expertise about the agencies is lacking throughout the Legislature. Third, the Sunset process gives agency and rule adherents an opportunity to mobil-

ize forces on behalf of agency red tape where it protects existing competitors. Further, the "yes-no" formulation leads even tradesmen tired of red tape to argue against Sunset because the scenario of no agency at all is worse. Those interests most likely to benefit from the Sunset of a particular agency, consumers, small business and prospective entrants, unfortunately lack presence and influence.

The result of re-creations, extensions and minor terminations has been an erosion of legislative support for the Sunset concept in Colorado. This year the lack of support for Sunset culminated in the introduction of a Sunset repeal bill. The bill's advocates claimed Sunset was too time consuming and not cost effective. Sunset detractors stated that Colorado has spent approximately $400,000 in two years of review with negligible cost savings. Sunset supporters, admitting that Sunset is not a panacea, offered two admendments to save the Colorado Sunset law. The first amendment abolished one of the expensive performance audits required by law. The second lengthened the review cycle from 6 to 10 years.[2] The bill to repeal Sunset was then defeated by a two to one margin.

OTHER STATES AND CONCLUSIONS

Although Colorado has had the most experience with Sunset, other states have had similar experiences. At this writing 35 states have enacted Sunset legislation. Most states passed workable Sunset laws and report some progress. Other states, however, enacted patently foolish comprehensive measures. For example, Iowa, West Virginia and Mississippi embraced the Sunset concept by enacting huge laws. In each instance only an Executive veto spared starry-eyed law makers a fate similar to that of Alabama's over-anxious legislators. Alabama's Sunset law was so poorly written that at the end of the 1977 legislative session the Alabama House was compelled to vote on over 200 agencies in three hours. Legislators were required to vote "yes" or "no" with no modifications permitted. This blitzkrieg process repeated itself in 1978.

In reviewing the modest successes of the few workable Sunset laws, the following elementary conclusions emerge:

1. *Sunset should not be applied on a comprehensive basis.*

Comprehensive Sunset legislation is unworkable and ultimately self-defeating. Some agencies will simply not be terminated. No one seriously advocates the abolition of Food and Agriculture or the Department of Corrections. It is wasteful and delusional to subject such agencies to mandatory termination dates. Politicians tire of recreating agencies that should not have been threatened with termination in the first place. They become discouraged and suspicious of the process. The result is that properly Sunsetted agencies receive *pro forma* approval.

This problem is further complicated by the lack of evaluative criteria. It is nearly impossible to establish helpful evaluative criteria for large indispensable agencies. Evaluative reports produced for large agencies are uniformly long, complex and indefinite. Legislators have neither the time or inclination to assimilate such lengthy reports, particularly under the threat of Sunset termination.

2. *Sunset is a workable, productive technique when applied on a limited basis to small regulatory agencies.*

The vast majority of states that have enacted limited Sunset laws have had some success when focusing on the regulatory activities of barbers, morticians, yacht brokers and watchmakers. Some boards are abolished, others consolidated.

More important, Sunset has required state legislators to scrutinize to some extent these otherwise ignored agencies. Some states have enacted reform measures, including the addition of public members to previously industry dominated agencies; others have used the heavy hammer of termination to force some cost cutting reforms.

When faced with extinction, even the most antediluvian agency may streamline to prevent termination. For example, in 1975, one year before Colorado enacted its Sunset law, the State Board of Shorthand Reporters certified only 3 of 84 applicants. Within a year, and before Sunset was actually enacted, the certification rate had increased to 50%.

Small regulatory agencies are more susceptible to definitive, yes-no, evaluative studies. It is fair to assume that most states have at some time reviewed their professional and occupational licensing agencies to determine if continued regulation is justified. It is equally fair to assume that every study has recommended the abolition of some boards and the consolidation of others. California has conducted at least three studies with similar recommendations. If state-sanctioned studies conclude some agencies are unjustified, it is logical to subject at least those and similar agencies to Sunset review.

3. *Sunset should not be viewed exclusively as a cost-cutting measure but also as a management efficiency tool.*

History indicates that Sunset is not an effective budget cutter. Only three of the 35 Sunset states report significant savings. Kansas and Washington report savings of approximately $100,000 and $120,000 respectively. Texas reported savings of $7.1 million in 1979. Most individuals regard this figure with suspicion, if not incredulity.

In 1979, Texas abolished the following nine agencies: Pink Bollworm Commission, Stonewall Jackson Memorial Board, Texas *Navy*, Inc., Battleship *Texas* Commission, Pesticide Advisory Commission, Office of Vehicle Equipment Safety Compact Commission, Board of County and District Bond Indebtedness, Texas Private Employment Agency Regulatory Board, and Board of Manager of Texas State Railroad. In the same year, four agencies were combined into two. It is hard to imagine saving $7.1 million by abolishing the Pink Bollworm Commission.

In general, Sunset will not save enormous sums that show up in the budget. Further, agency adherents will argue the "special funded" agencies (financed by license fees) are "free." While they may be politically inexpensive, the hidden costs are imposed industrywide and act as a tax on consumers, whatever the amount. Moreover, the abolition of protective, anticompetitive agencies and their red tape does have a ripple effect throughout the economy. It is hard to compute the total dollar savings that result from reduced consumer prices and less restrictive and artificial barriers to entry, but it is undeniably true that these more significant savings occur.

4. *Sunset has not generated the anticipated and desired public participation; it has generated agency protective lobbyists.*

When Sunset was first enacted it was hoped that the public would participate in both the agency review and the decision to terminate or recreate. This has not occurred. Persons without a direct economic stake in the decision have not participated.

In almost every state the lobbying efforts of barbers, cosmetologists, morticians and harbor pilots have twisted and warped the Sunset process into a series of exemptions, extensions and modifications. Every year the process repeats itself — which leads to the final point.

5. *The key to Sunset is the will and commitment of the legislator.*

This point is childishly simple but nonetheless true. Sunset presents legislators with analytically difficult and politically painful decisions. The whole purpose of Sunset is to institutionalize the making of difficult decisions. Without the Sunset termination cycle legislators would, and have, avoided these decisions. The enactment of a Sunset law is only the first step in a long and continuous decision-making process. When a legislator votes for a Sunset law he is committing himself to the arduous process for the duration.

Some legislators recognize the task. On October 16, 1978 California State Assemblyman Lockyer, Chairman of the

Assembly Committee on Labor, Employment and Consumer Affairs, issued a memorandum entitled "Sunset-AB 3145" (McCarthy's first Sunset bill, *see below*). The memorandum poses a series of questions and answers. One question asks, "How can we guarantee legislative interest and active, well-informed participation in the Sunset process?" The answer reads, "We can't."

SUNSET IN CALIFORNIA

The first year of the 1977-1978 legislative session saw the introduction of Sunset to California. In that year approximately twelve Sunset bills were introduced. The only measure to pass was Senate Concurrent Resolution No. 3 (Mills), which directed the Legislative Analyst to review the Sunset concept.

SB 5 (Rains) was one of the bills that failed. SB 5 proposed a Sunset pilot project that subjected the Department of Insurance to a termination date of January 1, 1981. The bill provided that the Legislature could recreate the Department, but only for a six year period. SB 5 was introduced on December 6, 1976 and amended for the fifth and final time on August 30, 1977. The final version of SB 5 was not a Sunset bill; it merely proposed that the Legislative Analyst study the Department of Insurance and report its findings to the Legislature by September 1, 1979. As an indication of things to come, even this hollow "Sunset" measure failed. (SB 5 was introduced unsuccessfully the following year, this time as SB 820.)

The Legislative Analyst's report (77-30) required by SCR 3 was released in December, 1977. The report concluded that the Legislature already had sufficient oversight mechanisms and that Sunset was an unnecessary and inefficient oversight tool. The report stated that the fundamental element of effective oversight is legislative commitment to the oversight process. If the Legislature is firmly committed to serious oversight the following tools exist and suffice: (1) The budget process; (2) The Office of the Auditor General; (3) The Office of the Legislative Analyst; (4) The Little Hoover Commission; and (5) The Senate and Assembly Offices of Research.

Legislative Analyst Report 77-30 is undoubtedly the leading California Sunset document. It is not the purpose of this article to debate the report's findings. However, this much can be said: the report was astonishingly accurate in predicting Sunset's bleak future in California.

Every year since 1977 has seen the introduction of a blizzard of Sunset bills. Every year has seen an equal number of casualties. The most successful Sunset measures have been AB 3145 (March 23, 1978) and AB 46 (December 4, 1978), both introduced by then-Speaker of the House McCarthy. The bills were nearly identical and proposed the following:

(1) The outright abolition of the State Council of Educational Planning and Coordination, The California Design Awards Committee, The Advisory Committee on Drug Manufacturing, The Colorado River Toll Bridge Compact, The Colorado River Toll Bridge Authority, The Interdepartmental Coordinating Committee Relating to Alcoholism, The Committee to fix the rate of interest paid on registered warrants, and The Board of Library Examiners. AB 46 added The Advisory Committee on The State Emergency Telephone Number, The Committee on Executive Salaries, and The Scenic Highway Advisory Committee.

(2) Sunsetting approximately 20 agencies within The Department of Consumer Affairs.

It should be noted that AB 3145 and AB 46 combined all the right features of Sunset bills. Both bills were limited to professional and occupational licensing groups most susceptible to and in need of Sunset review.

More important, both bills were enacting recommendations contained in state-commissioned studies of the targeted agencies. California has conducted at least three major studies of the licensing agencies in the Department of Consumer Affairs. All three studies unequivocally conclude that some agencies should be abolished and others consolidated. The Commission on California State Government Organization and Economy (The Little Hoover Commission) has twice completed studies. (September 14, 1967 and January, 1979.) Both studies recommended the abolition of some DCA agencies. In 1978 the DCA released its independently-authored Regulatory Review Task Force Report. Again, as before, the report concluded that some agencies should be terminated and others consolidated.

McCarthy also adroitly did not include the Board of Medical Quality Assurance in either AB 3145 or AB 46. In this way he avoided the wrath of the powerful California Medical Association. The only committee within BMQA to be Sunsetted was the Psychology Examining Committee (PEC).

AB 3145 was very successful. It cleared the Assembly easily and received only minor amendment in the Senate. However, it died on the last day of the session while awaiting Assembly concurrence of Senate amendments. We were told that AB 3145 died in the very last minutes because copies of the final version could not be distributed to the desks of the Assembly members before the deadline.

At the beginning of the 1979-1980 legislative session, Speaker McCarthy reintroduced AB 3145 (with slight modifications) as AB 46. AB 46 encountered little initial opposition, passing out of policy committee (Governmental Organization) by a 11-0 vote and fiscal committee (Ways and Means) by a 20-0 vote. At this point, the lobbyists came forward. The barbers, cosmetologists and geologists were vocal and well-organized in their opposition to AB 46. However, we have been told "it was the psychologists (the PEC) that singlehandedly scuttled AB 46." By the time AB 46 got to the Senate, the PEC had been amended out of the bill.

In its first Senate test, the Governmental Organization Committee chaired by Senator Dills, AB 46 died by a 2-1 vote; three votes short of the five needed for approval. The members simply avoided voting on the measure. The year before, AB 3145 had received unanimous 8-0 support in Dill's committee. There is a twofold explanation for the apparently schizophrenic legislative reaction to essentially identical bills. One reason is the intense pressure exerted by the psychologists and other professional groups. The other reason is reported in the July 20, 1979 *Sacramento Bee* and the July 23, 1979 *San Francisco Examiner*. Both papers editorialized that the Senate Governmental Organization Committee's contradictory vote occurred because McCarthy had opposed Dill's school aid bill. Both papers described Dill's and his committee's performance as "a fit of pique." Both editorials concluded by reaffirming their support for AB 46 and requesting Dill and his fellow committee members to behave rationally upon reconsideration. The pleas went unheeded. AB 46 died in Dill's committee.

AB 46 was the victim of internal squabbles elevated above the public trust, lobbying led by the PEC (in spite of a minority report by PEC supporting AB 46) and lack of commitment by our legislators to a cause they had publicly espoused.

AB 46 was supported by, among others, the Department of Consumer Affairs, Common Cause, some professional groups (e.g., architects) and three government-commissioned studies. AB 46 was a modest first Sunset step, neither exceedingly expensive (DCA estimated the cost of AB 3145 and AB 46 at $230,000 and $380,000 respectively), nor overly burdensome to the system. Although AB 46 would not have produced sweeping reform, it may have eliminated some superfluous agencies and established a favorable Sunset precedent.

The record of Sunset in California after AB 46 is dismal. There are very few Sunset laws on the books. Three of the more prominent provisions are described below. The histories of these three measures indicate a certain disdain for meaningful Sunset

review:

Board of Landscape Architects

Chapter 375, 1980, terminates the Board of Landscape Architects as of June 30, 1984 unless the Legislature enacts a law continuing the Board prior to that date. The Board, which has a projected 1981-1982 fiscal year budget of approximately $150,000, is preparing its Sunset response.

Board of Registered Construction Inspectors, Chapter 1416, 1978

Existing law provides that the Registered Construction Inspectors Law is to be repealed on July 1, 1981. Last session AB 1000, which would have extended the termination date to December 31, 1985, failed. This year, two identical bills (SB 206, AB 2114) have been introduced which would extend the termination date to December 31, 1986. SB 206 passed out of the Senate Business and Professions Committee on April 28 by a 5-1 vote. AB 2114 has also advanced to fiscal committee.

Program Sunset review of educational programs; Education Code Section 62,000 et seq.

Chapter 282, 1979, terminates the following 19 educational programs on the specified dates unless the Legislature votes to continue the programs:

(a) Termination date of June 30, 1981:
  (1) Driver training.
  (2) Instructional television.
  (3) Environmental education.
  (4) Special education for physically handicapped, mentally retarded, severely mentally retarded, and individuals with exceptional needs.

(b) Termination date of June 30, 1982:
  (1) Miller-Unruh Basic Reading Act of 1965.
  (2) Adult education.
  (3) Career guidance centers.
  (4) Demonstration programs in reading and mathematics.
  (5) Instructional materials.
  (6) Transportation.

(c) Termination date of June 30, 1983:
  (1) School improvement program.
  (2) Indian early childhood education.
  (3) Professional development centers and staff development centers.
  (4) Child care and preschool programs.
  (5) Mentally gifted minor programs.
  (6) Economic impact aid.

(d) Termination date of June 30, 1984:
  (1) Urban impact aid.
  (2) Bilingual education.
  (3) Indian education centers.

In order to ensure that the program review would occur, the Legislature, on the last day of the 1980 session, created the Joint Ad Hoc Educational Sunset Review Committee in Assembly Concurrent Resolution No. 157.

The program Sunset review is an ambitious undertaking covering 19 categorical educational programs costing over $1 billion. We have been told that the Sunset program was really a political compromise between Democrats who support state-mandated categorical educational programs and Republicans who support the bloc grant approach. In an effort to secure passage of his school aid bill (SB 8), Assemblyman Greene agreed to placate the Republicans by inserting the Sunset program. History supports the political compromise theory. Subsequent events indicate that no one was sincerely interested, then or now, in Sunset review of the nineteen programs.

The Joint Ad Hoc Educational Sunset Review Committee met once before this session. It has not convened this session. Inquiries to Speaker Brown's office reveal that no appointments have been made to the Committee this session, nor are appointments expected any time soon. The Assembly Office of Research, which was given the duty of preparing studies for each of the nineteen programs, released its report on Instructional Television in January, 1981. However, it has been learned that the office has since stopped work on the other reports due to lack of guidance from the unappointed Sunset committee.

The Legislature has responded to the June 30, 1981 termination date for the first four programs in a typically evasive manner. A flurry of bills has been introduced postponing termination dates and exempting favorite programs. A sampling of the bills follows:

AB 777 (Greene) delays the earliest termination date until June 30, 1982 and the latest until June 30, 1986. AB 777 also rearranges the review schedule but keeps the total of nineteen programs intact.

AB 519 (Vasconcellos) and SB 906 (Dills) both delete the Miller-Unruh Basic Reading Act from Section 62000.

SB 375 (Dills) extends the driver training termination date to June 30, 1985 (*see also* AB 651).

SB 10 (Carpenter) deletes the school improvement program, economic impact aid and urban impact aid programs from Sunset review and termination.

SB 1063 (Watson) postpones the termination date for the adult education program until June 30, 1987.

Serious review of the categorical educational programs is problematic.

As is always the case, this session has seen the introduction of a number of Sunset bills. (*See* CRLR Vol. 1, No. 1 (Spring 1981), "General Legislation.") Two bills exemplify the Legislature's current approach to Sunset.

AB 178 (Lockyer) proposed termination of the Contractors State License Board et al. on June 30, 1982 unless prior to that date the Legislature voted to continue the Board. On April 23, 1981 all of the Sunset provisions were amended out of AB 178.

As originally written on December 2, 1980, AB 54 (Filante) proposed Sunsetting all agencies of state government (with some exceptions) over a four year period commencing June 30, 1984 and ending June 30, 1988. By April 20, 1981 AB 54 had been amended down to a pilot project. AB 54, as then written, scheduled the Department of Health Services for termination on June 30, 1984. However, even this small project, reminiscent of Senator Rain's SB 5, was rejected. The bill was amended in a fashion similar to SB 5. AB 54 now preposterously proposes that every agency in state government be studied by June 30, 1986 and findings be reported to the Legislature. There are no termination dates and AB 54 is no longer a Sunset bill as such. The similarities between AB 54 and SB 5 are striking. If history repeats itself, AB 54 will be further amended to provide for the study of a single department. It will then be defeated.

CONCLUSION: SUNSET'S FUTURE

The future of Sunset in other states holds some promise. Legislators may now realize that Sunset is not a panacea, but rather, a useful oversight mechanism which, when focused and combined with legislative commitment, can produce some government reform. Sunset repeal measures in Colorado, Maryland and North Carolina have all failed. Legislators in Minnesota, Ohio and Pennsylvania are presently in the process of enacting Sunset laws.

Sunset in California is dead. Most legislators are "fed-up," "bored" or "sick-and-tired" of Sunset. Legislative attention has turned elsewhere. The Office of Administrative Law is now the cutting edge of regulatory reform in California. In fact, Gene Livingston, Director of the Office of Administrative Law, has testified against this year's Sunset bills on several occasions. (*See* CRLR Vol. 1, No. 1 (Spring, 1981) for complete analysis of OAL; *See also* OAL update *infra*.)

Senate Democrats are so bored with Sunset that they have invented a new reform program. On March 18, 1981 the Senate Democratic leadership (Senators Roberti, Carpenter, Rains, Presley and Keene) introduced the Government Red Tape Reduction Program (GRRP). The second bill in their reform package,

avowedly designed to stop "[t]he growth of unnecessary, complicated and costly government regulation [that] is choking the state's economy,"[3] is SB 512.

SB 512 (Rains) proposes the abolition of nine "redundant, superfluous and unnecessary" agencies. Six of the nine agencies named in SB 512 were also contained in McCarthy's AB 3145 and AB 46. Page 5 of the GRRP booklet describes SB 512 as a "Superfluous Entity Clean-Up Bill" to "abolish a long list of redundant and unnecessary entities which have spawned many burdensome regulations."

The description is false. Nine is not a long list and some of these agencies — Colorado River Toll Bridge Authority and California Design Awards Committee — have never met. By no stretch of the imagination have these agencies promulgated "many burdensome regulations."

This has been Sunset's fate in California — to be displaced and denied substance by the deregulation of GRRP and SB 512. Our legislators failed to enact SB 5, a defensible pilot project bill. They failed to enact either AB 3145 or AB 46. Sunset has yielded to symbolic posturing despite the fact that the widely respected Senator Rains still says "the Legislature must demonstrate the capacity to throw out obsolete and useless agencies."[4]

Sunset did not so much die in California as atrophy. Its decline is more a reflection of Legislative abandonment of oversight and the quiet hard work it entails than a cause of that abandonment.

FOOTNOTES

1. Actually, Texas first "discovered" Sunset. In 1974 Texas proposed a new state constitution containing several Sunset provisions. However, Texas voters rejected the proposed constitution.

2. Sunset supporters are not overly distressed by this repeal effort. Ardent Sunset advocates believe that Sunset laws should be subjected to Sunset review and termination; Sunset should not be exempt from Sunset. Sunset supporters do oppose Sunset critics who employ falsely-premised arguments. Sunset should not be repealed for not doing what it is not designed to do.

3. Senate President Pro Tem Roberti's March 17, 1981, press release: "Senate Democrats Axe Regulations."

4. *Ibid.*

PUBLIC INTEREST ORGANIZATION ACTION

Introduction:

Each regulatory agency of California government hears from those trades or industries it respectively affects. Usually organized through various trade associations, professional lobbyists regularly formulate positions, draft legislation and proposed rules and provide information as part of an ongoing agency relationship. These groups usually focus on the particular agency overseeing a major aspect of their business. The current activities of these groups are discussed as a part of the Summary discussion of each agency, *infra*.

There are, in addition, a number of organizations who do not represent a profit-stake interest in regulatory policies. These organizations advocate more diffuse interests — the taxpayer, small businessman, consumer, environment, future. The growth of regulatory government has led some of these latter groups to become advocates before the regulatory agencies of California, often before more than one agency and usually on a sporadic basis.

Public interest organizations vary in ideology from the Pacific Legal Foundation to the Campaign for Economic Democracy. What follows are brief descriptions of the current projects of these separate and diverse groups. The staff of the Center for Public Interest Law has surveyed approximately 200 such groups in California, directly contacting most of them. The following brief descriptions are only intended to summarize their activities and plans with respect to the various regulatory agencies in California.

AMERICAN LUNG ASSOCIATION OF CALIFORNIA
(213) 484-9300

The American Lung Association is concerned with the prevention and control of lung disease and associated effects of air pollution. Any legislative bill regarding respiratory care is of major concern to the Association. Several committees of the Association monitor the Air Resources Board, and the Association often supplies expert witnesses at Board meetings.

The Association's major focus is the reauthorization of the Clean Air Act. The Association opposes any relaxation of air quality standards and is working to maintain current health standards and deadlines for improving air quality.

CALIFORNIA CONSUMER AFFAIRS ASSOCIATION
(213) 736-2103

The CCAA is an affiliation of those local governments which have consumer affairs programs. The consumer affairs representatives from each participating city or county meet as an association to exchange information and decide what issues to address. The CCAA encourages its members to apply as public members to the various boards. Members have served on the Bureau of Home Furnishings, Bureau of Electronics and Appliance Repair, and the Bureau of Collection and Investigative Services.

A current bill of major concern to CCAA is AB 1079, which would prohibit public disclosure of complaints filed against licensees of the Department of Consumer Affairs until the complaint is fully adjudicated. They contend that this bill would keep the public from making a timely and fully informed choice of services and products. CCAA is lobbying against the bill.

With other consumer agencies, the CCAA monitors the Contractors State License Board. CCAA has obtained money for programs to monitor advertising of contractors on the local, rather than just the state level.

CALIFORNIA RURAL LEGAL ASSISTANCE
(916) 446-7901

California Rural Legal Assistance (CRLA) represents the legal interests of the rural poor on diverse issues including education, health, housing and farm labor.

CRLA engages in legislative and regulatory advocacy on behalf of its clients. In the future, CRLA may support housing and nursing home issues which would affect several regulatory agencies.

CALIFORNIA PUBLIC INTEREST RESEARCH GROUP OF SAN DIEGO
(714) 236-1508

CalPIRG is a nonprofit and nonpartisan organization funded and staffed by students from San Diego's three largest universities. It is the largest student funded organization of its kind in the state. CalPIRG helps San Diego residents with consumer issues through the Consumer Assistance Line at 236-1535.

CalPIRG is working on a nursing home study to analyze public citation records of local nursing homes and determine what health and safety violations have occurred. CalPIRG hopes this study will inform consumers, influence nursing home legislation and affect policies of the Board of Nursing Home Administrators.

CalPIRG's attorney, David Durkin, represents consumer interests before the Public Utilities Commission. Durkin is making many recommendations to the PUC including a new rate design for residential users. CalPIRG is also urging the elimination of blanket budgeting for research and development by San Diego Gas and Electric. CalPIRG seeks more detailed monitoring of large research and development expenses which ratepayers must finance. CalPIRG is also pressing the utility to reduce the cost and increase the efficiency of its conservation advertising.

CALIFORNIANS AGAINST WASTE
(916) 443-5422

Californians Against Waste (CAW) continues to lobby for SB 4, a "bottle bill" which would require a deposit on all beverage containers. CAW has little hope the bottle bill will pass this year. Therefore, CAW is working on a citizen initiative for the November 1982 ballot.

CAW also addresses recycling issues before the Solid Waste Management Board.

CITIZENS ASSERTING SUPREMACY OVER TAXATION
(213) 786-5977

CAST is a nonpartisan, nonprofit organization of California taxpayers working to "reclaim the power of taxation" by the initiative process. CAST believes citizens should not give the government of California complete discretion to set tax levels because waste and abuse inevitably ensue.

CAST is working on an initiative which is a proposed amendment to Article XIII, Section 29 of the California State Constitution. Essentially the initiative would prohibit any new tax, fee or levy to be imposed, or any existing one to be increased, without the consent of two-thirds of the affected taxpayers. Other provisions in the initiative give voters further control over the taxes, fees or levies. The initiative imposes a six year limitation on the lifespan of any voter approved measure. Another provision in the initiative would eliminate the 6% Sales and Use Tax over a five-year period.

CAST hopes to increase local control over state government through greater public accountability for taxing and spend-

ing. This initiative could affect fees or levies state agencies impose, e.g., licensing fees, since the legislature and the agencies would be prohibited from collecting any fees under the terms of the initiative unless two-thirds of the affected licensees agreed to them.

CAMPAIGN FOR ECONOMIC DEMOCRACY
(213) 393-3701

Campaign for Economic Democracy (CED) concentrates on energy issues, toxic waste control, housing and reproductive rights.

CED monitors the Public Utilities Commission and is particularly concerned with preventing a possible utility monopoly of solar and alternative energy sources. CED policy favors renewable resources and opposes nuclear power.

CED has also supported toxic waste control bills which would reduce toxic waste and create a fund to clean up abandoned waste sites.

CITIZEN'S ACTION LEAGUE
(415) 647-8450

The Citizen's Action League (CAL) is a nonprofit organization that motivates its members to work for and accomplish concrete improvements in their neighborhoods and cities.

One of CAL's major projects is to oppose utility rate increases. CAL works with the Public Utilities Commission and directly with utility companies, including San Diego Gas and Electric (SDG&E) and Pacific Gas and Electric (PG&E).

CAL is supporting legislation which would require automobile insurance companies to disclose information to the public about their investment and rate-setting practices. Presently, it is difficult to obtain information from insurance companies or the State Department of Insurance.

To locate the nearest California chapter, write or call the main headquarters at Citizen's Action League, 2988 Mission Street, San Francisco, California 94110.

COMMON CAUSE
(213) 387-2017

Common Cause (CC) enters its second decade in pursuit of this stated goal: obtaining a "more open, accountable and responsive government." CC is involved in regulatory advocacy and supports many bills which affect the regulatory agencies.

CC opposes AB 429, which would allow only one beer distributor per district, thus limiting competition.

A possible future project is a limited Sunset bill affecting the licensing boards in the Department of Consumer Affairs.

A present issue for CC is trucking deregulation. CC supports the Public Utilities Commission's proposals to eliminate minimum rates and reduce entry controls into the industry. Hence, CC opposed AB 1232 (Young) which would have delayed the PUC's proposals. The effect of PUC's proposals has been to restore competition in the trucking industry.

CONSUMER FEDERATION OF CALIFORNIA
(213) 388-7676

The Consumer Federation of California (CFC) is composed of 60 nonprofit state and local organizations and private individuals. The CFC strives to educate consumers in such areas as food, credit, nutrition, insurance, housing, health care, energy, utilities and transportation. The organization serves as a consumer advocate before state and local regulatory agencies and legislative bodies.

In the regulatory agency area, CFC is currently opposing the savings and loan bills which would allow fluctuation of home mortgage interest rates.

CONSUMERS UNION
(415) 431-6747

The Consumers Union is the largest consumer organization in the nation. CU publishes "Consumer Reports" and finances consumer advocacy on a wide range of issues in both federal and local forums. Historically, CU has filed several major lawsuits or amicus briefs in California lawsuits. CU has opposed milk supply and price fixing and supported termination of "fair trade" liquor laws (vertical price fixing) via court actions. CU's current major focus in California is legislative advocacy.

With other groups listed above, CU opposes AB 1079 prohibiting disclosure of complaints against licensees until the period for appeal on the ruling has expired. CU feels the public should be aware of the licensees' alleged violations long before the adjudication of the complaint has ended. CU argues that AB 1079 is inconsistent with the court system, which informs the public of pending litigation.

CU is also opposed to AB 650, which would partially deregulate savings and loans in California and AB 429, which would limit competition in wholesale beer sales.

CU recently testified before the Department of Food and Agriculture when the Department was hearing public comments pursuant to AB 1111 review of rules.

CU's California office, consisting of two full-time attorneys, has recently been reduced to one attorney due to budget constraints.

NATIONAL AUDUBON SOCIETY
(916) 481-5332

The National Audubon Society is a major organization whose main goals are to conserve wildlife and help establish and protect wildlife refuges, wilderness areas and wild and scenic rivers. The Society supports measures for the abatement and prevention of all forms of environmental pollution. A major project is preservation of the remaining California condors.

The Society is presently most active before the Coastal Commission, the Water Resources Control Board and the Forestry Board. Working with the Energy Commission, the Society is planning strategies for new energy development. The Society supports the New Energy Plan which calls for conservation and the use of solar energy, providing for new energy needs and minimizing the need for nuclear energy.

The Society is concerned with preserving the State Coastal Commission. Local chapters are working against the Coastal Zone Management Act and other legislation which threatens the Commission's existence.

The Society also continues to work with the Water Resources Control Board, which controls the use of streams leading into Mono Lake. The lake's level has severely declined due to Los Angeles' increased pumping from the lake. Because Mono Lake is an important nesting habitat for gulls, the Society has filed a lawsuit against the Department of Water and Power to preserve the lake's level.

NATURAL RESOURCES DEFENCE COUNCIL
(415) 421-6561

The NRDC is a major national organization with an "established role in the formation of environmental policies and a commitment to conserve and improve the quality of our human and natural environment." The NRDC San Francisco office works on Western environmental issues, including energy, coastal zone management, forestry and public lands.

In mid-1980, NRDC published an alternative energy scenario for California which

advocated decreasing use of nuclear power plants. NRDC is now encouraging state agencies to take action to implement these goals. To accomplish this, NRDC is working as an advocate before the Public Utilities Commission (PUC) and the Energy Commission.

Every two years, the PUC conducts rate and increase hearings for utilities operating within the state. This summer NRDC will participate in the hearings for Pacific Gas and Electric (PG&E). NRDC will focus on two issues: PG&E's marginal cost and the overall effectiveness of PG&E's conservation program.

The Energy Commission is in the process of establishing energy efficient standards for appliances, residential buildings, and commercial structures. California was the first state to impose energy efficient standards for appliances. Presently, California's appliances use 20-30% less electricity than other states.' The Energy Commission is considering strengthening existing standards and broadening the number of appliances covered. The NRDC is working with the Energy Commission's technical staff to make the standards for appliances more stringent.

A key recommendation of NRDC's scenario was saving energy through upgrading energy efficient building standards. Partially at NRDC's urging, the Energy Commission instituted proceedings a year ago to review and perhaps upgrade its present energy standards. The Energy Commission set standards in December, 1980 and the NRDC has participated in hearings on these standards. The Energy Commission was to have adopted the final set of energy standards in June, 1981.

In addition to its work in residential energy efficient building standards, the NRDC has urged the Energy Commission to adopt similar standards for the commercial building sector. The Energy Commission plans to begin formal proceedings this summer to hear proposals for such standards. NRDC plans to participate in these proceedings to insure that any standards drafted are not only technically feasible but also meet conservation standards.

The NRDC has also been active in the development of local coastal programs required by the Coastal Act. As the original deadline for completion of all local coastal plans approaches, NRDC has been working with the Coastal Commission and state legislature on extension programs for some plans not yet completed.

The Model California Coastal Act is presently under attack in the state legislature by prodevelopment forces seeking to significantly weaken the act. NRDC is cooperating with other environmental groups to insure that the impact of this important piece of natural resource legislation is not diminished.

PACIFIC LEGAL FOUNDATION
(916) 444-0154

The Pacific Legal Foundation (PLF) was founded to represent the public interest by supporting free enterprise, private property rights and individual freedom. PLF devotes most of its resources to litigation. Suits are brought anywhere in the United States. Some California cases having regulatory impact and involving PLF follow.

Pacific Legal Foundation v. California Coastal Commission

PLF has filed an appeal from an order of the Superior Court, Los Angeles County, granting summary judgment in favor of the California Coastal Commission. The suit charges that the Commission is acting beyond its authority under the California Coastal Act in requiring private property owners to give up public easements in exchange for Commission approval; for example, to repair or maintain property located in the coastal area. While the court agreed with PLF that the language of the Commission's Public Access Guidelines was vague, the court concluded that the validity of the Guidelines could be determined only on a case-by-case review.

Pacific Legal Foundation v. State Water Resources Control Board

The California Ocean Plan requires, among other things, the removal of 75% of suspended solids from wastewater and the absolute prohibition of sewage sludge discharge into the ocean. The result is a mandate for land disposal of the great quantities of sludge generated. PLF feels scientific data indicates that ocean disposal could be beneficial to ocean ecology and that economic costs of complying with the Ocean Plan may be more than small municipalities can afford.

PLF has served a complaint on the State Water Resources Control Board, seeking to enjoin implementation of the Ocean Plan because of the State's failure to comply with the California Environmental Quality Act which requires an environmental impact report.

Pacific Legal Foundation v. State Energy Resources Conservation and Development Commission; Pacific Gas & Electric Company v. State Energy Commission

These two nuclear moratorium cases were consolidated on appeal. The United States Court of Appeals for the Ninth Circuit has heard the oral arguments.

The federal courts have recently ruled that California laws placing a moratorium on the construction of nuclear power plants are unconstitutional. Representing a coalition of citizen groups, PLF successfully argued for a key section of the California nuclear power laws to be declared unconstitutional. The law had indefinitely prevented nuclear power plant licensing in California. In the case brought by Pacific Gas & Electric Company, another federal court ruled that all regulation of construction and operation of nuclear power plants is strictly reserved to the federal government. The two cases were consolidated on appeal.

PLANNING AND CONSERVATION LEAGUE
(916) 444-8726

The Planning and Conservation League (PCL) is a public interest lobby group aimed at conserving and protecting California's natural resources. PCL interacts with numerous state agencies, including the Air Resources Board, Board of Forestry, Coastal Commission and the Water Resources Control Board.

PCL is lobbying for key legislative bills affecting the environment. PCL supports toxic waste bills which would establish a hazardous waste site council, require the use of "best available technology" to reduce wastes by 10% and create a fund to clean up abandoned waste sites.

PCL is also supporting a series of bills which would create a $75 million Energy and Resources Fund to be invested in California's natural resources to protect and upgrade them.

PCL opposes SB 260, which seeks repeal of the California Coastal Act of 1976. PCL is working to retain the Coastal Commission.

PUBLIC ADVOCATES
(415) 431-7430

Public Advocates focuses on infant formulas, hazardous dumping in third world countries and food distribution in the inner cities. Public Advocates has set up stores for inner city food distribution in Oakland and San Francisco.

Public Advocates is presently monitoring the Department of Savings and Loan and financial institutions generally to gauge the financial community's response to inner city needs.

PUBLIC INTEREST CLEARINGHOUSE
(415) 557-4014

The Public Interest Clearinghouse is a resource and coordination center for public interest law, focusing on the San Francisco Bay area. It is a cooperative venture of Bay Area law schools, including Hastings, Santa Clara and San Francisco. The Clearinghouse publishes a directory of public interest organizations to update their activities.

The Clearinghouse places students in California's regulatory agencies to work on the AB 1111 review process. Also, the Clearinghouse publishes a regulatory and legislative alert to inform the public of recent developments in public interest issues.

SIERRA CLUB
(916) 444-6906

Sierra Club volunteers are active before many boards, including the Energy Commission, Air Resources Board, Board of Forestry and the Coastal Commission.

The Sierra Club publishes "Energy Clearinghouse," a newsletter dealing with energy issues and legislation. The Club is currently working with the Energy Commission to revise energy efficient building standards, requiring new buildings to be more energy efficient. The Sierra Club is seeking speedy adoption of the standards, contending that each year of delay causes the building of more energy inefficient homes. Adoption of the standards has already been delayed past the statutory deadline.

The Club opposes several bills which would eliminate energy efficient building standards or severely weaken the Energy Commission's authority to set such standards.

The Sierra Club considers SB 351 the most threatening bill in the regulatory hopper at present. SB 351 would reduce the Energy Commission's authority to set building standards and would codify compromises the Commission made with the building industry during adoption of the building standards.

The Sierra Club also monitors the Air Resources Board. The Club is continuing to work for the lowest possible vehicle emission standards. The Club has recently shown interest in the problem of combustion and disposal of toxic chemicals.

The Sierra Club reviews the development permits submitted to the Coastal Commission on a continuing basis. The Club is helping with the transition from local coastal commissions, which are being terminated as local plans are adopted. (*See* Coastal Commission discussion, *infra*.) The Sierra Club is arguing for a strong state commission to oversee the local commissions.

In regular appearances before the Forest Practices Board, the Club supports logging practices and reforestation, which protect streams and future forest stock.

INTERNAL GOVERNMENT REVIEW OF AGENCIES

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

THE OFFICE OF ADMINISTRATIVE LAW (OAL)

Director: Gene Livingston
(916) 323-6221

OAL continues to review and reject proposed regulations. A review of OAL's files indicates, as before, (*See* CRLR Vol. 1, No. 1 (Spring, 1981) at 2-8) that the majority of regulations are rejected on the basis of: lack of necessity (failure of the rule-making file to include facts sufficient to demonstrate a need for the regulation) and failure to adequately respond to opposing public comment. Lack of authority and consistency appear to be the second most used standards.

MASTER PLAN:

On April 1, 1981 OAL released its Master Plan for Regulation Review. The review of all existing regulation is to be completed in accordance with the following schedule:

June 30, 1981 – Titles 1,7,9,11,12,15, 20,21,23.

January 31, 1982 – Titles 2,3,4,5,13, 14,19.

July 31, 1982 – Titles 8,10,16,17,18, 22,25.

Of course, the schedule is just a general guide and some agencies have now been given extensions. The Master Plan contains the specific review dates for each agency and interested individuals should consult the Master Plan or the particular agency for exact dates. The two most important dates for individuals interested in participating in the review process are: 1) the public comment ending date for each regulation or group of regulations; and 2) the date upon which the reviewing agency will submit its Statement of Review Completion to OAL. The latter date commences the six month period during which individuals may petition OAL to review a specific regulation. (Government Code Section 11349.7(g).)

When the Master Plan was released on April 1, 1981, the Department of Education had not submitted a review plan to OAL. However, it has since been learned that the Department of Education has submitted a review plan and intends to fully participate in the AB 1111 review of existing regulations.

APPEALS:

On March 31, 1981, pursuant to Government Code Section 11343 the California Board of Accountancy (the Board) filed with OAL proposed regulation Section 53, Title 16 CAC. The Board is responsible for overseeing the licensing of accountants and for establishing and maintaining the integrity and dignity of the accounting profession. (Business and Professions Code Section 5000 et seq.) Proposed Section 53 was adopted pursuant to Business and Professions Code Section 5018, which provides, in pertinent part, that "[t]he Board may by regulation, prescribe, amend or repeal rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession."

Proposed Section 53 provides: "Discrimination Prohibited. No Licensee or registrant shall engage in any conduct or practice which shall deny any person an opportunity or benefit of employment within the accounting profession based on race, color, religious creed, national origin, ancestry, physical handicap, sex, marital status, sexual orientation or age."

On April 30, 1981, OAL rejected Section 53 stating: ". . . [W]e are returning section 53 for failure to meet the requirement of 'necessity' as defined in Government Code Section 11349(a) and 'authority' as defined in Government Code Section 11349(b)."

OAL further said that the Statement of Reasons was defective because: "[T]he rulemaking file in this case contains no facts which indicate that employment discrimination by accountants is responsible for underrepresentation of minorities in the accounting profession."

On May 8 and 9, the Board voted unanimously to appeal OAL's rejection of Section 53 to the Governor and on May 18, 1981 the Board filed an appeal. On May 29, 1981, pursuant to Government Code Section 11349.5, the Governor overruled OAL's rejection of proposed regulation 53.[1] On June 5, 1981, Byron S. Georgiou, the Governor's Legal Affairs Secretary, issued a nine-page explanation of the Governor's action. The June 5, 1981 opinion states that the Governor believes the Board's Statement of Reasons adequately demonstrates the factual basis for the regulation and refers at length to the Board's Statement of Reasons (*See* June 5, 1981 opinion for complete discussion of the Statement).

The Governor's opinion states that the Board need not "*prove* that the accounting profession has engaged in intentional invidious employment discrimination" in order to adopt the contested regulation, but only "*state* facts which it feels underlie the need for the regulation." OAL has no authority to require the Board "to *prove* that its determination is accurate" before approving the regulation. (Emphasis added.)

The opinion further states: "The Board of Accountancy felt that adoption of the regulation defining employment discrimination as unprofessional conduct was reasonably necessary to further the integrity and dignity of the accounting profession. OAL is in no position to second guess the expertise of the professional governing board in this case."

LITIGATION:

On January 8, 1981 the Division of Allied Health, Board of Medical Quality Assurance, filed a proposed amendment to Title 22 CAC Section 1399.443 with OAL. The amendment proposed to change the content of the examination administered by the Acupuncture Advisory Committee and required of all applicants for a certificate to practice acupuncture in this state. The proposed amendment would have required an examinee to demonstrate a basic knowledge of clinical science and medicine so that an accupuncturist would be able to recognize an ailment he/she was not qualified to treat and refer the patient to a properly trained health practitioner.

On February 6, 1981, OAL rejected the proposed regulation, stating the Board did not have the authority to adopt the regulation and had failed to demonstrate the factual need for it. OAL's rationale was that a knowledge, however cursory, of clinical sciences could not be required of acupuncture examinees.

The Board's appeal to the Governor was not successful. The 30 day appeal period expired without the Governor overturning OAL's rejection of the proposed regulatory change.

On June 12, 1981 the Division of Allied Health, at the behest of the Acupuncture Advisory Committee and after consultation with the Office of the Attorney General, agreed to file suit against OAL. On that date it was not known when the suit would be filed, but it was acknowledged by Board counsel that the suit would be filed in Sacramento Superior Court, probably in late July or early August.

Although specifics of the lawsuit were not revealed, it was learned that a primary argument against OAL will be that the scope of the acupuncture exam is exclusively within the Board's jurisdiction and that the Acupuncture Advisory Committee was entirely authorized to rely on its members' expertise when proposing changes in the exam.

LEGISLATION:

A large number of bills have been introduced this session that pertain to OAL. Some of these bills are discussed in the General Legislation Section. The bills listed below are those which potentially have the most immediate and drastic impact on OAL's and other agencies' operations.

AB 1013 (McCarthy) would prohibit state agencies from issuing, utilizing, enforcing or attempting to enforce any guidelines or other policies unless the guidelines or policies have been adopted pursuant to the procedures of OAL. If any agency attempts to issue or enforce guidelines not approved by OAL, OAL would be authorized to determine the validity of the guideline or policy and to announce that determination to the Legislature, Governor, courts and public.

The practical effect of this bill, if adopted, would be to forbid the use of any type of informal rulemaking or policymaking by agencies. All such policies would have to be formally submitted to OAL for OAL approval. Furthermore, the bill does not provide a time lag for agencies to submit their informal policies to OAL for ratification. Consequently, if AB 1013 is approved, many agencies will be left with unenforceable policies until such time as OAL approves them – if ever.

AB 1014 (McCarthy) is sponsored by OAL and described by OAL as a "clean-up" bill. However, AB 1014 proposes a number of substantive changes in the law. Some of these changes are:

1. Existing law requires OAL to "prescribe regulations for carrying out the provisions of this chapter." (Government Code Section 11344(b).) AB 1014 would delete this requirement and, instead, provide that OAL may adopt regulations.

This cavalier approach to its statutory mandate to produce regulation is just another indication of OAL's intransigent unwillingness to unveil its procedures to public scrutiny. Now OAL is seeking legislative ratification of its clandestine operations. If AB 1014 is approved, OAL, no longer required to adopt formal regulation, will be able to change its informal policy without informing or receiving comment from the affected agencies or members of the public. One wonders if AB 1013 will apply to OAL. This preferential treatment afforded OAL will only serve to further garble the already undependable, sporadic communications issuing from OAL and in turn exacerbate the growing hostility between OAL and the rest of government.

One can only imagine the concerns of legal scholars as they struggle to reconcile the California Supreme Court's *Armistead* ruling with OAL's attempt to enforce policies that have not been adopted through the regulatory process.

2. AB 1014 would increase the material required to be contained in the rulemaking file and require a sworn statement by an agency official attesting to the veracity and completeness of the file.

Agency personnel uniformly chafe at the notion that OAL does not trust them to honestly perform their rulemaking duties. They regard the requirement of a sworn statement as a gratuitous insult to their integrity and another example of OAL's overreaching pomposity.

3. Existing law requires OAL to disapprove and return a regulation to the promulgating agency within 30 days of its submission to OAL by the agency. AB 1014 would delete the requirement that OAL return the disapproved regulation within the 30 day time period.

Agency personnel abhor this thought and fully expect that if AB 1014 is approved, OAL will notify an agency that its regulation was rejected "only when OAL gets around to it." Agency personnel already lament OAL's poor communications and wring their hands at the thought that AB 1014 will give OAL license to employ even sloppier communication procedures.

4. Existing law requires OAL to review each regulation against the five statutory standards contained in Government Code Section 11349.1. AB 1014 would authorize review pursuant to the provision in this "chapter." The effect of this seemingly innocuous change is to give OAL statutory authority for actions presently taken by OAL without benefit of statutory authorization. The law authorized OAL to review regulations against the five statutory standards – necessity, authority, consistency, clarity and reference – and to reject regulations that fail to meet any of these standards. As a corollary, Section 11349.1 also states that OAL "shall approve the regulation if it complies with the standards set forth in this section." However, in its first nine months, OAL has rejected numerous regulations for reasons other than failure to comply with the five statutory standards (failure to respond to public comment, inadequate Statements of Reasons, etc.). Apparently, AB 1014 is a belated attempt to legitimatize these formerly illegitimate grounds for disapproval.

Among other things, AB 1745 (Leonard) proposes to:

1. Amend Section 11340.1 to read that it is the Legislature's intent that agencies require performance standards instead of prescriptive requirements whenever the former are less burdensome;

2. Require agencies to include in the Statement of Reasons why certain technology is required and why alternative proposals were discarded;

3. Redefine the "necessity" standard so that the agency must demonstrate in the rulemaking file that no less burdensome regulatory approach is available.

AB 1785 (Statham) would require the Governor, when overruling an OAL rejection of a regulation, to transmit to the Legislature the reasons for the overruling and the agency's Statement of Reasons.

AB 1828 (Naylor), as amended, would require OAL to submit a plan for periodic review of existing regulation to the Legislature and the Governor by December 31, 1982. The plan ensures review in not less than 5 nor more than 10 years after the previous review.

AB 1864 (Leonard) would add a sixth standard by which all regulations must be measured. "Demonstrated effectiveness" would mean that "any specific technology or equipment mandated for use by a regulation shall have been proven to have operated successfully under field conditions for a minimum of one year and to have achieved at least 95% of expected performance levels."

AB 1930 (D. Brown) would require agencies to include in both the notice of proposed regulatory action and the Statement of Reasons "an estimate of the range of reasonable costs or savings to private persons or entities affected by the regulation."

AB 1931 (D. Brown): Government Code Section 11347 permits any interested person to petition an agency requesting the adoption, amendment or repeal of a regulation. Section 11347.1 requires an agency to deny such a petition within 30 days of receipt and to reconsider its decision within 60 days after receiving a petition for reconsideration. AB 1931 would amend Sec-

tion 11347.1 to provide that after denial of a petition for reconsideration, the petitioner may appeal the decision directly to OAL, which in turn may approve or disapprove the regulation.

AB 2165 (Costa) proposes adding clause (m) to Government Code Section 11349.7. Clause (m) would require OAL, at the request of any standing select or joint committee of the Legislature, to initiate a priority review of any regulation regardless of the Master Plan review schedule. The priority review must be completed within 60 days of receipt of the request for priority review from the committee.

This bill is widely acknowledged as a compromise legislative veto bill. Although this bill presents serious problems of political coercion and special interest lobbying, AB 2165 does not raise the grave Constitutional concerns contained in a legislative veto bill. For this reason, AB 2165 is more palatable to legislative veto opponents.

Footnotes:

1. Please refer to Executive Order B-86-81 of May 28, 1981. The order establishes a protocol for the Governor's handling of agency appeals.

OFFICE OF THE AUDITOR GENERAL

Auditor General: Thomas W. Hayes (916) 445-0255

The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California Legislature. The OAG is under the direction of the Joint Legislative Audit Committee (JLAC). The JLAC is comprised of 14 members; 7 from each house, 8 Democrats and 6 Republicans. Assemblyman Ingalls is the current Chairman. The JLAC has the authority "to determine the policies of the Auditor General, ascertain facts, review reports . . . take action thereon and make . . . recommendations to the Legislature . . . concerning the state audit . . . revenues and expenditures . . ."(Government Code Section 19501.) The JLAC receives requests to perform an audit from Committee Chairpersons, JLAC members and Officers of the Legislature. If approved by the JLAC, the request is forwarded to the OAG.

Government Code Section 10527 authorizes the OAG "to examine any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property, of any agency of the State . . . and any public entity including any city, county, and special district which receives state funds . . ." In addition to the traditional fiscal audit, the OAG is also authorized to make "such special audit investigations, including performance audits, of any state agency . . . and any public entity . . . as requested by the Legislature."

The OAG receives more requests to perform audits from the JLAC than it has the capability to perform. The OAG prioritizes requests and on concurrence by the JLAC refers the request to one of three divisions (*see infra*). The OAG has a staff of 114 professionals. Chief Deputy Kurt R. Sjoberg was unaware of the OAG's budget.

FINANCIAL AUDIT DIVISION:

This division performs the traditional CPA fiscal audit. All such audits are performed according to the auditing standards developed and issued by the United States General Accounting Office. During 1980 this division issued 122 reports. Some of these reports were done pursuant to the Federal, State, and Local Federal Assistance Amendments of 1976. The amendments require that all state agencies receiving federal funds be audited once every three years. Compliance with these requirements enables California to receive $275 million annually in revenue sharing funds and maintain its high bond ratings.

In addition to these audit reports, the OAG sent each state department a letter identifying prevalent control and systems weaknesses. The letter (report) revealed generally improper controls and systems review that have exposed the state to loss, fraud and waste. The most serious weakness involves poor procedures for collecting and recording receivables. The state has lost millions of dollars in interest because of slow and sloppy accounts receivable procedures. This report (001.1), released in May, 1981, is available to the public.

The Division's major project for next fiscal year is, as Chief Deputy Sjoberg described, "a phasing in of a first time, complete review of the combined funds of the state." This will be the state's largest financial audit and involve approximately $34 billion of State and Federal money.

INVESTIGATIVE AUDIT DIVISION:

The Investigative Division investigates allegations of fraud, waste and abuse in state government received under the Reporting of Improper Government Activities Act (Government Code Section 10540 et seq.). Since the Act became law on January 1, 1980 the OAG has received 1,800 contacts and accepted 547 allegations for investigation. All complaints are confidential and the individuals who contact the OAG are guaranteed anonymity. Although some complaints are sent by letter, 76% of the allegations are received by the OAG over its toll free, 24-hour phone (800-952-5665).

Upon receipt of an allegation the OAG invokes an initial internal screening process. If sufficient corroborating evidence is uncovered, the OAG requests permission from the JLAC to conduct a field investigation. After receiving JLAC approval, the OAG either conducts the field investigation or permits the implicated agency to conduct its own investigation. This latter course is adopted only when the OAG is convinced that the agency can perform an independent and objective analysis of the allegation.

At the conclusion of the field or agency investigation, the OAG reports to the JLAC. If the report concludes that there is improper activity, the proper corrective action is suggested. If the JLAC approves the report it is forwarded to the agency and the agency has 30 days in which to institute corrective action. The JLAC has no enforcement power. However, if the agency does not respond within 30 days the JLAC is authorized to release its report to the public. Apparently, this threat of public disclosure is sufficient power; to date, no agency has refused to implement the suggested corrective action.

Chief Deputy Sjoberg told us that this program cost $120,000 in 1980. "Direct recoveries at least equal to $120,000" were made. He stated the program is a huge success in terms of discharges, prosecutions, deterrence and systems improvements. A report produced by the OAG on this program (1-81-1) was released in May, 1981 and is available to the public.

PERFORMANCE AUDIT DIVISION:

The Performance Audit Division reviews programs funded by the state to determine if they are efficient and cost-effective. All performance audits are approved by the JLAC. In 1980 the OAG completed 28 performance audits which, if certain recommendations are adopted, could result in savings of $50 million annually.

After the OAG completes a performance audit, the JLAC convenes to approve it. The audit is given to the subject agency one week before submission to the JLAC and agency comments are included in the final report submitted to the JLAC. After submission to the JLAC the report remains confidential for 48 hours.

Historically, the majority of performance audits have been performed in those areas where the majority of budget dollars are spent: Education, Health Services, Medi-Cal, Social Services, State Personnel, Civil Service, etc. The OAG's 1980 Annual Report summarizes the 28 performance audits completed in 1980. The

individual audits are available upon request.

Although the OAG is part of the Legislature, its high degree of professionalism appears to insulate it from the political vicissitudes of that body, giving it some independence. A recent reform has added more insulation. Until 1980 the Auditor General served at the pleasure of the JLAC. Now the Auditor General is employed by the Legislature and a majority vote of both houses is required to replace him.

It should be noted that AB 739 (Ingalls) proposes some moderate substantive changes in the OAG's mandate. One provision of AB 739 would specify that every contract entered into by a public entity which receives state funds is subject to OAG examination. All contracting parties must submit to an OAG audit. A second provision repeals a Sunset termination date of January 1, 1982 that was originally attached to the Reporting of Improper Governmental Activities Act, extending the Act indefinitely.

THE COMMISSION ON CALIFORNIA STATE GOVERNMMENT ORGANIZATION AND ECONOMY (THE LITTLE HOOVER COMMISSION)

Executive Director: Les H. Halcomb (916) 445-2125

The Little Hoover Commission was created by the Legislature in 1961 and became operational in the spring of 1962. (*See* Government Code Section 8501 et seq.) Although considered to be within the executive branch of state government for budgetary purposes, the law states that "the commission shall not be subject to the control or direction of any officer or employee of the executive branch except in connection with the appropriation of funds approved by the Legislature." (Government Code Section 8502.) This unique formulation enables the Commission to be California's only real, independent watchdog agency. However, in spite of its statutory independence, the Commission remains a purely advisory entity only empowered to make recommendations.

The purpose and duties of the Commission are set forth in Government Code Section 8521. The Code states: "It is the purpose of the Legislature in creating the Commission, to secure assistance for the Governor and itself in promoting economy, efficiency, and improved service in the transaction of the public business in the various departments, agencies, and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies, and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives . . ."

The Commission has 13 members: 5 public members appointed by the Governor; 4 public members appointed by the Legislature; 2 Senators and 2 Assemblymen. The law further stipulates that no more than 7 of the 13 members can be from the same political party. The Commission employs a very small staff. Presently, there is an Executive Director, one analyst and two clerical assistants. The Commission's Executive Director, Les Halcomb, has been Executive Director for the entire 19 year life of the Commission. The Commission's budget is approximately $200,000.

The Commission's major responsibility is to investigate areas of government inefficiency and issue reports. The reports uniformly contain findings and recommendations; they often propose specific curative actions and legislation. As of November 24, 1980 the Commission had released approximately 37 studies and 7 letters. A perusal of the Commission's bibliography reveals that the majority of reports involve issues of health care, planning and administration. However, there are numerous other reports pertaining to such issues as personnel management, executive salaries, occupational licensing, transportation, school aid and county fairs.

The law states that the Commission may, on its own motion, investigate any state agency. (Government Code Section 8522.) The Commission's current study of the State Horse Racing Board was started on the Commission's own motion (*see infra*). However, the Commission most often responds to requests from legislators and the Governor to investigate a particular state organization. Apparently there are no prohibitions against private citizens requesting the Commission to investigate a certain agency.

The Commission requires individuals who request an investigation to supply a modicum of evidence indicating the need for an investigation. If a request is approved, the Commission will do some preliminary legwork to delineate the issues that require in-depth exploration. At the conclusion of the preliminary investigation, the Commission employs what many Commissioners consider their most powerful tool – the authority to hold public hearings and compel public testimony. (Government Code Section 8541.) At the conclusion of the public hearings the Commission will prepare, publish and issue its report. The Commission is authorized to, and many times does, issue interim reports.

In addition to the above-described duties, the Commission is also empowered to review executive branch reorganization plans. Government Code Section 8523 requires the Governor to submit reorganization plans to the Commission at least 30 days prior to submission of the plan to the Legislature. The Commission then has 30 days to make its recommendations to the Legislature.

MAJOR PROJECTS:

The Commission currently has four major projects before it: a recently released study of the L.A. Unified School District; a study of the State Horse Racing Board; a recently approved study of the State Department of Education; and a Governor's reorganization plan that proposes the creation of a new Department of Toxic Substances Control.

On June 3, 1981 the Commission released its final report on the Los Angeles Unified School District. Executive Director Halcomb described the report as "highly critical and containing several dramatic findings." At the Commission's May 21, 1981 hearing where the Commission approved the report for release, Commission Chairman Nathan Shapell stated that the District is "plagued by gross mismanagement and waste." Shapell cited statistics indicating that while the District's student population has decreased by 16% since 1970, the number of teachers and administrators and the size of the budget has steadily increased. The District's budget is now $1.8 billion dollars, of which $1.2 is supplied by the State. The report contains four basic criticisms:

1. The District is too big in terms of size and money and consequently has been unable to consolidate underutilized schools or relieve overcrowded ones.

2. The District "has no understanding of the budget process" and "in short, . . . has mismanaged its $1.8 billion of taxpayer dollars."

3. The District "has no handle on its inventory," including large excess real estate holdings which should be sold to generate revenue. (*See* AB 1632, Section 2, (Roos).)

4. The District is hampered by poor personnel practices and management and must "initiate a labor relations program."

At the May 21, 1981 hearing Chairman Shapell stated that Los Angeles was "not an exclusive club" and that several other school districts in the state were suffering from bad management. Shapell (and the final report) suggested that a number of school districts should be subjected to the same intense audit and review.

In fact, additional audits might occur. On March 31, 1981, at the request of Senators

Alquist (a Commissioner) and Roberti, the Commission agreed to study the State Department of Education. At the May 21st meeting, Executive Director Halcomb reported that the Commission would work in concert with the Office of the Auditor General; that office is in the middle of a number of studies of various educational programs. It was agreed that the Commission, through its public hearings forum, could help publicize the Auditor General's reports.

In addition to cooperating with the Auditor General, the Commission agreed to study the following areas: the Department's budget; the Department's supervision of local school districts; areas of duplication of services; and categorical educational programs. Chairman Shapell summarized the inquiry with the question "what does the Department of Education accomplish?"

At present the Commission is actively involved in its investigation of the California Horse Racing Board and the horse racing industry. Executive Director Halcomb indicated that the two major problems with the Horse Racing Board are the Board's lack of integrity (Board members are also Board licensees) and the state's loss of tax revenue. (The state is entitled to approximately 12.5 cents of every racing dollar.) Last year, state revenue amounted to approximately $150 million.

At the March 31, 1981 hearing, Commissioner Manning Post reported on his subcommittee's progress. The major problems in the racing industry are archaic cashier systems, equipment breakdowns, a lack of security, and an ineffective Horse Racing Board. These problems are compounded by allegations of skimming, conspiracy and computer fraud.

Post reported that the Board has no enforcement program against bookies. Bookies operate with impunity, often at the tracks, and collect money from which the state receives no tax revenue. A jump-step fee schedule often encourages tracks to operate less frequently than they could and the state, in turn, loses tax revenue. Post suggested a percentage of gross fee schedule. Post also stated that persistent rumors of drug abuse have resulted in a public loss of confidence in horse racing and a decrease in state tax revenue. Pre-race testing would restore public confidence and increase state revenues.

Post concluded by saying that there is "still much to do" because "things keep coming up." He stated that recent evidence indicates "massive impropriety in the handling of uncashed tickets."

On May 13, 1981 the Governor submitted *Reorganization Plan No. 2 of 1981* to the Commission, as required by Government Code Section 8523. The Plan proposes the creation of the Department of Toxic Substances Control, transferring government functions presently performed by the Department of Health Services, the State Fire Marshal, the Office of Emergency Services, the Solid Waste Management Board, the Air Resources Board, the Department of Fish and Game and the State Water Resources Control Board to the new Department. The new Department will not have any authority to register or regulate the use of pesticides.

The proposed Department of Toxic Substances Control would have three divisions. The Toxic Response Division would be responsible for emergency response training, coordination with local government, and the cleanup of abandoned sites. The Hazardous Waste Management Division's chief responsibility would be the issuing of permits and the administration of 36,000 pages of federal regulatory requirements. The Research Division, largest of the three, would be responsible for scrutinizing and coordinating toxic substances research. The new Department will also house the Office of Local Program Services. The Office will act as a liason between the three divisions and local government. The Department of Toxic Substances Control will have 359 personnel and a $16 million budget. 87% of the personnel will be transferred from the Department of Health Services. Only six new executive positions will be needed to fully staff the new Department.

On May 21, 1981, Mr. Peter Weiner, Special Assistant to the Governor, presented the Plan to the Commission. At that time, Weiner stated that the reasons for creating the new department were: the increased use of toxic substances; increased public sensitivity to the problem; the alarming lack of disposal sites; the need to better administer federal programs, including super-fund cleanup money; elimination of duplicative research; and coordination of inter-agency response to emergency spills and leaks.

On June 11, 1981 the Commission held a public hearing exclusively for the purpose of receiving public testimony and making its decision on the Plan. Weiner stated that "institutional change is essential to confront the burgeoning problem facing us." He argued that the "myriad of programs scattered throughout Departments and Agencies" has led to fragmentation and duplication. Weiner concluded by stating that the new Department would "attack the bottlenecks" and produce better coordination and enforcement of programs and prioritization of research.

There was significant opposition to the Plan, the major opposition points being:

1. The Plan would disrupt research and jeopardize the public health.
2. The problem is not administrative but statutory – a new Department administering the old laws will be as inefficient and unresponsive as the several departments presently responsible.
3. Since 87% of the Department's personnel will be extracted from the Department of Health Services, why not just create a Toxic Substances Control Division within the Department of Health Services?

Because of the length and quantity of public testimony, the Commission postponed making a formal decision. However, while there appeared to be general support for the Plan, a majority of Commissioners indicated that the Department should not be independent as proposed by the Governor, but included within the Health and Welfare Agency.

The lack of formal Commission approval of his Plan presents the Governor with a problem. A reorganization plan must be submitted to the Legislature at least 60 days before the end of a session, excluding recess. Once submitted, a plan may not be amended. If neither house disapproves the plan within 60 days of submission, the plan becomes effective. In this case, Weiner estimated that the Plan must be submitted to the Legislature by June 15, 1981 for it to be considered this session. If the Plan is so submitted it will be without formal Commission recommendations or approval. Thus, the Governor has two options. He may submit the Plan this session (by June 15) without an official Commission response and face almost certain defeat, or submit the Plan early next session, long after any official Commission response and Plan amendments in recognition thereof and long before the 60 day limitation.

RECENT MEETINGS:

In addition to the above-described activities, the Commission also discussed the following matters at its March 31, 1981 meeting.

The Commission approved a proposed amendment to the 1969 legislation creating the Committee on Executive Salaries. (*See* Government Code Section 11675 et seq.) Among other things the amendment would name the Chairman of the Little Hoover Commission as the Chairman of the Committee. (*See* SB 238 (Alquist).) It is the duty of the Committee to establish the salaries of Constitutional officers. However, existing law prohibits the adjustment of Constitutional salaries during tenure, and because the Committee has not met since its creation in 1969, Constitutional salaries have not increased at the same rate as the salaries of other state employees. In some instances Constitutional officers now make only a dollar per year more than their

subordinates. The Office of the Legislative Analyst also supports this proposed amendment.

The Commission also approved the expenditure of $10,000 for a University of Southern California study of the Commission. The USC study, the first known study of the Commission, will be an analysis of comparable state commissions (if any) and the impact of the Commission's major reports on state government. The study will also include interviews with past and present Commissioners, legislators and government personnel. The Commission encouraged USC to be critical, in much the same manner the Commission is critical of the agencies it investigates. The study is supervised by Dr. Alex Cloner and will be completed sometime in July.

At its May 21, 1981 hearing the Commission entertained a request by Assemblyman Kelley to review the operations of the Agricultural Labor Relations Board (ALRB). Kelley alleged that the ALRB was acting outside its jurisdiction by its persistent refusal to conform its interpretation of the law to that of the National Labor Relations Board. Kelley stated that on at least 10 occasions the ALRB has refused to adhere to NLRB policy.

The Commission initially approved Kelley's request and he left the room. However, upon Kelley's departure two Commissioners, Trugman and Walker, strenuously objected to the Commission's involvement in what they perceived to be a purely political controversy. Both Trugman and Walker stated that Kelley had not produced sufficient evidence of ALRB inefficiency or disorganization. Trugman stated that Kelley's contentions were purely legal and the courts, not the Commission, should properly decide those issues. After extensive, confused debate the Commission agreed to postpone an official response to Kelley's request.

Commissioner Walker briefly reported on the status of the Commission's continuing study of the state's health programs. Walker stated that the Subcommittee has been focusing on the issues of cost containment and preventative health care, namely HMOs. The Subcommittee is reviewing proposed legislation but has not taken any position (*See* SB 652, AB 1370, AB 1534).

Discussion on the status of the Commission's Caltrans/Culver City Redevelopment Agency, Century Freeway, and Metropolitan State Hospital studies was postponed until a later meeting.

DIVISION OF CONSUMER SERVICES, DEPARTMENT OF CONSUMER AFFAIRS

Chief: Ron Gordon
(916) 322-5252

The Division of Consumer Services (DCA) has the major responsibility for carrying out the Consumer Affairs Act of 1970. It is through the Division's programs that the Department fulfills its mandate to educate and represent California consumers. In fiscal year 1980-81, the Division had a staff of 57 and a budget of approximately $1.6 million, of which $1.2 million was General Fund and $407,973 was Special Funds. The Division provides many services to the California consumer and its major activities are described below.

LEGISLATION UNIT:

The Division reviews over 500 bills each year to determine their impact on the California consumer. Each bill is analyzed and a "bill analysis" printed. The Division provides the only regular, full-time advocacy (lobbying) of consumer interests within both the Administration and the Legislature. In addition to analyzing bills, the Division also proposes consumer legislation, secures legislative authors and aids in pushing its bills through the Legislature to the Governor's desk. Examples of DCA sponsored bills are the two McCarthy Sunset bills discussed in the feature article.

The unit also publishes and mails two publications: a weekly "Legislative Newsletter" which lists and describes the consumer bills to be heard by the Legislature in the coming week; and a "Legislative Alert," a sporadic communication only published when a particularly controversial or important consumer issue is scheduled for legislative debate.

LITIGATION UNIT:

The Division is authorized to both initiate and intervene in lawsuits that affect consumers. Over the years, California consumers have received millions of dollars in restitution and had their legal rights clarified and secured as the result of the Division's litigation efforts. Presently, the Division is engaged in two major lawsuits.

Two years ago, the Division initiated a lawsuit against the Beltone Electronics Corp. in an effort to enjoin the Corporation's "pressure sale tactics." Division Chief Ron Gordon stated that the Corporation goes door-to-door, employing "strong-arm tactics" to sell unsuspecting and gullible older people over-priced and improperly fitted and tailored hearing aids. Gordon indicated that the Division is confident it will obtain an injunction in the near future. The major thrust of the injunction will prohibit the use of door-to-door sales tactics and allow the Corporation to approach a consumer only when requested.

A few years ago, the Division joined the Los Angeles Legal Aid Society in suing the Avco Finance Company. The object of the suit was to prevent Avco from evading the strictures of the Unruh Act (consumer credit) by "flipping" retail installment sales contracts into loans. The Division was successful at the trial court level and received a ruling prohibiting the "flipping" of retail installment contracts into loans. Avco has appealed, but Gordon is confident the appellate court will uphold the lower court's decision.

The Division is now focusing on the restitution portion of the case. The Division is seeking a multi-million dollar restitution award, and Gordon indicated that a $1-2 million award would be unsatisfactory to the Division and probably appealed.

In further conversation, Gordon stated that the majority of the Division's litigation resources are spent on amicus briefs and supporting other consumer protection organizations and their lawsuits. Litigation is selected on the basis of consumer complaint data and scientific surveys. If data analysis reveals a significant complaint pattern or persistent illegal activity in a certain area, the Division considers litigation. Gordon stated the Division prefers to support other consumer groups in order to conserve Division resources and maintain the good working relationship that the Division enjoys with the state's other consumer organizations. However, if circumstances demand, the Division will initiate its own lawsuit, as is the case with Beltone Electronics Corporation.

CONSUMER EDUCATION UNIT:

This unit performs a number of important activities. The unit has distributed over 1.2 million educational pamphlets and brochures to California consumers. The unit also distributes fact sheets which instruct a consumer on how to handle certain situations, like buying a used car, purchasing a vacation package program or ordering commodities through the mail. The Division concentrates on those consumer situations and problems that are not germane to the Department's 38 Boards and Bureaus. The unit also acts as a central clearinghouse, directing consumer complaints to the appropriate government entity.

Last, the unit performs a modest amount of consumer complaint mediation. Again, as is the case with the Division's fact sheets, the mediation program concentrates on those areas not covered by the Department's Boards and Bureaus. Gordon cited a defective tire as a good example of a com-

mon consumer problem that, in the absence of the Division's mediation program, would "fall through the cracks." However, Gordon stated that the Division does not expand its mediation program because the Department feels "the state is too far removed from the problem" and "not the proper or best entity to mediate consumer complaints." Better results are obtained from the local government entities to which the Division refers many of the complaints it receives.

RESEARCH AND SPECIAL PROJECTS UNIT:

The Division is constantly conducting research, surveys and polls to detect the latest trends in consumer problems and complaints so that the Division can most efficiently allocate its resources. Research frequently reveals significant problems and the need for special projects. The Division presently has three such special projects:

1. Co-op Development Program. Recent research revealed that retail grocery stores in inner cities are vanishing. Inner city consumers are being deserted, left without access to competitive retail grocery services. In response to this problem, the Division initiated its co-op development program. With the assistance of federal CETA funds, the Division has helped local people organize grocery cooperatives in three locations – Watts, San Francisco and West Oakland. Gordon stated that the program has been very successful and that he hopes to expand the program. The Division is presently hiring two professional people to supervise the operations of the 3 cooperatives.

2. Senior Citizens Discount Program. AB 1248 (McCarthy; Chapter 31 Statutes of 1980) authorized this two year program. The program entitles participating card-carrying senior citizens (60 years and older) to discounts from participating merchants (symbolized by a Division issued placard posted in the merchant's window). Gordon stated that the program has been "wildly successful" and "surpassed all expectations." The Division anticipates eventually involving 40% of California's senior population.

The Division is presently preparing its two year report to be submitted to the Legislature by July 1, 1982. Gordon fully anticipates that, because of the first-year success of the program, the Legislature will extend the program for a long, if not indefinite, period of time.

3. Solar Energy/Insulation Program. The burgeoning solar energy and insulation industries have created unique consumer problems. Two years ago the California Energy Commission requested the Division's help in regulating this new and chaotic industry. The Division responded by producing educational pamphlets that alerted the public to the typical problems encountered by consumers when contracting with solar energy and insulation installers. Because the majority of problems in this area are contractual problems between homeowners and contractors, the Division is turning the program over to the Contractors State License Board on July 1, 1981. The Contractors Board will continue to receive assistance from the Energy Commission and the PUC.

The Consumer Advisory Council is mandated to make recommendations concerning consumer issues to the Governor, Legislature and the Director of DCA. The Council regularly holds public meetings throughout the state at which time the public is invited to express its consumer concerns and raise issues warranting further Council study. The Council is composed of 7 members appointed by the Governor, one Senator and one Assemblyperson, appointed respectively by the Senate Rules Committee and the Speaker of the Assembly, who serve as ex-officio Council members.

Among the Council's present priorities are: the promulgation of complaint disclosure guidelines (*See* AB 1079); mandatory item pricing; automobile repair reform; patient access to medical records (*See* General Legislation); and institutionalized access to the Department of Insurance.

The Council was formerly housed within the Division. However, the Council has recently been removed from the Division and now exists independently of the Division. This independence permits the Council more freedom in performing its watchdog, investigative and research activities. The Council next meets on July 27, 1981 in Santa Cruz. For further information contact Joanne B. McNabb, Consumer Liason Officer at (916) 445-7450.

RECENT ACTIVITIES:

The most important recent event involving the Division was an attempt to remove the $1.2 million General Fund appropriation from the Division's $1.6 million budget. On May 27, 1981, acting under the advice of the Legislative Analyst, the Senate Finance Committee voted to cut $1.2 million from the Division's budget. The Legislative Analyst advised the Committee that the Division could replace the loss of General Funds by transferring Special Funds to the budget. This advice confused many informed individuals because it contradicts both law and fact. It is commonly understood, and an Attorney General's opinion supports this understanding, that Special Funds cannot lawfully be diverted to pay for general consumer services and advocacy. Furthermore, it is highly doubtful that there are sufficient Special Fund surpluses to replenish the $1.2 million cut.

In spite of this misinformation, on June 9, 1981 the Budget Conference Committee restored the Division's $1.2 million General Fund allocation and also provided a $131,000 budget augmentation for an expanded co-op development program.

THE ASSEMBLY OFFICE OF RESEARCH

Director: Steven M. Thompson
(916) 445-1638

Created in 1966, the Assembly Office of Research (AOR) performs four major functions: 1) budget analysis; 2) research and policy formulation of major policy projects; 3) routine research for Assembly members as requested; and 4) 3rd reading bill analyses. The AOR is directed by the three year old Special Assembly Committee on Policy Research management. The Committee, chaired by Assemblyman Berman, is a bipartisan collection of house leaders. The Committee members are: Berman (Chairman), Nolan (Vice-Chairman), W. Brolon, Hallet, Hannigan, Imbrecht, Lancaster, McCarthy, Pagan, Ross, Torres, and Vasconcellos. The Committee approves all of AOR's major policy projects and generally supervises AOR's ongoing activities. However, there is no rigid protocol between the Committee and AOR and AOR appears to exercise a substantial degree of independence. AOR's major policy projects are often self-initiated and only secondarily approved by the Committee.

The AOR is also closely linked with Speaker Brolon's office. Director Thompson is a Brown appointee and enjoys a close working relationship with the Speaker. However, in spite of this political intimacy, the AOR is not as politically oriented as the Senate Office of Research and appears able to maintain the appropriate degree of professional independence.

The AOR has a staff of 33 professionals and 7 clericals. Its budget is subsumed in and indistinguishable from the general Assembly contingency fund.

MAJOR FUNCTIONS:

Three of the AOR's functions require little explication. The AOR does budget analysis and figures and works closely with the Legislative Analyst in this regard. Because of an unusually hectic budget process, the AOR has spent an inordinate amount of time on budget preparation this year.

It is the duty of the AOR to respond to members' requests for research. These requests are initially referred to the Capital Library Service. If the Service is unable to

supply the requested information, the request is referred to the AOR. Members' requests and the AOR response are routinely confidential. All such requests and responses are considered confidential unless the requesting member states otherwise. Confidential requests and responses are unavailable to the public and other Assembly members.

The AOR has the additional responsibility of preparing 3rd reading bill analyses. Many bills are amended between 2nd and 3rd readings. These amendments can occur after the various committee consultants have completed their analyses. Thus, it is the AOR's responsibility to do the final bill analysis before the 3rd reading. (A bill will not be read a third time before such analysis is on the members' desks.) Although sometimes a "cut-and-paste job" is done using previous analyses, often an amended bill requires new and detailed analysis before its third reading. Such analyses are available to the public.

The AOR's major function is relatively new; conducting policy research projects centered on resolving major issues facing the Legislature. So far this session the AOR has identified eight major research policy projects. The projects are identified and selected by the AOR, often in response to the specific or unspecific concerns of Assembly members. Final concurrence by the Committee is required before in-depth research begins. The projects so far identified this year are: Medi-Cal reform; a review of California water policy, focusing on more efficient use and management of water and the possibility of establishing a free market water system; a review of the Sacramento - San Joaquin Delta Islands and Levees; Vocational Education; Juvenile Justice System; Services to the Aged and Chronically Disabled; a review of Post-Proposition 13 State and Local Financing; and a review of state government operations.

The latter project (Governmental Operations Review or GOR) is directly related to regulatory agencies and will "identify problems in the state superstructure that interfere with agency goals." The project specifically focuses on the impediments and obstacles erected by three Executive branch "control agencies": the State Personnel Board; the Department of Finance when approving staffing levels, budgets, personnel movement and contracts; and the Department of General Services when purchasing and processing contracts. GOR is sponsored by Assemblypersons Berman and Nolan and as such enjoys bipartisan support. The AOR has assigned Art Bolton as project manager. The report is scheduled to be released in October and hearings will be held in November and December. Legislation, if any, will be proposed by February. The Auditor General and Legislative Analyst have indicated their willingness to assist in the project.

SENATE OFFICE OF RESEARCH

Director: Nancy Burt
(916) 445-1727

The Senate Office of Research (SOR) is the state Senate's research arm. The major function of SOR is to perform long-range research for California's 40 state senators. SOR has a staff of 10 professionals and its director, Nancy Burt, is a political appointment of Senate President Pro Tempore Roberti. Burt was appointed director in December, 1980, shortly after Roberti assumed his leadership position. SOR staff positions, however, are not political appointments and there has been only one personnel turnover since Burt's appointment.

Burt described her staff as "hard-working" and "far-seeing." Although much of SOR's research is done in response to requests from senators, some of SOR's research is self-initiated. SOR staff members are encouraged to investigate potential problems they perceive. If preliminary investigation reveals a possible problem which also interests a Senator, SOR will thoroughly research the area and produce a report.

Most of SOR's work is confidential and until recently SOR made little effort to inform the public of its activities. Burt told us that she intends to better publicize SOR's efforts and make SOR reports accessible to the public. Burt gave this reporter edited "public copies" of three recent SOR reports on: Medi-Cal (4/7/81); plant closures (5/1/81); and a compendium of bills relating to criminal sentencing (5/22/81). In addition to these reports SOR is presently conducting research in the areas of: criminal justice, jobs development, health services, the environment, revenue and taxation, transportation and education.

Burt stated that except for the indirect impact of SOR's research on regulatory agencies, SOR has little impact on agencies. She indicated that the most direct impact SOR has on Executive branch agencies is when SOR is asked by a senator to study agency implementation of a statute. Senators occasionally express concern that agencies are resisting or incorrectly interpreting legislation. Concerned legislators request SOR to study the agency response to specific legislation and decide if it is resisting or improperly interpreting legislative intent. All such requests and subsequent SOR replies are confidential.

In conclusion it should be understood that SOR is essentially a political body. Unlike the Assembly Office of Research, SOR does not report to an overseeing committee but, rather to the Speaker Pro Tempore. There is a very close connection between SOR and the Speakers Office. In fact, Director Burt's office is in the Pro Tempore's State Capital Building office. (SOR staff is housed across the street from the Capital.) Although SOR does not operate secretively, it does operate quietly, under the immediate control of the Pro Tempore. While SOR undoubtedly produces top-notch, professional work, there does not appear to be any compelling reason to continue its semi-secret status. Any SOR intention or trend to make its operations and product more visible and accessible to the public should be encouraged.

COMMISSION ON CALIFORNIA STATE GOVERNMENT ORGANIZATION AND ECONOMY

Sacramento
June 18, 1981

PRESS RELEASE

"The Commission's public hearing on the status and future plans for the Century Freeway in Los Angeles County (I-105) will be held in Room 1138 of the State Building at 107 South Broadway, Los Angeles at 9:00 a.m. on 6/23/81.

The hearing will commence with a presentation by Adriana Gianturco, Director of the California Department of Transportation, and her staff on the State's position on this most expensive and controversial of California's freeway projects. Ms. Gianturco accompanied Lynn Schenk, Secretary of Business, Transportation and Housing Agency, Assemblyman Bruce Young, Los Angeles County Supervisor Dean Dana, and mayors of several cities within the freeway corridor to their meeting with the U.S. Department of Transportation Secretary Lewis and others on Thursday, June 18. Nathan Shapell considers this meeting most timely in that it will allow Ms. Gianturco to apprise the Commission of the current position of the Federal Government's participation in this freeway project.

Chairman Shapell noted that recently Governor Brown, the California Transportation Commission, the California Department of Transportation officials, together with elected officials of the nine cities within the corridor, have agreed that the project should proceed. To date, Federal

participation is the sole lacking, but key, factor in making the project a reality.

In addition to being concerned with the construction aspects of this project, the Little Hoover Commission members are equally disturbed with the chaos that exists in the 17-mile corridor of razed homes, boarded-up structures and the crime and social problems created therefrom. Mr. Don Turner, Director of the State's Department of Housing and Community Development, will speak to the members as to what steps must be taken to alleviate the problems that are presented to the communities transgressed by this uncompleted project.

Upon completion of Mr. Turner's testimony and that of interested county officials, the representatives of the cities affected will participate in an informal panel discussion of the effect of this uncompleted project on their communities.

At 1:30 p.m., the Commission will conduct another public hearing relating to the Metropolitan State Hospital in the City of Norwalk. Norwalk City officials will present their problems to the Commission and make suggestions for efficient use of the excess land. Dr. Al Loeb, Director of the State Department of Mental Health, and Dr. Richard Elpers, Director of the Los Angeles County Department of Mental Health, will discuss State and County programs at this facility and changes or proposed action which might affect the operation of the facility."

REGULATORY AGENCY ACTION

State & Consumer Services Agency
(Department of Consumer Affairs)

BOARD OF ACCOUNTANCY
Executive Officer: Della Bousquet
(916) 920-7121

The Board of Accountancy regulates, licenses, and disciplines Public Accountants and Certified Public Accountants (PA's and CPA's). One of the major functions of the Board staff is to administer and process the nationally standardized CPA exam to those seeking CPA licenses. Roughly 7,000 applications are processed each year; about two thirds of the applicants qualify to take the exam and three to four thousand are licensed.

Earlier this year, the Board negotiated a settlement to a suit alleging the Board abused its discretion when licensing and regulating foreign applicants seeking CPA licenses. (*See* CRLR Vol. 1, No. 1 (Spring 1981) at 13.) At its May meeting, the Board decided to oppose the plaintiff's petition to collect attorney's fees from the Board in that action. The Board has now reviewed all 98 files associated with the alleged discrimination, approving two applications, deferring 13 while permitting temporary practice and rejecting the remaining 83, although the Board may reconsider the denied applications if applicants offer supplemental information.

The Board also decided at its May meeting to appeal a decision by the Office of Administrative Law (OAL) in which the OAL refused to approve Board Regulation 53. The regulation prohibited licensees from engaging in discriminatory hiring. The OAL position on appeal remained the same. The Board lacks authority for such regulation because its purpose is to regulate consumer safety in accounting services and the antidiscrimination regulation does not serve that purpose. The Governor's office reversed the OAL on appeal and Regulation 53 now stands.

At the June meeting, the Board basically reviewed and decided the status of applicants. A representative of the Filipino applicants requested that the word "reject" in the letters sent to applicants be changed or explained. The word "reject" is presently misunderstood and is too discouraging to applicants of the Filipino community. Since "reject" is a word required by statute, meaning that the applicant cannot practice temporarily pending the Board's future reconsideration, the Board decided to leave the word "reject" in the letter. However, the Board did decide to make the letter more positive and explain the meaning of "reject" in the letter sent to denied applicants.

MAJOR PROJECTS:

The Board is continuing its AB 1111 Regulatory Review according to schedule but will hold the regulatory hearing planned for January 1982 at some later date because the OAL will not have completed its preliminary work on the Board's regulations.

The Legislature has funded the Board's plan to coordinate and encourage free accounting services for low-income people; funds became available on June 1, 1981, from the new budget. The Board will not actually institute the plan until sometime later in the year.

The Board also plans to encourage California schools to increase use of scholarship funds available to minority accounting students. The funds are available through a variety of private programs nationwide.

FUTURE MEETINGS:

The next Board meetings will be July 31 - August 1 in Monterey, and October 2-3 in Orange County.

BOARD OF ARCHITECTURAL EXAMINERS
Executive Secretary:
Silverenia Kanoyton
(916) 445-3393

The Board of Architectural Examiners (BAE) licenses and regulates architects and building designers. Architects are individuals who can legally perform any aspect of building planning and design. Building designers are members of a closed class of licensed professional designers whose projects are restricted by specific height and span limitations. BAE is a nine member special fund board composed of five public members, three architects and one building designer.

MAJOR PROJECTS:

The Board's major projects include institution of a new licensing exam and completion of AB 1111 review. The Board has also recently completed its search for a new executive secretary and is preparing to increase the effectiveness of its enforcement division.

For the past two years, BAE has been trying to create a new licensing exam. This effort began in 1978, after the Department of Consumer Affairs-sponsored Regulatory Review Task Force and the Commission on California State Government Organization and Economy issued scathing critiques of the present exam. According to Board President Dan Wooldridge, BAE's efforts have resulted in the most exhaustive study of any regulated profession ever performed. The Board is now in the final stages of creating an entirely new exam using the study results.

While California has been reviewing its regulations, the National Council of Architectural Registration Boards (NCARB) has been conducting its own review. Again according to Mr. Wooldridge, NCARB is a "quasi-public/pseudo-private" national body that determines which state licensed architects will be eligible for reciprocity in other states. NCARB maintains a registry of those persons who meet the standards it has established. Persons failing to meet these qualifications, though fully certified in their home states may be denied the recognition necessary to practice in other states. Presently, California administers the exam approved by NCARB.

If California institutes a new exam which does not correlate with the current NCARB exam, future California licensees will be denied reciprocity. In order to prevent this situation, the members of BAE have been, in their words, bending over backwards to work with NCARB in designing a new exam. Jerry Weisbach, one of BAE's architect members, is also a member of NCARB's R5C Committee on exam reform.

Unfortunately, BAE's attempts to coordinate with NCARB appear to have been unsuccessful. The R5C Committee has arrived at conclusions and recommendations which while not exactly identical to California's position, are acceptable to BAE. However, NCARB has now indicated that these findings will not be acted upon. NCARB's annual conference June 23-28 in Hawaii will allow each state to cast one vote for each of twenty resolutions. Among these are supposed to be several resolutions affecting exam qualifying standards for reciprocity. However the NCARB leadership has refused to pay for the R5C Committee to attend the conference and present its findings. Additionally, elections will be held at the conference for several NCARB national offices. It is illuminating that NCARB's nominating committee is promoting candidates who either oppose changes in the current exam

or at most favor a "go slow" approach. The nominating committee has ignored the suggestions submitted by its Western Conference, of which California is a leading member.

The bottom line may be a new exam for California which, although more focused and updated, causes the loss of reciprocity with other states.

Because NCARB is so far behind California in preparing a new exam and is unlikely to take any immediate action, BAE is planning to offer its own new exam in February 1982. The new California exam will consist of a single format rather than the present two step process. The new exam will focus more on graphics and less on multiple choice. Eventually BAE hopes to coordinate with NCARB to develop a national exam and reestablish reciprocity.

The Board has finally appointed Silverenia Kanoyton as executive secretary. Ms. Kanoyton has an extensive administrative background. She was the Deputy Director of the Michigan Department of Licensing and Regulation immediately prior to joining BAE. Ms. Kanoyton has served as a member of the Michigan State Board of Education and ex-officio officer of the Michigan Board of Architects. She is also a graduate of the Harvard Senior Executive Management Program. Ms. Kanoyton is the first woman ever to serve as BAE executive secretary.

The Board has appointed Pat Etienne as the new chairperson of its Enforcement Committee. The Board is still trying to iron out communication problems in its implementation of SB 816, which became law in 1980. President Wooldridge hopes the new chairperson will stimulate the Board's Enforcement Division. The Committee's previous chairperson, Jerry Weisbach, was unable to fully participate because the NCARB R5C Committee required enormous amounts of his time. According to Mr. Wooldridge, BAE is concerned about mediation reports and insurance claims reporting. The Board wants more information in order to review the Enforcement Division's efficiency in following up problems in these areas.

RECENT MEETINGS:

The Board's most recent meeting was held May 18, 1981 in Irvine. The Board approved Silverenia Kanoyton as new executive secretary. Ms. Kanoyton was selected from 236 applicants nationwide. The Board also considered the institution of a phased birthdate renewal system for licensees. This new system would replace the current mass renewal process.

After adopting a report from its Examination Committee on the exam review process, the Board ordered its attorney to draw up revised regulations for its new exam. One unexpected change was required in the new examination procedures. At the Board's meeting last February, it was decided that waivers previously granted to certain licensure candidates would be abolished. The Board previously exempted candidates with degrees from approved architecture schools from taking all but the design portion of the qualifying exam. This exemption would be unavailable to candidates who had not applied prior to a specified date. Due to an error in drafting the new regulation, the Board was forced to grant waivers to all candidates for the June 1981 exam who qualified under the old system.

This meeting also marked BAE's first AB 1111 hearing. The response was poor and there is nothing significant to report. Only Sections One and Two were reviewed. Since these sections cover only general provisions and applications, public interest may increase when the Board reviews more substantive regulations. The next hearing will cover Sections One, Two, Six and Seven.

The Board ended the meeting in executive session. It accepted the decision of an administrative law judge in an action against Fernando Juarez and dismissed charges against him. Three exam appeals were heard with one denied and two examinees given additional time to prepare their presentations. The Board also discussed the substantive aspects of the new exam. The format of the exam has been approved and the actual questions are now being created.

LEGISLATION:

SB 165 (Ellis): This bill, which is supported by the California Council of the American Institute of Architects (CCAIA), seeks to change the membership balance of the Board. The Board would be enlarged from nine to eleven members, with eight architects, three public members and no building designers. Among other changes, the bill promotes the reduction in terms from four to two years and an arrangement whereby the industry members would be chosen by their colleagues rather than appointed by the Governor. The Governor's appointment powers would be reduced from nine members to one; equal powers would be given to the Speaker of the Assembly and the Senate Rules Committee. BAE is opposed to the bill's passage. SB 165 has passed the Senate Business and Professions Committee but missed the Senate Finance Committee deadline and will be held over until next year. Critics contend the bill would transform the Board into a trade cartel, immune from antitrust exposure.

SB 299: Present law allows a public member to vote on the certification of an architect but prohibits the building designer member from doing so. This bill would give full voting rights to the building designer.

Draft legislation: The American Institute of Building Designers (AIBD) has developed a proposal to reopen the building designer class. Those persons currently registered as building designers are members of a class which was closed ten years ago. The AIBD proposal would also give building designers the opportunity to qualify for the architectural exam by accumulating a total of ten years of actual experience, rather than requiring them to have traditional educational experience. At this writing, the proposal has not been formally sponsored.

ATHLETIC COMMISSION

Executive Officer: Javier Ponce
(916) 445-7898

The Athletic Commission regulates wrestling, karate and amateur and professional boxing. Virtually all participants are individually licensed; events and matches are all preapproved.

MAJOR PROJECTS:

The major projects of the 5 member Commission include a pension disability plan for boxers and a comprehensive rule change package designed to deregulate professional wrestling and boxing.

The pension-disability plan is the world's first comprehensive system to protect boxers. The Commission was required by the Legislature to formulate such a plan in 1974. The previous Commission did not act in the area, believing such a plan to be unworkable. The current Commission has conducted actuarial studies and drafted a plan allowing benefits from promoter, manager and boxer contribution based on the number of scheduled rounds for each boxer. Several years of continuous boxing are required for the pension part of the system to "vest." The proposal was enacted in late 1980 and is to take effect in July of 1981.

Although the OAL refused to publish the pension-disability rules, subsequent negotiations between the OAL and the Commission resolved any remaining objections and the rules were filed and published to take effect on July 1, 1981. There is some question, however, about the ability of the staff to implement the system on time.

The deregulation proposal is part of a comprehensive review of rules begun by the Commission one year before the rule review required of all agencies by AB 1111. The Commission hired a California Institute of Technology economist, Dr. Roger

Noll, to conduct a comprehensive economic study of the trade as regulated and of the impact of regulation. Based on this study and subsequent hearings, the Commission has scheduled final consideration of a rule change packet for professional wrestling and boxing. The changes involve ending the licensing of announcers, ticket-takers, ushers, and other ancillary employees and the policing of these functions by simply holding their employer, the licensed promoter, responsible for their performance. Promoters would be relieved of the requirement to use licensed ticket-printers, and would not be licensed by "arena" or territory, but would be free to promote anywhere in the state.

Since wrestling exhibitions are "fixed" and injuries are rare, some have argued that its regulation should be ended. The strongest argument in favor of continued regulation has been somewhat cynical: wrestling generates revenues for the Commission to take to the Legislature to justify the appropriations needed to regulate the more dangerous sport of boxing. The current rule proposal deregulates wrestling to some extent but does not end its regulation.

The current rule change package is divided into three parts. The "primary" rule change packet includes those updating and deregulation proposals which can be made without new enabling legislation. This package was considered and passed at the May 22 meeting of the Commission in Los Angeles. Among the changes made are: removal of promoter license requirements to identify prospective dates of events, and to specify the arena to be used (and thus be limited to that arena); removing commission certification of physicians who give physical examinations to licensees (Commission certification requirements for ringside physicians remain); removing specific limits on purse amounts payable to various contestants; removing prohibitions on starting main events after 10 PM; removing the need to keep comprehensive records of those receiving complimentary tickets; removing limits on the number of seats available to the press; and ending the licensing of ticket printers and doormen.

The secondary rule change package includes those provisions requiring statutory change (*see below*). The secondary package would end licensing of announcers, ushers, et al. and hold the licensed promoter who employs these persons responsible for their behavior.

Likewise, wrestling is substantially deregulated. Advance notice of wrestling participants, rest period specifications, dress requirements for referees, limitations on the frequency of wrestling, and other requirements are ended.

There is also a tertiary package. Immediately prior to the AB 1111 implementation, the Commission had already written to all licensees and had sent copies of the rules to all concerned, asking for comments and suggestions. These comments are inincluded in the tertiary package. Most of the suggested changes are not to eliminate rules, but rather in the direction of change (a boxer should or should not be saved by the bell in the final round, etc.). In addition to this existing package, the Commission proposed to OAL public hearings on June 17 and 18 in Sacramento and Los Angeles, respectively, to solicit additional public suggestions and comment. These hearings will be conducted by staff and the results added to the tertiary package.

In order to implement the secondary package above, and to make other changes, the Commission drafted AB 2322 (Kapiloff). This bill has passed Assembly Govrnment Operations and is currently on its way to Assembly Ways and Means. It is expected to pass the Assembly by June 10. The Commission hopes Senator Alex Garcia will sponsor the bill on the Senate side. The bill authorizes deregulation, raises license fees somewhat, and lowers some of the gate taxes from 5% to 2%, particularly in areas where heavy competition from lower gate tax states is leading promoters to schedule the major boxing contests in nearby states. According to the Commissioners, since the implementation of the pension disability plan will cost between two and three percent of the gate, the reduction is needed to prevent large-scale avoidance of California for the bigger fights. The bill also clarifies numerous conflicting laws and rules concerning minimum glove weights and simplifies bonding requirements for promoters (requiring one bond instead of three separate bonds). In general, the Commission law and rule change packages greatly simplify regulation. The Commission believes that fraud, health and safety standards are not compromised by the changes. The Center for Public Interest Law supported the deregulation reforms of the Commission.

The Commission is confronted with the following additional dilemmas:

1. The question of female boxing — many females feel that they are ready for 10 to 15 round matches; the Commission contends that males with comparable experience are limited to 4, 6 or 8 rounds. The Commission is gradually increasing the rounds.

2. The Commission will be reviewing amateur boxing. Currently, amateur boxing is exempt from regulation if it is nonprofit. It is nonprofit if the revenues go only for boxing related expenses. Hence, the *San Francisco Examiner* annual tournament which contributes excess funds to charity is regulated, while other amateur events are not. Since the basis for regulation is to protect health and safety and to prevent fraud, the disposition of funds would appear unconnected to these goals.

The Commission has drafted a major revision to the current law governing amateur regulation. It provides that the Commission has jurisdiction over all boxing where an admission is charged or where anybody is paid anything (covering everything but neighborhood fist fights). However, the Commission may defer aspects of its regulation to amateur supervisory bodies which meet or exceed the health and safety standards of the Commission, subject to Commission annual verification and monitoring of those standards. This would allow responsible groups like the AAU to run their own shop without having to use Commission licensed referees, but maintain general Commission oversight, preventing health and safety laxness.

The Commission was in serious trouble because of its budget (*see* CRLR Vol. 1, No. 1 (Spring, 1981) at 15). However, a deficiency appropriation of $411,000 was obtained largely due to the help of the Department of Consumer Affairs. Further, the monies removed from the 1980-81 budget are scheduled to be restored to the 1981-82 budget ($33,000). Hence, additional secretarial help has been added in Sacramento and the Los Angeles field office, state cars are again available to investigators and the Commission is again functioning as a viable entity. There has been some conflict between the executive officer and his assistant in Sacramento and the three Commission inspectors in Los Angeles. The conflict reached such a level of memordandum writing and lack of communication that the Commission voted to appoint Commissioner Olga Connolly as mediator to establish lines of communication, restructure paperwork flow and resolve personality clashes.

The Commission's internal conflict is exacerbated by the entry of auditors from the Department of Consumer Affairs who have been extremely critical of the (lack) of enforcement of some of the Commission's rules and of inefficient management practices. The auditors have been especially critical of the Los Angeles office. The Commission has responded to the DCA staff criticisms by means other than the seeking of administrative changes through Commissioner Connolly's intervention. Two DCA suggestions were included in the legislative change package described above (the glove weight and bond changes), three others resulted in rule change proposals and two others produced a special announcement to all licensees providing notice that past nonenforcement of Commission rules (e.g., required notice to the Commission of prospective boxers 72 hours in advance) will no longer occur.

RECENT MEETINGS:

In addition to general discussion of the pension plan, deregulation rules and the three "dilemmas," at its January and February meetings the Commission considered a typical agenda of 4 to 8 licensee fines for rule violations (unlike most other agencies, the Commission may impose immediate fines and sanctions, including suspension, pending appeal). In addition, 2 to 4 new promoters were licensed at each meeting. Finally, the Commission considered 3 to 5 contract disputes. It is empowered to arbitrate these disputes, but generally ends up considering them in lengthy proceedings before the whole Commission.

It should be noted that unlike many regulated trades, the members of this trade know and deal with each other regularly. Hence, emotions often run high and the meetings are long and informal. Spontaneous outbursts and even speeches from the audience are common.

One of the five Commission positions has been unfilled for over two years. Commissioner DeLeon has submitted a letter of resignation, effective when he is replaced. The letter was written in 1979.

Commissioner DeLeon and Chairman Fellmeth had their terms expire in June of 1980. In June of 1981 the "year of grace" expires and both become non-members unless reappointed. If they are not replaced or reappointed the Commission will be out of business, since the only two remaining members do not constitute a quorum.

FUTURE MEETINGS:

Assuming there is at least one reappointment or new appointment, the Commission will meet July 17 in San Francisco.

BUREAU OF AUTOMOTIVE REPAIR

Chief: Robert Wiens
(916) 366-5050

The Bureau of Automotive Repair regulates repair facilities throughout California. Automobile Repair facilities are required to be licensed, pay a registration fee (paid to the State Treasury to the credit of the Automotive Repair Fund) and display a large sign in the facility identifying them as approved repair dealerships, and advising the consumer where to direct complaints if he/she is not satisfied with the quality of service. The Bureau is then supposed to enforce the provisions of the Automotive Repair Act, sanctioning member dealerships who do not live up to its standards.

The Bureau is assisted by an Advisory Board of 9 members, 5 from the general public and 4 from the industry. There is one vacancy at present.

MAJOR PROJECTS:

On June 5, 1981 OAL filed Bureau regulation Section 3303.1 with the Secretary of State. The regulation will become effective on July 5, 1981. Section 3303.1 establishes a consumer information system to provide consumers with information about Bureau registrants. The system works in this way. The Bureau receives a request about a particular repair facility from a member of the public, researches the registrant's file and determines its likely accuracy. The Bureau then mails its reply to the inquirer and sends a copy of the reply to the subject repair facility. The consumer's name is deleted from the copy.

The Bureau's reply will provide the inquirer with the number of violation notices filed against the registrant and their disposition (suspension, revocation, etc.). The reply also includes the date of the facility's registration with the Bureau and the status of that registration. Last, all reply letters will contain boilerplate language warning the consumer to keep the enclosed information in perspective by considering a number of diverse factors such as the size of the registrant's business, the volume of business, the seriousness of any violations, etc.

Assemblyman Floyd has introduced a bill, AB 1079 (*see* General Legislation Section) that if enacted would effectively repeal Section 3303.1. AB 1079 would prohibit the release of any information about a licensee to a requesting consumer prior to final ajudication of complaints. The Bureau is opposed to AB 1079.

Another major project facing the Bureau is AB 1111 review of existing regulations. The Bureau has not yet started the review process, but Bureau Chief Wiens informed us that at the July 31, 1981 meeting of the Advisory Board he intends to instruct the Board members on the AB 1111 review process. Wiens intends to hold at least two public informational hearings sometime this fall or winter. The Bureau's Statement of Review Completion is scheduled to be filed with OAL in December, 1981.

RECENT MEETINGS:

The Bureau's Advisory Board convened on May 5, 1981 in Sacramento, but adjourned one hour later. The major topic of discussion during the hour was pending legislation. The Bureau is closely watching three bills. SB 380 (Holmdahl) is a Bureau sponsored fee bill. Wiens has projected a deficit for the Bureau in 1981-82 and estimated that an increase in fees to $125 would correct the situation. As originally written, SB 380 provided for an increase to $125. However, SB 380 has been amended and now only provides for a $100 fee. A $100 fee will correct the Bureau's 1981-82 deficit but create a 1982-83 deficit. The Board, knowing that $100 is better than nothing, has begrudgingly supported SB 380 as amended but requested that the $125 figure be reinstated.

SB 1232 (Presley) is a Bureau supported bill that proposes the creation of a two year shop certification pilot project in the greater Sacramento metropolitan area. The project is voluntary and allows Bureau licensees to apply to the Bureau for "certification." Board certification means that the certified facility is a well-run operation that provides the consumer top-rate service. The project further provides that should a consumer complain about a certified shop to the Bureau, the Bureau will promptly and completely investigate the complaint. If the Bureau determines that the complaint is justified the Bureau will direct the certificant to make repairs. A certificant is bound by the Bureau's findings and must comply with the Bureau's directive to remain certified. Some refer to this portion of the project as a form of "binding arbitration." Wiens is optimistic about the bill's prospects and equally optimistic about the project should SB 1232 be enacted.

The Board has maintained a neutral position on SB 33 (Presley). SB 33 is the controversial, complex and much-amended "smog bill." SB 33 is an attempt to meet federal EPA clean air standards by having some type of vehicle emission inspection program. SB 33 has slowly allayed industry fear and opposition.

FUTURE MEETINGS:

The Advisory Board's next meeting is tentatively scheduled for July 31, 1981. The location is undetermined.

BOARD OF BARBER EXAMINERS

Executive Secretary:
James D. Knauss
(916) 445-7008

The Board of Barber Examiners exists to establish professional standards for teaching, examining and licensing barbers; to inspect barber shops; and to otherwise insure that the public receives competent barber services in a sanitary environment. The Board meets bi-monthly.

At last report, the Board lacked the requisite membership necessary for a quorum, making Board action impossible. With the appointment of two new Board members, this situation has improved. Nevertheless, two vacancies remain on what is supposed to be a five-member board.

Since two of the three current members are new, the March 1, 1981 meeting was devoted almost entirely to briefing and

otherwise familiarizing the new members with Board functions and activities.

MAJOR PROJECTS:

The Board's major project is a review of its regulations as required under AB 1111. The Board is also reviewing the written and practical exams administered to license candidates. The exam review is the first in more than five years.

FUTURE MEETINGS:

The Board's next meeting is July 19 in San Diego.

THE BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Secretary: Samuel Levin
(916) 445-4933

The Board of Behavioral Science Examiners is responsible for the licensing of Clinical Social Workers; Marriage, Family and Child Counselors; and Educational Psychologists. The Board defines the scope of services which may be provided by each category of licensee, establishes education and experience requirements, administers examinations, sets licensing fees, conducts disciplinary hearings and suspends and revokes licenses. The Board membership consists of eleven appointees, six of whom are public members. Presently, two of the public membership appointments are vacant.

MAJOR PROJECTS:

The issue of consumer education has been a major concern of the BBSE for the last two years. The Board has argued that the task of informing consumers of their rights depends ultimately on the difficult question of what makes a good therapist. As a part of this ongoing inquiry, the Board adopted new regulations in November, 1979 adding "sexual misconduct" as grounds for license suspension or revocation.

The existence of the "Registered Social Workers Program" has been controversial since 1975. The Board has been attempting for some six years to review the program since its statutory base was considered inadequate to protect or serve the public. In late 1980 the Board helped secure the passage of AB 2712, which mandates the elimination of the RSW program by January 1, 1983.

RECENT MEETINGS:

The Board's more recent proposals to stimulate consumer education have generated controversy.

Regulations were proposed at the September 13, 1980 meeting to require each licensee to prepare a full "disclosure statement." The proposed statement would contain required information as to fees, graduate degrees, supervised therapy experience, areas of therapeutic specialty and any license suspensions or revocations within the past seven years. Public meetings on the proposal were held in Los Angeles and Millbrae on November 21. Based on the unanimous opposition to the proposed regulations voiced both at these meetings and in writing, the BBSE decided on November 22 not to adopt them. It was decided that public service announcements and consumer education brochures will be relied upon to inform the consumer about the licensing professions of the Board. A task force was appointed to determine how best to achieve these goals.

In September, the Board proposed regulations to reduce the two-year renewal fees for the Educational Psychologist and Marriage, Family and Child Counselor licenses to $20.00 for the December 31, 1981 birthdate renewals, and $20.00 for the March 30, 1982 Licensed Clinical Social Worker birthdate renewals.

Two pending bills of special interest to the BBSE were discussed at the January meeting. AB 173 (Young) would specify that the county Short-Doyle plan include the participation of Marriage, Family and Child Counselors as required. AB 174 (Young) would prohibit health care service plans, disability insurance and welfare benefit plans from excluding the services of Marriage, Family and Child Counselors if referred by a physician or surgeon.

In September, 1980 the Board proposed a regulation which would have required each licensee to prepare a full "disclosure statement" for use by potential clients. As discussed in The California Regulatory Law Reporter Vol. 1, No. 1 (Spring,1981), the intense controversy generated by this regulation resulted in the Board's decision not to adopt it.

The disclosure issue is once again receiving attention, this time as part of the AB 1111 review. The BBSE is preparing AB 1111 issue papers on all of its regulations which will be mailed to licensees. At its May meeting, the Board instructed the Executive Secretary to include an issue paper expressing the Board's concerns regarding disclosure and its belief that some kind of action in this area is necessary. Public input and participation are invited. The Board hopes that a joint effort will achieve a solution to the problem, with either a new regulation or broadening of the present regulation defining unprofessional conduct.

The comprehensive review of regulations by July, 1982 mandated by AB 1111 has been started. A draft of the BBSE's regulation review plan was submitted to the Office of Administrative Law in December, 1980 and amended after correspondence from the OAL. This document is not the review of agency regulations, but a plan for review of the regulations. The amended plan was adopted by the Board at its January 24, 1981 meeting and was subsequently approved by the OAL. It provides for "public" involvement in the review through direct mailings to the more than 21,000 licensees, registrants and applicants of the Board. In addition, special mailing lists will be used to notify organizations with a particular interest in consumers' rights.

Advisory Committees will be established for each of the three disciplines licensed by the Board. Members will be recruited from professional organizations and will also include individuals interested in consumer rights. The Board will be holding information meetings on each of its licensing programs with final voting meetings following within approximately six months. The first information meeting was held in March; the first voting meeting will be in November, 1981.

The BBSE has requested $90,000 from OAL to carry out the AB 1111 mandate. As of the March, 1981 Board meeting, however, no AB 1111 funds had been received and the Board's AB 1111 expenses up to that date had been paid for out of the general budget. Due to the shortage of funds, notice of the March, 1981 regulation information meeting was mailed only to the Board's limited mailing list and not to the 21,000 licensees as provided for in the regulation review plan. The Board decided at the March, 1981 meeting to cancel the April, 1981 information meeting and the May, 1981 regulation hearing until after July 1, 1981, the start of the new fiscal year.

Executive Secretary Samuel Levin informed the Board at the March, 1981 meeting that it was facing a $6,000 budget deficit. He warned the Board that unless AB 1111 funds were shortly forthcoming it would have to move to cut enforcement activities. The Board decided, as a cost-saving measure, to curtail public appearances by the Executive Secretary until after July 1, 1981.

Antoinette Ziegler has been elected the new chairperson, and George Anderson as vice-chairperson.

FUTURE MEETINGS:

The next meeting of the BBSE will be July 11, 1981 in San Francisco.

REGULATORY AGENCY ACTION

CEMETERY BOARD

Executive Secretary: John Gill
(916) 920-6078

The Cemetery Board licenses cemetery brokers and salespersons, cemeteries, and crematories. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 and less than ten acres in size are all exempt from Board regulation. As a result of these broad exemptions, the Board has only 185 licensees, primarily brokers and salespeople.

Licenses are issued if candidates pass an examination testing knowledge of the English language and elementary arithmetic and demonstrate a fair understanding of the cemetery business.

MAJOR PROJECTS:

Currently the Board's major project is review of its regulations as required by AB 1111. The Board held its first review hearing on April 24, 1981. It reviewed the sixteen regulations contained in Article 3, applications and licenses; Article 4, signs, contracts, and literature; Article 5, endowment care funds; Article 6, special care funds; and Article 7, disciplinary proceedings. The remaining Articles 1 and 2, general and fee regulations, will be considered later this year.

The only regulation generating any discussion at the hearing was Section 2370 concerning special care funds. This rule has generated a jurisdictional controversy with the Funeral Directors and Embalmers Board. Health and Safety Code Section 8775 permits any cemetery establishing an endowment care fund for "embellishment and care" of its grounds to apply the principal and income of money received in trust for maintenance purposes. Maintenance purposes include "any purpose or use not inconsistent with the purpose for which the cemetery was established or is maintained." Using Section 8775 as authority, the Cemetery Board adopted regulations in Section 2370 providing that trusts established for burial purposes may include funeral services such as mortuary, cremation, or other related services. Hence, trust funds for funerals are under the supervision of the Cemetery Board. By law, mortuary services may only be provided by licensees of the Board of Funeral Directors and Embalmers and not by Cemetery Board licensees unless also licensed as funeral directors. The Cemetery Board's Section 2370 also appears to contradict the Short Act (Business and Professions Code Sections 7735 et seq.), making all preneed funds accepted for mortuary services subject to the strict accounting and reporting requirements of the Board of Funeral Directors and Embalmers.

Dual licensees of both the Cemetery Board and the Board of Funeral Directors and Embalmers have used Section 2370 to avoid the jurisdiction of the Board of Funeral Directors and Embalmers and report their mortuary trust funds under the admittedly more liberal regulations of the Cemetery Board. These regulations provide less protection to the consumer by allowing speculative investments; they authorize few trust and reporting requirements and permit less of the trust income to be credited to the individual's account and more to be retained by the licensee for "expenses."

Section 2370 has been criticized for failure to comply with any of the five standards (authority, clarity, necessity, consistency, and reference) established by AB 1111. The Board has responded by offering to consider the issues raised and to accept the Board of Funeral Directors and Embalmers' long-standing invitation to discuss and resolve the problem of overlapping jurisdiction. However, the Cemetery Board has taken no action to arrange a meeting as of this writing.

RECENT MEETINGS:

The Cemetery Board presently consists of three public members and one industry member. There are currently two vacancies on the six-member Board. Consequently, each member must attend the quarterly meetings for there to be a quorum.

At its most recent meeting on April 24, the Board conducted mainly routine business: granting licenses to cemetery salespersons, brokers, and crematories and issuing certificates of authority to operate cemeteries. The Board adopted regulations increasing its fee schedule. Under current fee provisions the Board will experience a deficit by the end of the year. In addition, Senate Bill 912, introduced by Senator Craven March 25, 1981 would increase the Cemetery Fund by requiring each cemetery authority to pay the Board a regulatory charge for each burial, entombment, inurnment, or cremation performed.

FUTURE MEETINGS:

The next Board meeting is tentatively scheduled for July 27 in Sacramento, subject to confirmation by all Board members that they will attend and provide a quorum.

BUREAU OF COLLECTIONS AND INVESTIGATIVE SERVICES

Chief: James Cathcart
(916) 920-6424

The Bureau of Collections and Investigative Services oversees the regulation of five industries: collection agencies, repossessions, private investigators, private patrol operators and alarm services. The Bureau regulates by licensing and formulating regulations. However, decisions are made by one person, rather than by a majority of Board members. The individual vested with this executive power is the Chief of the Bureau, James Cathcart. The Chief is appointed by the Governor, subject to confirmation by the Senate.

Decision-making is delegated to the Chief by the Director of the Department of Consumer Affairs. This delegation gives the Chief unusual authority to issue licenses and propose regulations. The Chief receives the license application and other paperwork directly from the applicant. He then evaluates these materials and decides whether the license should be granted. The Bureau does have one advisory Board under its jurisdiction. The Collection Agency Advisory Committee makes recommendations to the Chief regarding the regulation of collection agencies. The Committee is not a decision-making body and does not directly regulate. Because of the heavy regulation in the collection industry, it does function as a consultant to the Chief.

The Bureau only has public meetings when proposing regulations, as required by the Administrative Procedure Act. Since it is not a multi-member Board, the Open Meetings Act does not apply. There are no hearings regarding licenses; all decisions are made administratively by the Chief. The Collection Agency Advisory Committee does have regular public hearings.

MAJOR PROJECTS:

In each of the Bureau's five major industries there are ongoing projects peculiar to that industry. Each industry has its own regulations and legislation which affect it. The major project common to all five industries, however, is compliance with AB 1111.

While many regulatory entities are trying to circumvent the law, Chief Cathcart believes that the public interest will best be served by cooperating with the OAL in complying with AB 1111. The Bureau has, therefore, submitted a schedule of meetings when regulations and rules will be reviewed. Information hearings were held on June 11 in Oakland and on June 26 in Los Angeles.

The Bureau is currently implementing legislation requiring repossessor's employees to register with the State. This statute allows the Director of the Department of Consumer Affairs, after a hearing, to refuse to register as a repossessor's employee any person who has committed an act which would result in the denial of a license to a repossessor. The Director may also suspend a registered employee for enumerated infractions.

The Bureau is also implementing legislation which relates to private patrol operators. This legislation requires that employers of private patrol operators (security guards) who carry firearms must pass a Bureau approved firearms instruction course. The licensee is also required to keep records of its on-duty employees who carry firearms. The Bureau is authorized to audit the licensee's records to ensure compliance and can levy various fines when violations are found.

Another major project involving private patrol operators is implementation of a reporting system for injuries caused by patrol officers' firearms. With the proliferation of the private patrol industry, there has been a substantial increase in shooting incidents. The Bureau will administer a program which will report and monitor such incidents.

As of July 1, 1981, insurance adjusters came under the jurisdiction of the Department of Insurance and are no longer regulated by the Bureau.

LEGISLATION:

The Bureau had previously discussed a fining system for violations of the Collection Agency Act. Previously, the Bureau had no mechanism to impose such fines directly upon licensees. However, legislation is being introduced that would allow licensees and individual collectors to be fined. Individual collectors could be fined for willfully and knowingly violating the law. Licensees would be fined only if they knew of violations of their individual collectors.

RECENT MEETINGS:

The Collection Agency Advisory Committee held two public hearings in May (in Oakland and Inglewood) to receive input on proposed regulations involving attorneys who engage in collection work. Currently some attorneys do collection work in their law offices. These attorneys have individuals who call debtors in the same manner as collection agencies. However, under the Collection Agency Act, attorneys are exempt from regulation by the Bureau although they engage in collection activity. Attorneys do not have to obtain a license to do collection work and do not have to register their individual collectors.

The proposed regulations would bring attorneys who regularly engage in debt collection under the scrutiny of the Bureau. Licensed collection agencies favor these regulations while attorneys who engage in debt collection are opposed. Bureau Chief James Cathcart will decide whether to adopt these regulations and then submit them to the OAL for approval. Because the Bureau is not a multi-member Board, only Cathcart's approval is required to adopt proposed regulations.

BOARD OF REGISTERED CONSTRUCTION INSPECTORS

Executive Officer:
Lisa Frederiksen
(916) 323-2556

The Registered Construction Inspectors Law (Business and Professions Code Section 9100 et seq.) is a Title Act which forbids any individual who performs construction inspection, as defined, from using the title "registered inspector" unless he or she has passed the Board administered exam. The Board presently recognizes 4 divisions of inspector and 14 specialties (*see* Board regulations, Title 16 CAC Section 3400 et seq.). The Board consists of 12 members, 2 of whom must be public members. Currently, one industry position is vacant.

The most important issue facing the Board is its July 1, 1981 Sunset date. If the Legislature does not recreate the Board by July 1, 1981, the Board will cease to exist. This imminent threat to its continued existence is another chapter in the Board's short, yet troubled, history. The Board was created on January 1, 1974 and given a loan of $100,000 from the General Fund. By February, 1976 the money was exhausted and the Board closed. In January, 1979 the Board was recreated (SB 1367 (Alquist)) but the same bill contained the July 1, 1981 Sunset date. Last legislative session Assemblyperson Fenton sponsored a bill, AB 1000, that would have extended the Board's Sunset date to December 31, 1985. However, on September 30, 1980 Governor Brown vetoed AB 1000. This session two identical bills, SB 206 (Alquist) and AB 2114 (Young), have been introduced that would extend the Sunset date to December 31, 1986, or, if the bill is chaptered after July 1, 1981, provide for the reenactment of the Registered Construction Inspector Law. However, both bills are urgency statutes and the Legislative Counsel has recently opined that it is unconstitutional to recreate offices by an urgency statute. (*See* California Constitution Article IV, Section 8(d).) It therefore appears that if either bill is approved by the Legislature and signed by the Governor, it will not take effect until January 1, 1982. There are two possible outcomes: the Board will either permanently expire on July 1, 1981, or recommence operations on January 1, 1982, after a six month hiatus.

The Board of course supports both SB 206 and AB 2114. The Board's argument for its continued existence is essentially this. An estimated 12,000-16,000 individuals perform construction inspections in California; approximately 3,000 are registered with the Board. If the statistics do not indicate that the program is successful it is only because the program has had a sporadic history. There is a need for the program. Presently, there are 442 cities and 58 counties which register or license construction inspectors. All of these jurisdictions have different requirements and examinations. None of them practice reciprocity with one another. An inspector living in a densely populated area is required to take and pass as many as 25 different exams in order to be able to practice his or her profession. A single, uniform, statewide licensing scheme would eliminate the need for numerous local jurisdictions to administer their separate licensing schemes.

Savings would result, inspectors would pay a single registration fee and local jurisdictions would save money because building departments would no longer have to administer exams, etc. The last is especially important in light of Proposition 13. Local jurisdictions face large budget deficits and building departments are unaffected. As a result, some jurisdictions are employing minimal screening procedures and unqualified inspectors are entering the profession.

A uniform state licensing scheme would provide a pool of qualified inspectors. During peak construction periods, building officials could tap this pool instead of having to examine, hire and fire inspectors.

The Board insists there is an inconsistency in state law. Every other building profession is licensed – architect, engineer, contractor – so why not the construction inspector? If the idea is to protect the public, why not insure that inspectors are as qualified as their colleagues?

The Board has prepared a lengthy Sunset response detailing its position. The response can be inspected at the Board's Sacramento office. Included in the response are the results of an informal Board survey of interested individuals who were asked if the program should be continued: Of those responding, 76 percent answered affirmatively.

The Board's two most influential supporters are The League of California Cities and California Building Officials. Both organizations cite a need for a uniform state system which would replace individual local licensing schemes.

MAJOR PROJECTS:

Despite its uncertain future the Board is continuing work on a few major projects. The Board has approved a $149,000 budget for the 1981/1982 fiscal year, but the Governor did not include this figure in his proposed budget. (This year's budget is $124,000.) The Board must administer 2,600 exams to "grandfather" inspectors by December 31, 1981. Of course, if the Board ceases operations on July 1, 1981 the exams will not be given. Both SB 206

and AB 2114 include a provision extending the testing date to December 31, 1982.

The Board has recently adopted an "inspector-in-training" program and is in the process of developing the necessary regulations. If the Board is not terminated, this will be the Board's major project in the next year.

The Board is proceeding with the AB 1111 review of existing regulation. However, the Board has very few regulations and previous informational hearings have been unattended.

CONTRACTORS STATE LICENSE BOARD

Registrar: John Maloney
(916) 445-4797

The Contractors State License Board licenses contractors to practice in California, sets forth regulations to handle consumer complaints about contractors already licensed, and mandates performance requirements.

The thirteen member Board, which consists of eight contractors and three public members, all appointed by the Governor, meets approximately every two months. There are two vacancies at present. The Board regularly discusses amendments to the existing rules and regulations and proposes improvements in the contractors' licensing procedures, including examination questions about which it has received complaints.

The Board now has three Committees: an Operations Committee overseeing budget and management; an Enforcement Committee on field work and investigations; and a Consumer, Industry and Labor Relations Committee on policy problems. There is also a six person Management Liason Committee functioning as an Executive Committee. The Committees gather information and do not require a quorum.

MAJOR PROJECTS:

The Board recently issued its first citation under powers granted by the Legislature last year. The citation, signed by registrar John Maloney, ordered the recipient to complete an unfinished roofing job within 15 working days and pay a $200 civil penalty. The civil penalty was levied because of a violation of state laws which govern contracting activity. The Board now has authority to issue citations for correction and/or civil penalties from $50 to $2,000 on any one project.

Any contractor cited under this statute has 15 working days to appeal all or part of the citation's conditions. Complaints are to be thoroughly investigated and in most cases contractors will be given the opportunity to resolve complaints prior to citation.

According to Maloney, this citation system will greatly reduce the time it takes the Board to act. "In the past, it has taken months, sometimes years, to suspend or revoke a license. In most cases a citation can be issued within weeks after a violation has been established by our investigative staff." A contractor's failure to comply with a final citation from the Board is grounds for suspension or revocation of the license. Maloney believes most contractors will comply without formal disciplinary actions. The citation system allows the Board to issue sanctions quickly without suspending or revoking a license, drastic measures which result in extensive and often dilatory proceedings.

The Board has also approved a proposal from the Fresno County Department of Weights and Measures and Consumer Protection. The proposal will establish and develop a comprehensive monitoring program to stop construction activity of unlicensed contractors. A pilot program will link local building permit offices, the Fresno District Attorney's office, the Fresno County District office of the CSLB and the Fresno County Consumer Protection Division coordinating the services of these agencies. Development of supplemental services to address the problem of the "unlicensed contractors" in a cost effective manner is also part of the pilot project.

Although the CSLB concedes the Board itself should be dealing with the unlicensed contractor problem, it has decided on a two-year trial of this program. The Board will receive a regular accounting on the program's effectiveness. However, the Board thinks this problem might best be dealt with on a local level.

RECENT MEETINGS:

A study of the impact of the licensing schools on the results of recent examinations was conducted by several UCLA students and presented to the Board. The study shows a correlation between those who take classes at these schools and those who pass, but these results are minimal when all other relevant factors are considered.

A new complaints disclosure system became partially operational in April. Data on disclosable complaints will be computer coded and will be available at all regional offices in June. The data will be accumulated and updated monthly from July 1979 to present.

AB 1363: The Board rules adopted at the January 23, 1981 Board meeting relating to citation procedures were approved intact by the OAL on April 23, 1981. They will take effect 30 days after being filed with the Secretary of State, probably during the first week of May.

AB 1242: Board Rule 775, providing for limited waivers of examination was adopted by the Board in October 1980 and later disapproved by the OAL. It was resubmitted to that office with additional supporting information in late March. Again, the response was negative. There was a great deal of discussion by the Board on what to do, and the Board finally deciding to table the matter until the next meeting. Since that time the staff has decided to resubmit the proposal with minor changes and more substantiation.

AB 1111: The CSLB is beginning its comprehensive review of all of the 97 regulations which became part of the Administrative Code prior to July 1, 1980. The purpose of this review is to eliminate regulations which do not conform to the five statutory standards of necessity, authority, clarity, consistency, and reference.

The CSLB has submitted a plan which has been approved by the OAL and so will be starting the review process soon. It has divided the review into three phases, each allowing for public written comment and a public meeting covering approximately one third of the 97 regulations. By giving notice of the opportunity to comment 45 days in advance and allowing a full 45 day period in which to respond, CLSB has provided the public ample time for adequate input.

To focus and narrow any issues which develop during the in-house analysis and public written comment periods, issue papers will be developed and distributed by staff 15 days prior to the public meeting scheduled for each phase. Special advisory committees may also be formed to resolve difficult issues as they arise.

After the Board completes its review of all the regulations, a "Statement of Completion" must be filed with OAL; the statement is due July 1, 1982. The Board must list all regulations to be repealed, amended or retained. For each regulation which is retained, the Board must attach a Statement of Findings summarizing why it has been retained. The Statement of Findings must contain the following: information favoring retention; reasons for rejecting public comments recommending repeal; specific statutory references where none now exist.

The Board Enforcement Committee proposes to open up another primary classification of Contractor licenses. This new primary classification would be for solar development. New Board rules would be formulated and a new type of exam would be given. A public hearing on this matter will be scheduled for the fall.

FUTURE MEETINGS:

The next meeting will be on July 23 and 24, 1981 at the Hyatt Burlingame Hotel, Burlingame, California.

BOARD OF COSMETOLOGY

Executive Secretary: Harold Jones
(916) 445-7061

The Board of Cosmetology is a counterpart of the Barber Board, both regulating the "beauty" industry. Like the Barber Board, the primary responsibilities of the Board of Cosmetology include teaching, examining and licensing. The Board meets bi-monthly, changing the location from meeting to meeting.

The Board's current concern is complying with AB 1111, which requires self evaluation of existing rules by agencies. The Board's plan for meeting these requirements has been submitted to the Office of Administrative Law. The Board will publicize its plan upon approval from the OAL.

MAJOR PROJECTS:

The Board's current primary concern is the AB 1111 review discussed above. To comply with the public input requirement of AB 1111, a public forum was held on June 14, 1981 in Sacramento. During the forum, testimony was heard on the rules contained in Articles 1, 3 and 8. Additional forums to review Article 4 are scheduled for July 20, 1981 in Los Angeles and September 20, 1981 in San Diego. In addition, the Board has asked for input from such parties as the California Association of Schools of Cosmetology and the Allied Counsel.

RECENT MEETINGS:

The last meeting of the full Board was June 14, 1981 in Sacramento. The major topic dealt with the Board's $1,000,000 budget surplus. In response to pressure by Senator Stern to reduce the surplus, four alternatives were considered:

1. To award gold pins to the Board's licensees;
2. To issue gold embossed diplomas;
3. To institute a consumer education program;
4. To provide "test kits" to examinees.

After considering the options the Board voted to adopt a consumer education program (which would include sending out newsletters and holding seminars) and to issue "test kits." The Board may also refurbish its exam centers.

Despite complaints from the Northern California Chapter of Electrologists that licensees engaging in misleading advertising were going unprosecuted in Northern California, there was no talk of enacting tougher regulations or otherwise solving this problem.

The Board voted to amend AB 1674 to leave the decision as to whether to require a continuing education program up to the Board, rather than to require it by law.

Introduced at the meeting were newly appointed Board member Joyce Seymour and the new executive secretary, Harold P. Jones.

FUTURE MEETINGS:

The next scheduled meeting of the Board is September 20-21 in San Diego.

BOARD OF DENTAL EXAMINERS

Executive Secretary:
Frank McConnell
(916) 445-6407

The Board of Dental Examiners issues state licenses to practice dentistry to those applicants who successfully pass the examination offered by the Board. Dental auxiliaries are also regulated by the Board. The Board is charged with enforcing the provisions of the Dental Practices Act using various disciplinary measures. The Board consists of three public members and eight practicing dentists.

MAJOR PROJECTS:

The major projects of the Board include the implementation of regulations dealing with dental auxiliaries in extended functions, AB 1111, and the general anesthesia permit process. The Board is also interviewing applicants for the office of Executive Secretary. Finally, the Board has requested an Attorney General's Opinion on the legality of establishing a referral service for dentists.

At a recent public hearing on AB 1111, a majority of the dental auxiliaries present advocated the abolition of regulations which postpone the implementation of extended functions and services which auxiliaries could legally provide. It is the Board's policy to speed up the implementation process.

Other projects include consideration of numerous foreign applicants for the dental examination; hiring of investigators to be used solely by the Board; and implementation of AB 1111.

The Board receives applications from dentists all over the world who wish to take the California examination and become practitioners here. The Board must determine whether or not the applicant has received the level of training which qualifies him or her to take the state exam. To date, the only organized international exchange system existing is between the U.S. and Canada.

The Board has received funding to hire its own group of investigators. This would eliminate the need to use investigators provided by the Department of Consumer Affairs (DCA). An investigator working only for the Board of Dental Examiners will theoretically develop expertise in the field. The DCA prefers the Boards to use department investigators, contending that more objective investigators will better serve the consumer. The Board of Dental Examiners will lose its funding for this project if it does not act by May 15, 1981. Further, there is no office space for any newly hired employees. Finally, the Board has not set any policies to guide its own investigators. The Board is in the process of trying to overcome these problems.

The implementation of AB 1111 will be a tremendous task for this Board. Despite some uncertainty on the part of the Executive Secretary, the Board has managed to set up a time frame for completion of the reviews. The actual review process is not substantially underway. Dan Wooldridge, assistant to the director of the DCA, has informed the Board that there is funding available to assist in completing the Board's review of all current regulations as required by AB 1111. The Board will not get these funds unless it asks for them. Mr. Wooldridge claims that the Board of Dental Examiners is the only Board which has not submitted a request. The Executive Secretary denies this claim.

RECENT MEETINGS:

The Board's Disciplinary Actions Committee has been extremely active in recent months. Disciplinary cases brought before the Board are often referred to consultants. These consultants are licensed dentists who assist the Board in determining the severity of an alleged infraction. It is now the Board's policy that the identities of both the accused dentist and the complaining patient remain anonymous.

In another action to enforce the Dental Practices Act, the Board has hired a team of three full-time investigators and a supervisor. The hirings will eliminate the need to use less specialized investigators provided by the Department of Consumer Affairs.

The Committee has been working on a "Diversion Program." Dentists who obtain, possess, or use in violation of the law any controlled substance, dangerous drug, or other intoxicating substance may have their license revoked or be placed on probation. These sanctions possibly deter dentists from reporting their colleagues to the Board for engaging in such conduct.

A diversion program would consist of treatment and counseling for the dentist. A dentist would have the opportunity to approach the Board with his or her problem, undergo treatment, continue practicing

and avoid disciplinary action.

The Board's Examinations and Continuing Education Committees have reported significant action at recent meetings. Board members will no longer grade examinations. Expert examiners will be chosen to grade and the Board will administer the examinations. The Continuing Education Committee has sent letters to the deans of various dental schools requesting them to implement remedial programs for practicing dentists. Dentists found to be grossly negligent in their practices would be required to enroll in remedial courses.

A major concern for the Board in the past two months has been the election of its officers. The Board is highly factionalized, with the 6 "consumer" or "public" members opposing the majority of the 5 "trade" members. Helyn Leuchauer was nominated February 13, 1981 for President and was accused (as part of the "public" faction) of favoring the DCA in its attempt to "control" the Board. Dr. Leuchauer gave a nominating address and 5 Board members (the "trade" faction) walked out, leaving 5 women members and Dr. Howard Stein. Since seven is a quorum, the election was stopped. Further business proceeded conditioned on later "ratification." Almost immediately, however, the five walkouts returned, threatening to leave again should the election be held. The Board held that Dr. Leuchauer had been elected since the entire contingent had not left the premises (perhaps the heel of the last departing walkout remained) when the election occurred.

The Board is confronted with an additional dilemma: whether or not to dismiss Executive Secretary David Hamrock. Certain Board members feel that he has been ineffective and that more agressive management is needed. Those opposing the dismissal are in the "trade" faction. David Hamrock claims he will resign by June of this year.

The election issue and the cliquish division of the Board cause a great deal of gratuitous posturing and speeches by members off the issues. The Board members seemed unprepared on many of the agenda items. Despite these problems, the Board manages to handle most items on its agendas.

On January 12, 1981 Senator Keene introduced SB 122. In 1979 a new law was enacted requiring dentists to obtain a special permit from the Board in order to use "general anesthesia." Dentists using general anesthesia before the effective date of the new law (1/1/80) have until 1/1/81 to get their permit to continue anesthesia. SB 122 would extend this deadline another year, to 1/1/82, as an urgency measure. Many dentists do not have permits and use anesthesia. Moreover, to explain its urgency status, the bill itself states: "Regulations specifying the requirements for the use of anesthesia by licensed dentists have not been adopted."

Dental auxiliaries from other states are constantly applying to take the California exams. The Board is in the process of reviewing, on an ad hoc basis, courses which are offered in out-of-state schools. Based on this review, the Board must determine which applicants are sufficiently qualified to take the California exam.

The Board is continuously enforcing the Dental Practices Act, using the disciplinary means available to it. At its February meeting the Board decided which cases it would hear and which cases it would refer to an administrative law judge. The Board considered the following factors in deciding which course of action to take: budget and time constraints; the level of expertise necessary to properly decide the case; and the fact that most of the issues requiring expert judgment had already been decided by the Board in earlier cases.

One of the major issues facing the Board in the future is the role of dental auxiliaries. At its February meeting, the Board directed the Committee on Dental Auxiliaries to develop a program to train registered dental assistants in the use of the cavitron (a device used to remove cement).

This narrow issue illustrates a more general conflict. The "trade" faction contends that there should be direct supervision of most ancillary services, and required training. The DCA, supported by some of the "public" faction, argues that auxiliaries and dental hygienists should be allowed to do more without having to have a "dental practice" license, and that unnecessary "barriers" should not be imposed by dentists.

LEGISLATION:

The Board is in the process of introducing bills which would respectively make continuing education a mandatory requirement for dentists, liberalize the use of dental clinics and require candidates for licensure to purchase malpractice insurance.

FUTURE MEETINGS:

The Board must determine what to do about AG Opinion 80-321 (*see* AG Opinion discussion, *infra*), which holds that the DCA does not have the power to review or approve (or deny) the budget of the Dental Board or any Board except insofar as it affects the general fund appropriations of the DCA itself. However, the Department of Finance does have such approval authority. The Department of Finance, in the current scheme, gives great weight to the views of the DCA. Several members of the Board are generally upset by the result, although the Board requested the Opinion. They would prefer that the Board's budget be a matter between the Board and the Legislature. The Board might possibly retract its request if it could.

Future meetings in the Spring of 1981 should also consider the problem of dental corporations. Many licensed dentists now work for professional dental corporations. At present, the Board has authority over each licensee for the practice of that licensee. The Board would like, in addition, to hold the corporation licensee responsible for the practice of the licensees working for it. A bill is being formulated to make this change.

The next meeting is scheduled for July 17, 1981 in San Diego.

BUREAU OF ELECTRONIC AND APPLIANCE REPAIR

Chief: Jack Hayes
(916) 445-4751

The Bureau of Electronic and Appliance Repair registers service dealers who repair major home appliance and electronic equipment. Grounds for denial or revocation of registration include false or misleading advertising, false promises likely to induce a customer to authorize repair, fraudulent or dishonest dealings, any willful departure from or disregard of accepted trade standards for good and workmanlike repair and negligent or incompetent repair. The Electronic and Appliance Repair Dealers Act also requires service dealers to provide an accurate written estimate for parts and labor when requested; provide a claim receipt when accepting equipment for repair; return replaced parts and furnish an itemized invoice describing all labor performed and parts installed.

To ensure compliance with the Electronic and Appliance Repair Dealer Registration Law and regulations adopted pursuant thereto, the Bureau continually inspects service dealer locations. It also receives, investigates and resolves consumer complaints.

During March, 1981 the Bureau received 178 consumer complaints and resolved 173, 125 of these by telephone. Three hundred forty-four complaints were pending before the Bureau. Total communications, including correspondence sent and received and incoming and outgoing telephone calls, were 6,465. The Bureau's efforts resulted in the filing of 1 administrative action and 2 criminal actions. The Bureau held 1 office hearing and conducted 4 investigations.

At the end of March, 5,099 electronic dealers, 3,018 appliance dealers, and 587 combination dealers were registered with the Bureau.

In April, 1981 the Bureau received 139

complaints and resolved 156, 110 by telephone. Three hundred twenty-seven complaints were pending. Total communications were 6,238. The Bureau conducted 4 investigations. As a result of the Bureau's recommendations, 1 administrative action and 4 criminal complaints were filed.

At the end of April, 5,057 electronic dealers, 3,045 appliance dealers, and 585 combination dealers were registered with the Bureau.

MAJOR PROJECTS:

On May 22, the Bureau held its second regulation information hearing pursuant to AB 1111. The Bureau reviewed its Article 5 regulations regarding false or misleading advertising and the miscellaneous regulations contained in Article 7. The Bureau is recommending deletion of the requirement that service dealers include their registration number in all yellow page advertisements. Enforcement requires considerable time and money which the Bureau believes could be better spent on stricter enforcement of regulations offering greater protection to the consumer. The third informational hearing will be held in September.

The Bureau is making a determined effort to detect and register more service dealers. It sent letters to all city and county clerks asking them to inform those applying for a business license to repair electronic and/or major home appliance equipment that registration with the Bureau is required. Because the Bureau has received approximately 15 requests for applications since sending these letters, it feels the program was successful and will increase its effort next year.

Its budget permitting, the Bureau plans to contract with the State Board of Equalization to obtain the names of all service dealers who apply for retail sellers' permits. This action is also aimed at registering service dealers.

At the Bureau's request, the telephone company recently agreed to include a statement that it is unlawful to act as an unregistered dealer. The statement will appear at the beginning of the yellow page advertising sections for service dealers.

The Advisory Board completed its survey of parts availability and the delay dealers experience in obtaining parts from manufacturers in an attempt to resolve these problems.

The Board is continuing its investigation of manufacturer warranty rates and the accuracy of high voltage probes.

SB 317, introduced by Senator Petris to increase maximum registration and renewal fees, passed the Senate Business and Professions Committee on April 27 and is now set to be heard in the Senate Finance Committee.

The Bureau opposed AB 1079, introduced by Assemblyman Floyd, which would limit public disclosure of consumer complaints received by any agency within the Department of Consumer Affairs (*see* legislation discussion, *infra*). The Bureau considers the bill too restrictive and contrary to the Public Records Act and the Consumer Affairs Act. In addition, the Bureau feels the bill deprives consumers of important pretransaction information. Passage of the bill would invalidate regulations recently enacted by the Board establishing a complaint disclosure system.

RECENT MEETINGS:

The Bureau's Advisory Board consists of 2 representatives from the appliance industry, 2 representatives from the electronics industry, and 5 public representatives appointed for four-year terms. The Bureau is currently attempting to fill the 2 public vacancies on the Board.

At its most recent quarterly meeting on May 22, the Board discussed video game repair complaints received by the Bureau. At present, the Board's jurisdiction does not include repair of video games.

Many complaints involve the service facility established in California by Atari to repair its video games. Because it is a manufacturer, Atari has not registered as a service dealer. The Electronic and Appliance Repair Dealers Act is unclear as to whether the Bureau has jurisdiction since it generally has no jurisdiction over manufacturers.

For these two reasons, the Bureau has treated these complaints as non-jurisdictional and forwarded them to Atari. Nevertheless the Bureau is concerned about the complaints received.

The Bureau contacted the Attorney General, who concluded Atari's action was not an unfair business practice. The Attorney General has declined to take action.

The Board's Legislative Committee will study whether the Board should introduce legislation to include repair of home computers and sophisticated electronic games in the Bureau's jurisdiction.

FUTURE MEETINGS:

The next Board meeting is scheduled for September 18, 1981, in San Diego.

BUREAU OF EMPLOYMENT AGENCIES

Chief: Portia S. Siplin
(916) 920-6311

Created by the Employment Agency Act, the Bureau of Employment Agencies is a seven member board consisting of three representatives from the employment agency industry and four public members. All members are appointed by the Governor for a term of four years, and a quorum of four is required.

The Employment Agency Act empowers the Board to inquire into the needs of the employment agency industry. It is charged by statute with focusing its concern on promoting the public welfare. Based on this inquiry, the Board sets its policies. At its most fundamental level, The Board operates as an advisory board to the Chief of the Employment Agency Bureau.

The Chief of the Employment Agency Bureau prepares examinations for all candidates and ensures they are examined in accordance with designated rules and regulations established by the Chief. No employment agency may operate without a license; no license is issued unless an examination has been satisfactorily completed. A license entitles the licensee to engage in the business of finding all types of employment for others and charge a fee for the service.

Prior to licensing, an employment agency deposits a bond of $3,000 with the Bureau payable to the State of California for any damages caused by the licensee. The Bureau adopts rules and regulations that define "good business practices" within the trade, and is charged with establishing guidelines for violations of these rules as well as assessing penalties for violations.

Presently, the advisory board has only 4 of its 7 positions filled. All of the industry positions are filled, but 3 of the public member seats are vacant. Ms. Siplin hopes that these will be filled in the near future. Since the Board is purely advisory, the Bureau's ability to take action is not impaired. In any event, the Chief makes many of the decisions unilaterally, usually asking for advice only on important matters.

MAJOR PROJECTS:

Currently, the Bureau's greatest concern is AB 1633, proposed by Assemblyman Roos, which would take away the agency's enforcement powers. Although the Bureau would still have authority to set rules and regulations, the bill's passage would render the Bureau powerless to enforce them. Last year, this bill passed in both the Assembly and the Senate but was vetoed by Governor Brown. The Bureau is adamantly opposed to the bill, contending that it would devastate the consumer protection ability of the Bureau.

This bill was referred to the Assembly Consumer Protection Committee and got out of committee on "special consideration" requested by Assemblyman Roos. It will be heard by the Assembly Ways and Means Committee at its next meeting.

The Bureau has prepared drafts of legislation giving the Bureau greater control over unauthorized practices. Since there is a great deal of unlicensed activity, the

Bureau feels that more "watchdog" enforcement authority is necessary.

The Bureau is preparing for its review of all regulations as demanded by AB 1111. It has scheduled its first hearings for July 13 in Los Angeles and July 15 in San Francisco. The Bureau will contemplate rule changes in the AB 1111 review process. One regulation the Bureau is considering would prohibit the selling of installment contracts to finance companies without first giving notice to the affected clients. Another proposed regulation would require employment agencies to put their license numbers on all advertisements. Its purpose is to help pinpoint all non-licensed activity. The Bureau has expressed interest in receiving public input.

BOARD OF FABRIC CARE

Executive Secretary: Beverly Bair
(916) 445-7686

The Board of Fabric Care licenses, regulates and disciplines the dry cleaning industry. The Board has seven members, four public members and three from the industry.

MAJOR PROJECTS:

The Board recently received test results from the Bureau of Home Furnishings which measured the levels of particular chemicals used to clean draperies "on the premises" of homes and businesses. The results were startling. Two chemicals, carbon tetrachloride (CTE)and perchlorethylene, were found in levels that the Deputy Chief for Health and Safety stated were "immediately dangerous to life or health." CTE is lethal and is banned under the Federal Health and Safety Code. With the help of Gus Skarakis, chief counsel for the Department of Consumer Affairs, the Board has added a responsive amendment to AB 103. The amendment would ban the use of carbon tetrachloride and trichlorethylene in on site drycleaning. The Board has authorized funds to enforce this legislation through additional inspections.

The Board appears to have embarked on another major project. Barbara Erickson proposed the Board use its million dollar budget surplus to set up a private testing laboratory with the Bureau of Home Furnishings. The budget surplus has been collected from licensing fees in the Board's special fund. Currently, when a consumer complains that a garment has been damaged during dry cleaning, the clothing is analyzed at the dry cleaners' trade association laboratory. Ms. Erickson contends that an independently run laboratory will benefit the consumer while assuring the integrity of the tests.

RECENT MEETINGS:

The Board has abandoned a $17,000 project to issue an updated "California Fair Claims Guide." A fair claims guide is used by judges to determine the value of clothes damaged in the dry cleaning process. The Board will, instead, seek to adopt and expand the International Fabricare Institute's recently published fair claims guide.

The Board is also printing and will distribute a Lien Law Poster detailing the rights of dry cleaners and consumers when articles are left for long periods at the stores. The dry cleaners do have the authority to put a lien on, and eventually sell, clothes left at their stores beyond a reasonable time.

The Board is also considering doubling the salary paid to test examiners from $25 to $50.

The Consumer Education seminars designed to educate the public about current problems in dry cleaning and fabrics were declared qualified successes. The Board is considering new approaches to consumer education, an area currently budgeted at $60,000 annually.

ROUTINE BUSINESS:

Bill Peterson, the executive secretary, has resigned. Barbara Erickson and former president Jerome Jones, both public members, have left the Board. Mr. Jones was actively pursuing the problems of dangerous chemicals used in on site cleaning.

Doris Easley announced that close to half the persons taking the licensing tests had failed and informed the Board large numbers of applicants are failing the manual portion of the test, which requires applicants to remove stains and press clothing.

After 175 routine inspections, the Board has issued 149 violations. Most of these violations are apparently delinquent license renewals.

FUTURE MEETINGS:

On July 16, 1981 the Board will begin reviewing all of the Board's regulations pursuant to AB 1111. The public is urged to attend the meeting, at 9:00 A.M. at the Fabulous Inns of America.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Secretary:
Kathleen Callanan
(916) 445-2413

The Board of Funeral Directors and Embalmers regulates the business of a funeral director, the physical and sanitary conditions of a funeral establishment, and the practice of embalming. It registers apprentice embalmers and licenses funeral directors.

Funeral directors must pass an examination on legally accurate determination of death and other applicable laws. Funeral establishments must pass an inspection of their physical facilities. Embalmers must successfully complete a nine-month course in an approved embalming school and a two year apprenticeship in an approved funeral establishment. They must also pass an examination on the theory and practice of embalming, anatomy (including histology), embryology and dissection, pathology and bacteriology, hygiene (including sanitation and public health), chemistry (including toxicology), restorative art (including plastic surgery and demi-surgery) and applicable laws. The Board approves funeral establishments for apprenticeship training, applications to operate an embalming school and controls the licensing examination.

The Board approves funeral director examination scores; issuance, transfer and cancellation of funeral director licenses; and changes of funeral establishment name, ownership, or location. It issues certificates of registration to apprentice embalmers, cancels certificates which have been abandoned or on request, qualifies employers of apprentice embalmers, approves embalmer examination scores and licenses embalmers.

MAJOR PROJECTS:

The Board held its first AB 1111 informational hearing to review Article 8 preneed fund regulations on May 18, 1981. The Board is recommending repeal of several regulations: some have no statutory reference; others are merely reworded statutes which do not meet the "necessity" requirement of the OAL. The remaining regulations are being carefully scrutinized to ensure that they provide the maximum security for preneed funeral trust funds. The details of the consumer's contractual agreement with the funeral director must be enumerated in a formal trust instrument so the survivors may determine if the contract is actually honored. Appropriate investments which will not jeopardize the safety of the funds are specified. All trust income above a maximum of two and one-half percent (allowable as administrative fees) must be retained in the consumer's account as protection against the rising costs of funeral merchandise and services. Strict recordkeeping and reporting requirements are set out for the Board to determine whether trusts are properly maintained.

The Board will review its regulations concerning funeral directors, embalmers, apprentices and embalmers' licenses at its next meeting.

The Board opposed AB 201, introduced by Assemblyman Papan at the request of the California Mortuary Alliance, feeling it offered little protection for the consumer. This bill allowed funeral directors to ar-

range their own audit of trust accounts free from Board verification and prohibited guaranteeing the price of a funeral. The bill also authorized the funeral director to credit a small percentage of the income actually received to the trust account while retaining all remaining income for trustee's fees, legal fees, accounting fees, clerical costs and sales commissions.

In response to criticism by the Board and others, Assemblyman Papan recently withdrew the key elements of the bill during a hearing of the Assembly Consumer Protection and Toxic Materials Committee. Only three provisions remain. Any violation of the preneed law would be a felony rather than the current misdemeanor. The Board believes violations should be chargeable as either felonies or misdemeanors. Otherwise, minor transgressions of the law may not be prosecuted at all.

As amended, the bill also appears to prohibit the commingling of funeral and cemetery trust funds, and permits the Board to audit a funeral director's preneed accounts.

The bill must now be heard in the Assembly Ways and Means Committee. However, a hearing date has not yet been set.

The Board opposes as "over-regulation" SB 339, introduced by Senator Foran. This bill would prohibit disposing of, scattering, or commingling the remains of one person with those of another.

Legislation is also pending (AB 326) which would increase the penalty for vandalizing a cemetery or interfering with any funeral services from a misdemeanor to a felony. AB 799 would increase the exemption allowed for money placed in an irrevocable funeral expenses trust in determining eligibility for public social services programs. (From $1,000.00 to $1,800.00.)

The Board completed revision of its licensing examination and began administering the new test in June.

RECENT MEETINGS:

At its April, 1981, meeting the Board amended its regulations to limit the maximum administrative fee (including trustee fee) recoverable from the income of preneed trust accounts to two and one-half percent of trust corpus per annum. All remaining income must be credited to corpus. Payment of any sales commission, rent, or salary from trust corpus or income is now specifically prohibited.

The Board recommended this change after an informal survey of banks legally authorized by the State to administer trusts indicated that two percent of the trust corpus was a reasonable fee for administration. Prior to the amendment, actual administrative expenses could be recovered from the income on preneed funeral trust accounts when the amount of the trust corpus exceeded one hundred dollars. The taking of administrative fees was prohibited until the individual account had been credited with at least five percent income, added to the trust corpus annually.

The amendment results in payment of a higher percentage of trust income to the individual consumer's account than had previously been credited.

Additional amendments adopted by the Board require that all preneed agreements entered into prior to July 1, 1977, be treated in the same manner as trusts created after that date. This change is intended to better safeguard the previously created trust funds and credit a greater amount of their income to corpus.

FUTURE MEETINGS:

The next Board meeting is set for Saturday, July 11, at 9:00 a.m., in Sacramento.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

Executive Secretary: John E. Wolfe (916) 445-1920

This eight member Board was created by the Geologists and Geophysicists Act of 1970. The Board licenses geologists, geophysicists, and engineering geologists. The statute sets standards of education and/or practice in order to qualify for the written examination. If the applicant qualifies, he/she then takes the examination administered by the Board. If the applicant achieves a score of 70 or better on the examination, the Board will then issue a license to practice.

The Board also has authority to field complaints from consumers concerning licensees. The Board decides which complaints require investigation. The investigation itself is usually done by the Attorney General's office. The Board can adopt disciplinary measures ranging from warning letters to license revocation.

Since its creation, the Board has licensed 3,389 geologists, 1,034 engineering geologists and 813 geophysicists. The Board has revoked one license.

MAJOR PROJECTS:

Present activities of the Board include: (1) Proposed legislation to allow the Board to increase renewal fees for a specialty geologist or specialty geophysicist from "not more than 10 dollars" to "not more than 80 dollars" (AB 940); (2) Proposed legislation amending the enabling statute to include a definition of the word "negligence" (AB 2175); (3) Implementation of a stronger enforcement program; (4) Coordination with city and county officials of efforts to identify geological problems and hazards; (5) Formulation of a policy allowing experienced out-of-state geologists and geophysicists to obtain a license without an examination pursuant to Sections 7847.5 and 7847.6 of the Act; (6) Designing and adopting a brochure describing the Board and its activities to the consumer; (7) Reviewing and justifying existing rules and regulations of the Board for AB 1111 review.

RECENT MEETINGS:

In recent meetings the Board has discussed the need for more money. The Board is funded by the fees it collects. Proposed legislation to raise these fees has been introduced and public hearings are now being held on the increase. These hearings coincide with the monthly meeting of the Board.

The Board has also considered starting a student intern program to help with Board activities. The staff of the Board will administer the new program to coordinate policies with localities in addition to licensing and other ministerial functions. The staff consists of two full time employees, the Executive Secretary and his administrative assistant. More staff is needed; hence the student intern program.

The review of the Board's rules and regulations pursuant to AB 1111 is underway. The Executive Secretary has completed his examination and clarification; public meetings concerning the rules and regulations will be held in September and October. These will probably coincide with the regularly scheduled Board meetings.

The Board has not yet adopted a policy for issuing licenses to experienced out-of-state geologists and geophysicists. At present it is being done on a case by case basis.

FUTURE MEETINGS:

The Board meets monthly at various locations around the state. The usual day for meetings is the third Thursday of each month.

BUREAU OF HOME FURNISHINGS

Chief: Gordon Damant (916) 920-6951

The Bureau of Home Furnishings licenses manufacturers, retailers, renovators and sterilizers of furniture and bedding. In addition, the Bureau establishes rules regarding labelling requirements approved by the California State Department of Public Health pertaining to furniture and bedding.

To enforce its regulations and control its licensees, the Bureau or its inspectors have access to premises, equipment, materials and articles of furniture.

The Chief or any inspector may open, inspect and analyze the contents of any furniture or bedding and may condemn, withhold from sale, seize or destroy any upholstered furniture or bedding or any filling material found to be in violation of rules and regulations of the Bureau. And the Bureau may also revoke or suspend a license for violation of its rules.

There is an eleven member (5 industry members and 6 public) California Advisory Board of Home Furnishings. It advises and makes recommendations to the Chief of the Bureau regarding changes in rules and regulations of the Bureau, needs of the industry and policy changes to promote public health and safety. The Chief of the Bureau serves ex officio as the secretary of the Board, but is not a board member.

MAJOR PROJECTS:

The Bureau's main concern is review of its regulations mandated by AB 1111. The Bureau has been developing "position papers" on its regulations which will be submitted to the Office of Administrative Law (OAL) for approval.

The "position papers" are a result of the Bureau's review of its regulations for necessity, clarity, authority, consistency with other laws and proper reference.

The Bureau has been holding public informational hearings on the existing regulations; however, little public or industrial input has been received. A final informational hearing on the remaining regulations (Articles 11 - 15) will be held June 24, 1981 in Sacramento. More public and industry input is expected on these regulations, which deal with waterbed (Article 12) and flammability regulations (Article 13) regulations.

The Bureau feels it will be ready to submit its "position papers" to the OAL by August 1981.

LEGISLATION:

In February 1981, Senator Greene introduced SB 205. The intent of the bill is to "insulate the purchaser [of furniture] from any financial harm or other harm caused by circumstances beyond his/her control and which results in his/her failure to receive the merchandise purchased free of defect in a timely manner." The bill would give the Bureau jurisdiction to require every agreement for the sale of retail home furnishings and bedding to contain certain consumer protection information, including: specific delivery dates and notice to the consumer of his/her option to cancel and receive full refund for untimely delivery service.

Assemblyman Floyd introduced AB 1079 in March of 1981. The bill would prohibit the dissemination of information by a director or an agency of the Department of Consumer Affairs to the public regarding consumer complaints against licensees unless those complaints have been fully adjudicated or the licensee does not seek judicial review within the time allowed by law.

Under existing decisional law, the disclosure of a consumer complaint to a licensee may result in its being classified a public record and thus open to inspection by the public.

The Bureau is opposed to the bill as unduly delaying access to important public information regarding licensees.

FUTURE MEETINGS:

The next meeting of the Bureau will be in September; the site is as yet undecided.

BOARD OF LANDSCAPE ARCHITECTS

Executive Secretary: Joe Heath
(916) 445-4954

The Board of Landscape Architects licenses those in the practice of designing landscapes and supervising implementation of design plans. To qualify for a license an applicant must successfully pass the written exam of the National Council of Landscape Architectural Registration Boards (CLARB) and the Board's oral exam. In addition, an applicant must have had the equivalent of six years of landscape architectural work. A degree from a Board-approved school of landscape architecture counts as four years of experience.

The Board is required to investigate all verified complaints against any landscape architect and to prosecute all violations of the Practice Act. The Board consists of four public members and two professional landscape architects, one each from Northern and Southern California.

MAJOR PROJECTS:

Projects of the Board include scanning phone books for advertising by unlicensed landscape architects; supplying city building departments and planning commissions around the state with complaint forms; distribution of the consumer brochure; development of TV spots to advertise the brochure; and implementation of AB 1111.

For the past few months a Board employee has been scanning California telephone books for listings of "landscape architects" who are practicing without a license from the Board. One hundred seventeen names were turned up, but only 42 turned out to be unlicensed; the rest were fictitious names of licensees. The search continues.

Sonoma County in particular has historically had a problem of unlicensed persons calling themselves "landscape architects." Many lawsuits over improper design have been filed there in the last five years. Last year, as an experiment, the Board sent consumer complaint forms to building departments and planning commissions in Sonoma County. Starting fiscal year 1981, the Board will be sending the complaint forms statewide together with a consumer brochure and a letter explaining the problem of unlicensed persons practicing landscape architecture and asking the building and planning departments to notify the Board if consumers are in need of Board assistance. The letter also informs the departments that "the Board has established a statewide committee that is available at no cost to assist local agencies in formulating policy relating to the design of land areas where human use requires adaptation of the natural environment." By this the Board means to offer help to local governments in developing grading and solar access ordinances.

Solar access ordinances generally prohibit building or landscape plans that have the effect of denying an adjacent property access to the sun (the goal of such ordinances is the encouragement of solar energy development). Los Angeles has had such an ordinance for two areas since 1980, the Park Mile plan and the Encino plan. According to Executive Secretary Heath, these ordinances make landscape plans much more complicated and thus more expensive. As a result consumers cannot file their own plans with the city. The Board's statewide committee of landscape architects will help cities simplify their ordinances for the benefit of both the consumer and the landscape architect.

The letter has been sent to the County Supervisors Association of California and the League of California Cities for approval. Those two organizations are going to supply the Board with a list of heads of Building and Planning Departments; they are charging the Board $100 for address labels.

The Board paid the California Consumer Affairs Association (CCAA) around $800 to distribute the Board's consumer brochure. They were distributed in January. The CCAA is a branch of county government located in County Consumer Advisory Offices. The brochures were to be distributed through CCAA's normal channels: local consumer groups. CCAA was chosen over the Chambers of Commerce, who were very willing to distribute the brochures. The Board felt that the latter, however, are generally perceived by the public as having a pro-business bias.

CCAA is supplying the Board with its "hit list" which includes certain nurseries and banks. The Board itself sent 5,000 brochures: to licensees to be made avail-

able in their offices, to local schools, news media, consumer unions and the Sierra Club.

The State printed the brochures and only 25,000 copies were made. Heath is presently trying to ascertain whether the budget will permit the printing of more brochures.

Under the direction of Carla Frisk, a public member of the Board and Chair of the Board's Public Information Committee, TV commercials are being developed to inform consumers about the brochure and where to obtain it.

AB 1111:

The Board's May 9 meeting was held on the UCLA campus. Present for the AB 1111 review were three Board members, two landscape architects (one of whom is a member of the Board's Education Committee) and one student. As usual, there were not enough members to establish a quorum. Fortunately, a quorum is not required for AB 1111 *review* of rules and regulations (as opposed to *formal approval* of rules and regulations). Executive Secretary Joe Heath called the turnout "disappointing." He attributed the low participation to the non-controversial nature of the regulations under review. Those regulations were:

Article 1, General Provisions
Sections
2600 Location of Offices
2601 Tenses, Gender and Number
2602 Definitions
2603 Delegation of Certain Functions
2604 Filing of Addresses
2605 Meeting
2606 Seal
2607 Signature, Date of Execution, License Number
2608 Complaint Information System

Article 2, Application for License
Sections
2610 Application for Examination
2611 Application for Temporary Certificate

(Title 16, Chapter 26 of the California Administrative Code)

The only matter that provoked some discussion was Rule 2608, effective only since 1980. That rule allows consumers to request and obtain from the Board information concerning complaints against individual landscape architects. Often a consumer will want to know if there are any complaints outstanding against a particular landscape architect before the consumer decides to hire that architect. Some architects believe that such information should not be disclosed until the investigative and adjudicative proceedings surrounding the complaint are terminated. Thus, they argue, the architect's due process rights are protected.

AB 1079 (Floyd) would require that a complaint against any professional regulated by the Department of Consumer Affairs first be substantiated before information about the complaint could be released to the public. Heath contends that landscape architects have less of a problem because complaints against them are investigated immediately.

A typical complaint the Board receives will be about a designer whose landscape irrigation plan used an incorrect pipe size. There is a relationship between water pressure and pipe size measured in gallons per minute. A plan designed by a landscape architect who has no knowledge of water pressure constitutes an offense for which the license to practice landscape architecture may be taken away.

Heath estimates that one or two landscape architects are suspended per year for malpractice. Most investigations into complaints against landscape architects do not reveal malpractice, Heath said, but rather honest errors made by those architects. For example, a recent complaint concerned improper installment of a drainage system. The problem was due to improper surveying by the surveyor of the property. The landscape architect had not checked to see if the surveyor's work was accurate and as a result, the drainage system he installed drained onto the adjoining property. (Surveyors are used where there are no distinguishing property lines. The owner of the property will usually hire the surveyor.)

When a complaint arises, Heath obtains a copy of the design plan in question and takes another professional look at it. Though a drainage system may be designed 20 different ways by 20 different people, the professional consulted can at least tell whether the overall design yields a good drainage system.

Heath's policy is to try to make the injured consumer whole. In the case described above, he told the landscape architect that he was responsible for the other professional's mistake, and therefore should not charge the customer for changes in the drainage system. The architect complied and the consumer was happy. Heath said landscape architects are usually responsible about their work. He added that it is too expensive to retain an attorney, anyway.

RECENT MEETINGS:

The Uniform National Examination (UNE) issued by CLARB was a major topic of discussion at the May 9 meeting. The Board administered the 18½ hour exam June 22 and 23. In a year of firsts for the Board, this is the first time the UNE has been given over two days. In previous years the UNE had always been a 27 hour long exam, given over three days. Exam sites were Cal Poly Pomona and UC Berkeley. Next year there will be three exam locations in response to the growing number of students.

The Board gave the exam in June of this year to conform to the practice of the rest of the country. The Board had traditionally given the UNE in July; however, other states complained that information about the exam was thus leaked to prospective examinees by examinees in other states.

1976 marks the year the UNE was first administered in its entirety. Since 1970 there had been piecemeal integration of the CLARB exam with the Board's own exam. Currently the Board includes its own plant identification section (two and one half hours) with the UNE. In addition, once the UNE is passed, the candidates must pass a Board oral exam which usually lasts about an hour.

For the first time California examinees filled out a nine question survey at the conclusion of their exam. Some questions were: Have you participated in a UNE review course? (UCLA, UC Berkeley and Cal Poly Pomona give UNE review courses.) Do you think the six year experience requirement to take the UNE is reasonable? Was this exam a reasonable test of your preparation and training for licensure as a landscape architect? An optional question asks for the examinee's ethnic background.

Next year the Board plans to have the exams corrected by professional landscape architects in California rather than by CLARB, which is headquartered in New York. Discrepancies between California and New York landscape design have led to undue penalization of California examinees. For example, where a California design might use four inches of concrete, a New York design would use six inches.

California has been approached by all of the Western states to score their exams.

Four hundred forty one candidates took the exam in California this year, 98 more than last year. Executive Secretary Joe Heath said there are usually 50 more examinees each year. Of the 343 candidates who took the 1980 exam, 108, or 31% passed. This figure is down from 46% in 1979. Of the 108, 63 were first time takers, yielding an 18% passage rate for first timers. The breakdown by schools was as follows*:

SCHOOL	NO. EXAMS TAKEN	NO. PASSED
UC Berkeley	53	21
UC Davis	17	5
Cal Poly Pomona	106	30
Cal Poly San Luis Obispo	53	19
Out of State Schools	89	28
Non-graduates	25	5
	343	108

*Figures include both first timers and repeaters. The exam can be taken an unlimited number of times.

The schools vary in their admissions procedures for accredited landscape architectural degree programs. Davis is very selective and cannot accept even half of its applicants, according to Heath. Cal Poly Pomona, on the other hand, accepts all applicants but subsequently flunks out a great many of them.

June 11 and 12, the Board Education committee reviewed UCLA's evening certificate program (new and old licensees are on all Board committees). The committee attended a Beginning Design and a third year design class. The classes were found to be satisfactory. UCLA's program is reviewed often because it is so new. The Cal Poly schools are reviewed once every four or five years. Those schools see the UCLA program as a threat to their own programs. Heath said the programs are tailored to meet different needs. UCLA's evening program attracts more career-change people, while the Cal Poly schools attract students who early on decide they want to be landscape architects.

Board member Paul Sarto brought up the subject of continuing education for landscape architects at the last meeting. Presently, none is required.

Landscape architecture has changed drastically in the last 10 years. Younger graduates have had more exposure to the environmental sciences, whereas older graduates are more design-oriented.

Conferences keep architects abreast of the latest trade techniques. A minimal fee is usually charged and the conference is usually sold out. Last October a conference on drip and underground irrigation was held. Approximately 200 architects attended and at least half were under 40 years old.

Public member Mike McCoy will address the American Institute of Landscape Architects (AILA) convention, August 20-22 in Las Vegas, on the subject of continuing education. McCoy is a Continuing Education Specialist at UC Davis.

According to McCoy, many educators are opposed to continuing education because they are aware of the history of abuses associated with continuing education. "Subjects are accredited but most are not germane or of a purpose to the profession," he said. "The consumer is often no better off because a professional studied *that particular object* or at *that particular institution*. Thus professionals get credit for irrelevant material and the consumer ultimately pays the bill."

McCoy's view of a consumer board: "A consumer board doesn't protect consumers solely by handling complaints. It protects consumers by making licensees responsible for their designs, as, for example, where licensees plant materials needing heavy chemical maintenance."

Though the Board recently proposed a resolution requiring landscape architects to use minimal amounts of water and pesticides in their landscaping plans, McCoy's own feeling is that "resolutions don't do very much. California doesn't have a good urban pesticide control law. Landscape users are everyone who goes to a park or employs an architect to design a landscape. I think ultimately the Board is a channel for a member of the public to express his or her views."

LEGISLATION:

Board bill AB 1196 (Floyd) would raise license renewal fees from $150 biennially to $200 biennially and eliminate the ceiling on exam fees. This bill may be amended to require that firms with fictitious names register with the Board. Registration would be intended not as a source of revenue but rather as an administrative convenience for Executive Secretary Joe Heath, who receives one or two calls daily from planning and building departments and one or two calls per week from consumers inquiring as to the reliability of certain landscape architectural firms.

Of the 1,500 or so landscape architects in California, 22% work for governmental agencies, 3% occupy teaching positions and 75% are in private practice. Of the private practitioners, 50% work for private homeowners.

AB 1077 (Floyd) would institute a process whereby a license would be retired for a minimal fee. For example, a retired landscape architect may wish to lecture occasionally. Each time he/she lectures, he/she would pay a small fee e.g., $10, to the Board for the privilege of using the title "landscape architect." He/she thus avoids the burden of license renewal and the accompanying fee. The California Council of Landscape Architects had approached the Board with a request that such a bill be devised. They had in mind retired professional Roy Page, who is 87 years old.

SB 310 (Alquist), the Budget Deficiency Bill, was signed June 19 by Governor Brown. The Budget Bill for fiscal year 1981-82 (Alquist) has passed both houses and is awaiting the Governor's approval.

FUTURE MEETINGS:

The Administrative Code rules to be reviewed at the next meeting are:

Article 5, Group Practice
Section 2640 Notification of Group Practice
Article 8, Branch Offices
Section 2660 Branch Offices
Article 9, Advertising
Sections
2670 Advertising
2671 License Number Required in Public Presentments

The meeting will be in Santa Barbara July 11, in the Santa Barbara Planning Commission hearing room.

The May 9 hearings were advertised in the *Sacramento Daily Recorder*, the *L.A. Daily Journal* and the *San Francisco Reporter*. In addition, they were advertised in the *San Francisco Pacific Builder*, a daily popular with landscape architects throughout the state. Heath also mailed notices of the hearings to the American Society of Landscape Architects, the American Institute of Landscape Architects and the Society of Irrigation Consultants with requests that the officers announce the hearings to members. Heath may try advertising in different publications for the July meeting.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director: Robert Rowland (916) 920-6393

The BMQA is a nineteen member Board within the Department of Consumer Affairs. The Board is divided into 3 autonomous divisions: Allied Health, Licensing and Medical Quality.

The combined purpose of the BMQA and its three divisions is to protect the consumer from incompetent, grossly negligent, unlicensed or unethical practitioners, to enforce provisions of the Medical Practice Act and to educate healing art licensees and the public on health quality issues.

The functions of the individual divisions are as follows:

The Division of Allied Health licenses and regulates the areas of audiology, physician's assistants, podiatry, speech pathology, physical therapy, psychology, acupuncture and hearing aids. Most regulation occurs through the Committees of this Division (*see* separate reports, *infra*).

The Division of Medical Quality is responsible for disciplining physicians who are found to be in violation of the Medical Practice Act. In addition, it is attempting to establish review mechanisms to identify physician problems such as drug and alcohol abuse and rehabilitate the physician before the problem becomes more serious and affects patients.

The Division of Licensing's responsibilities include testing for licensing, license renewal, establishing the continuing medical education requirements and verification of the physician's license to practice.

The BMQA, together with its three divisions, meets approximately five times a year at various locations throughout the State.

MAJOR PROJECTS:

As with many other agencies, the

Board's primary concern is complying with AB 1111. The Board is currently preparing issue papers which set forth the background and purpose of each existing regulation. It is expected that these papers will be ready August 1, 1981. Two public hearings to review the regulations are scheduled. The first is September 12, 1981 in Burlingame and the second September 25, 1981 in Los Angeles.

RECENT MEETINGS:

The most recent Board meeting was June 10-12, 1981 in Sacramento. Among the activities reported by each division to the Full Board were the following. The Division of Licensing has enacted a Loan Program for physicians setting up primary care facilities in underprivileged areas. Twenty applications were received and reviewed; five loans of $10,000 each were awarded. Of those receiving the loans three were minority physicians, one was a woman and three were Spanish speaking.

The Division of Allied Health is currently involved in a growing controversy among physicians, registered nurses and the Attorney General's office over whether or not it is legal for a nurse to prescribe drugs. The Attorney General's office says it is not legal while the nurses contend it is. Since many hospitals currently allow nurses to prescribe drugs, major policy changes by such hospitals may be necessary if the Attorney General's office is correct.

The Division of Medical Quality reported on its diversion program for impaired physicians. The program attempts to rehabilitate physicians with drug or alcohol abuse problems. The Division reported it is very pleased with the program's success.

The Division also reported it has agreed to grant oral argument to all licensees who are brought before a disciplinary committee if they request it.

In discussing current legislation, the Board voted to favor AB 107, a bill requiring continuing medical education. It opposed SB 732, an informed consent abortion bill, finding it a perversion of the informed consent doctrine.

FUTURE MEETINGS:

September 12, 1981, Burlingame,
September 25, 1981, Los Angeles.

PHYSICIAN'S ASSISTANTS EXAMINING COMMITTEE

Executive Officer: Ray Dale
(916) 924-2626

The BMQA's Physician's Assistants Examining Committee regulates the various types of "physician's assistants," their supervisors and training programs. The Legislature has provided for paramedical health care personnel to stem the growing "shortage and geographic maldistribution of health care service in California," and "encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks . . ."

In order to fulfill this mandate, the Committee certifies individuals as physician's assistants (P.A.'s), allowing them to perform certain medical procedures under the physician's supervision. For a primary care physician's assistant, permissible procedures include the drawing of blood, giving injections, ordering routine diagnostic tests, performing pelvic examinations and assisting in surgery. A P.A. may be certified for other tasks where "adequate training and proficiency can be demonstrated in a manner satisfactory to the Board."

The Board is made up of nine members, all appointed by the Governor.

MAJOR PROJECTS:

The Committee has four goals for 1981:

1. Initiating public relations activities to inform the general public and other members of the health professions what a P.A. is and what tasks P.A.'s may perform.
2. Changing the law so that a majority quorum may carry a motion.
3. Changing the law to allow more P.A.'s membership on the Committee.
4. Clarifying and simplifying the Committee's regulations (AB 1111) with the Office of Administrative Law.

RECENT MEETINGS:

The Governor recently appointed a sixth person to the Physician's Assistant Examining Committee, leaving three seats unfilled. This should make the conduct of committee business much easier because the law requires five affirmative votes to carry any motion.

The Committee recently appointed Ray Dale as its executive officer.

The scheduled Committee meeting of March 11 occurred before the appointment of the sixth member and one member was absent; there was no quorum present to conduct business. The regulatory hearing scheduled for June 10, dealing with Physician's Assistants transmitting orders for medications has been rescheduled for the Committee meeting of September 9.

A seventh person has now been appointed to the Committee, and is the only Physician's Assistant currently on the Committee.

At present, there is a surplus of about $20,000 in the Committee's budget. This money will revert to the State in the near future if not spent by the Committee. The surplus seems largely the result of two factors. First, the long absence of an Executive Officer and the salary thereby saved. Second, while no executive officer was aboard, no enforcement proceedings could be implemented, and so no money was spent on enforcement.

The Committee decided at its June 10 meeting to spend this money rather than let it revert to the State. To further that goal, a motion was passed directing that certain equipment be purchased. The list of equipment includes a memory typewriter, an electric typewriter, a conference tape recorder, an adding machine, a portable dictation unit and about $2,000 worth of audio-visual equipment. The estimated cost of this equipment is $6,000. The Committee also decided to hire some students as temporary help to work on special projects. These projects include papers on the prescribing of medications by P.A.'s, and the licensing of individual P.A.'s to perform additional tasks beyond the baseline tasks already allowed licensees.

The $20,000 surplus cannot be carried over to next year; it must be spent now or lost. Because fifteen enforcement cases have been opened by the new executive officer, it seems certain that more money than usual will be needed next year to follow these cases through. The carrying over of these unexpended funds to meet the clear needs of the coming year would seem to be desirable, but they will not be available in the future.

Prior to considering whether or not to approve a P.A.'s application to be allowed to perform an additional task, the Committee currently requires 2 physicians to attest to the P.A.'s level of performance of that task. One of these doctors is the P.A.'s supervising physician. The second doctor must be independent of the supervising physician. It was brought to the attention of the Committee that getting the opinion of the second, independent doctor is especially difficult in small communities. This is true either where there is no second independent doctor nearby or where the other doctor is a competitor unwilling to take the time to observe the P.A. Several suggestions were made regarding this problem. One alternative was to eliminate the second opinion, with the Committee auditing the task performed by the P.A. New tasks done by the P.A. under the supervision of his or her supervising physician would be followed up by the Committee to see if any problems occurred because of the P.A.'s performance. Another suggestion was that the Committee hire physicians in different geographic areas to act as independent doctors, and to report on the level of competency displayed by the P.A. The possibility of using medical schools to give the second opinion regarding competency was discussed. Another alternative was that

certain medical groups be freed of the requirement that the second opinion come from an unaffiliated physician. Other alternatives were also suggested and the entire matter will be considered in greater detail by the Committee at its next meeting.

Presently, sixteen persons are scheduled to take the specialty exams this June 20. Passing such an exam allows one to practice in a specific field, with allowable tasks set out in the Committee's Rules (CAC Title 16, Sections 1399.540-1399.584). These tasks differ from those allowed a primary care physician's assistant. The exam to license the orthopedic P.A.'s will be taken by six persons; an equal number will take the women's health care P.A. exam and four will take the allergy P.A. exam. These exams are to be given in both Los Angeles and in Sacramento.

FUTURE MEETINGS:

The Committee will meet on September 9 in Burlingame.

ACUPUNCTURE ADVISORY COMMITTEE

Executive Officer: Dean Lan
(916) 924-2642

The Board of Medical Quality Assurance's Acupuncture Advisory Committee is an eleven member committee charged with setting educational and licensing standards for acupuncturists. The Committee consists of four public members and seven acupuncturists. Five of the Acupuncturists must have at least ten years experience in acupuncture, but need not possess a physician's and surgeon's certificate. The remaining two must have at least two years acupuncture experience and possess a physician's and surgeon's certificate.

MAJOR PROJECTS:

The Committee is currently evaluating twelve schools which have applied for approval of their acupuncture programs. Three California institutions have already been approved by the Committee. This function is very important to the Committee: it desires to establish higher standards for acupuncture education in the state. The Committee believes that current accreditation standards, set by the Department of Education, should be supplemented by standards relating specifically to acupuncture. Schools would thus be compelled to upgrade their acupuncture programs in order to gain approval of the Committee and satisfy license requirements.

In evaluating acupuncture programs, the Board interviews the faculty members teaching the course. These interviews are designed to analyze the qualifications and experience of acupuncture instructors. The interviews and curriculum evaluation form the basis of the final determination regarding the quality of the school's acupuncture program.

The Committee is also continuing to upgrade the exam it administers to prospective licensees. The exam had previously consisted of an oral practicum only; however this year the April exam also included a written section. The exam is offered twice a year. The Committee has received positive comments on the written portion of the exam. Other Committee efforts to upgrade the exam have been less successful.

LITIGATION:

The Committee submitted regulations to the OAL in February upgrading the exam. These regulations were subsequently rejected. In an attempt to expand the scope of the exam, the Committee had proposed to test in the areas of Western medicine, organic chemistry, physiology and general science. The Committee believed that testing in such areas would produce more qualified licensees in the acupuncture field. The OAL, however, rejected these regulations, claiming that the documentation was insufficient to justify or show necessity for the change.

The Committee responded to this rejection by appealing to the Governor. The Administrative Procedures Act empowers the Governor to hear appeals from the decisions of state regulatory bodies. The Governor has 10 days to render a decision or the finding of the regulatory body is automatically upheld. The Committee's appeal was rejected by the Governor's Office, the 10 day period passed and the OAL's decision was sustained.

The Committee believes it has statutory authority to set examination standards without submitting excessive documentation to justify the change. The Committee also believes that it, and not the OAL, is best qualified to determine the standards by which acupuncturists should be licensed. Because it has exhausted its administrative remedies, the Committee plans to appeal the OAL decision to either superior court or the state court of appeals.

RECENT MEETINGS:

At the May 30, 1981 meeting executive officer Dean Lan reported on the results of the April examination. Fifty-eight percent of the 170 examinees passed the test, which was offered in five languages (two dialects of Chinese, Japanese, Korean and English).

Another agenda item involved the Committee's first license revocation. In revoking the license the Committee exercised important enforcement power, showing its willingness to punish violations of state acupuncture standards. The revocation also demonstrated the Committee's desire to expand its regulatory scope by scrutinizing the conduct of practicing acupuncturists. The Committee's activities had previously been confined to determining standards of entry into the profession.

The Committee also heard a report on a budget change proposal which would allow for additional staff. The report stated that additional staff is necessary because of the increase in examinees. This year the number of individuals taking the exam increased fifty-two percent over the previous year. Next year's increase is expected to be 100%.

Qualifications of faculty instructors were addressed at the May 30 meeting. Presently an acupuncturist need only be licensed to qualify as an instructor. The proposed regulations would require that an instructor have 4 years of education and 3 additional years of experience or 7 years of experience. The motive of these regulations is to prevent newly licensed acupuncturists from becoming instructors without first obtaining some on the job experience. Most acupuncture programs take 2-3 years, and the regulations will try to set a minimum level of educational and practical experience to insure quality instruction.

The Committee is still discussing a proposal regarding the title to be given certified acupuncturists. Titles such as Doctor of Oriental Medicine and Doctor of Acupuncture have been considered. The Committee generally believes the title question is important, because of the credibility the term "Doctor" has with the public. Consumers are more likely to seek medical treatment from a person whose name is preceded by the title Doctor, since it implies skill and expertise. These suggestions will be left for further discussion at future meetings.

On June 12, 1981, the Division of Allied Health Services of the BMQA met to discuss various proposed regulations relating to acupuncture. While the Acupuncture Advisory Committee is empowered to administer examinations and license acupuncturists, all of its proposed regulations must be approved by the Board before being submitted to the OAL.

Regulations concerning continuing education requirements for acupuncturists were discussed by the Board. Under these regulations an acupuncturist would be required to take 30 hours of approved continuing education courses every 2 years. If these requirements were not met, the acupuncturist's license would not be renewed. The OAL had previously rejected these regulations after they had been approved and submitted by the Board. The ground for

rejection was the lack of a clear and sufficient rationale to satisfy the "necessity" test. The Committee reformulated the rationales and presented them at the June 12 meeting. The Committee set forth 12 rationales for continuing education, including: to have a dialogue about diagnosis and treatment methods between Western and traditional Oriental practitioners, to exchange research and to generally expand knowledge of acupuncturists. All of these activities would ultimately protect the consumer. These continuing education regulations will be considered for approval by the Board in September after a formal notice hearing in compliance with the Administrative Procedures Act.

Other meeting topics, such as the use of the term "Doctor" and instructor qualifications, have been discussed above.

FUTURE MEETINGS:

Public hearings will be held regarding AB 1111 review of regulations on September 12 in San Francisco and on September 25 in Los Angeles. AB 1111 issue papers were drawn up in June.

A regular Committee meeting will be held July 18, 1981 in Sacramento.

HEARING AID DISPENSERS EXAMINING COMMITTEE

Executive Officer: Carol Richards
(916) 920-6388

The Board of Medical Quality Assurance's Hearing Aid Dispensers Examining Committee consists of seven members, four public. One public member is a licensed physician and surgeon specializing in treatment of disorders of the ear and is certified by the American Board of Otolaryngology. Another is a licensed audiologist. The three non-public members are licensed hearing aid dispensers. The Committee prepares, approves, grades and conducts exams of applicants for a hearing aid dispenser's license. The Committee also reviews the qualifications of applicants for the exam.

Actual licensing is performed by the Board of Medical Quality Assurance. The Committee is further empowered to hear all disciplinary matters assigned to it by the Board.

RECENT MEETINGS:

The Committee is drafting "standards of practice" to outline the minimum functions required of a "dispenser" in his/her practice.

Subcommittees were formed to develop "issue papers" regarding the regulations being reviewed under the mandate of AB 1111.

LEGISLATION:

AB 1528, introduced in May 1981 by Assemblyperson Rosenthal, expands the definition of what shall be deemed to be "hearing aid dispensing" requiring licensure.

Existing law exempts from licensure registered licensed audiologists and licensed physicians and surgeons who make recommendations to patients to purchase specific hearing aids by mail-order. (Bona fide sale of HA's by catalog or direct mail is also exempt).

The bill would: "provide that physicians and surgeons or an audiologist shall be deemed to be directly or indirectly engaged in the sale of hearing aids if he or she makes a recommendation for the purchase of a HA not individually fitted to the purchaser by a licensed hearing aid dispenser," and "delete the provision exempting from regulation sales of hearing aids by catalog or direct mail."

The effect of this bill would be to require that all hearing aids be purchased only through one who is licensed as a hearing aid dispenser. This would eliminate the ability of a patient ("purchaser") to bypass the hearing aid dispenser and purchase by mail under the guidance of an audiologist, physician or surgeon alone.

While some members of the Committee support this bill as protection of the consumer's ability to receive adequate attention for defective products, others reject it as an effort by those licensed as hearing aid dispensers to monopolize the sales of hearing aids. They further feel it does not benefit the consumer.

No decision was made to support or oppose the bill, as the Committee was evenly split.

FUTURE MEETINGS:

July 17, 1981 in Newport Beach, September 24, 1981 in Los Angeles and December 4, 1981 in San Diego.

PODIATRY EXAMINING COMMITTEE

Executive Officer: Aldo Avellino
(916) 920-6373

The Podiatry Examining Committee of the Board of Medical Quality Assurance has six members. All are appointed by the Governor. The Committee consists of two public members and two private members who are licensed podiatrists. There are presently two vacancies. The Committee sets educational and licensing standards for podiatrists and is empowered to inspect hospital facilities which specialize in podiatric medicine. This authority also allows the Committee to inspect hospital records relating to podiatry.

MAJOR PROJECTS/RECENT MEETINGS:

The Committee is currently involved in evaluating the continuing education courses offered to podiatrists. In order to be relicensed, a podiatrist must complete 50 hours of approved continuing education courses over a two year period. Because of this requirement, the Committee has determined that courses should correspond with the educational needs of podiatrists and reflect areas of clinical development.

An institution desiring to offer a continuing education course must first survey local podiatrists to determine what areas of study are most desired and needed. The institution then submits a course assessment to the Committee, justifying it in terms of the needs of local podiatrists. The Committee evaluates these assessments and either approves or disapproves the course. An unapproved course will not be credited toward fulfillment of the continuing education requirement; therefore approval is necessary to the course's survival. The supervision of these continuing education programs is the Committee's major ongoing project.

The Committee is currently trying to implement its statutory authority to inspect hospital facilities specializing in podiatric medicine, and is examining hospital records relating to podiatric care. These actions will give the Committee a larger role in podiatric quality control, determining if hospitals are complying with regulatory rules.

FUTURE MEETINGS:

The Committee's timetable for reviewing its regulations pursuant to AB 1111 has been approved by the Office of Administrative Law. Review should begin sometime in July, and thereafter the regulations will be submitted to the OAL.

PSYCHOLOGY EXAMINING COMMITTEE

Executive Officer: Howard Levy
(916) 920-6383

The Psychology Examining Committee (PEC) is the state licensing agency for psychologists. The PEC sets education and experience requirements for licensing, administers licensing examinations, promulgates rules of professional conduct, regulates the use of psychological assistants, conducts disciplinary hearings and suspends and revokes licenses.

MAJOR PROJECTS:

The Board has formed an ad hoc subcommittee composed of Dr. Maria Nemeth, Dr. Matthew Buttiglieri and legal counsel

to develop regulations for comparability studies. Presently, applications of candidates with degrees from non-accredited, non-approved schools are judged by the same standards as applications from candidates with equivalent degrees. The Board decided there is a significant difference in these two categories of degrees and, therefore, different standards should apply. The equivalent degree standard examines the candidate's individual coursework. The new regulations for comparability studies will place more emphasis on scrutinizing the school itself.

Major concerns of the PEC have been consumer education; sexual misconduct on the part of therapists; the regulating of psychological assistants; ethical violations by licensees which are also legal violations; the licensing of applicants who are already licensed in another state; and the licensing examination itself.

THE EXAMINATION CONTROVERSY:

An applicant for licensure by the PEC must first pass an objective written examination and then sit for a subjective oral examination. The Board has been working to improve both exams, focusing on content and relevancy of the written exam. The grading of the written exam, however, has become the center of a bitter controversy.

The current dispute began with an April, 1977 decision by the PEC to adopt an objective national exam, the Examination for Professional Practice in Psychology (EPPP), in place of the subjective essay exam it had been using. The EPPP is prepared by the American Association of State Psychology Boards and is administered by the Professional Examination Service. The Board also decided to adopt the national mean as a passing score, rather than the 75% raw score it had previously used. Arlene Carsten, a Board member, brought suit against the PEC alleging that the Board was compelled by statute to use a 75% raw score cutoff as a passing grade. The California Supreme Court affirmed the trial court's decision that Ms. Carsten, as a Board member, was not the proper person to bring the suit since she was not a candidate for licensure and so was not in a position to be hurt by the Board's grading policy. (*See* discussion in litigation section, *infra*.)

Until October, 1980 the mean for the standarized national test did, in fact, equate to a raw score of about 75%. In January, 1980 the Board passed a motion to change the cutoff to the national mean for all candidates with doctoral degrees. This refinement, which raised the raw score slightly, was thought to be necessary because in California the Ph.D. degree is an exam prerequisite, while in some other states candidates with masters' degrees are allowed to take the exam. The current dispute arose when the refined national mean score for the October, 1980 exam rose to approximately 79%. The result was that seventy-seven candidates who scored between 75% and 79% failed the exam.

Several of these failed candidates filed suit against the PEC seeking a writ of mandate from the court compelling the PEC to apply a lower 75% score cutoff. They relied on the specific wording of the enabling statute which states, "[a] grade of 75% shall be a passing grade . . ." The court denied the writ, agreeing with the declaration of a psychometric expert that the statutory language has no plain meaning and has no possible meaning or interpretation unless the raw score is first defined and then related to one of a number of possible standards of comparison.

The question became moot when the PEC at its January, 1981 meeting decided to retroactively lower the passing score for the October exam to the national mean for all candidates with Ph.D. degrees minus one-half standard deviation. The practical effect was to bring the cutoff point down to 75% score, thereby enabling the seventy-seven affected candidates to sit for special orals in March. At its February 1981 meeting, the PEC reaffirmed that the passing grade for the April exam will remain the national mean for all candidates with Ph.D. degrees.

Paul Hoffman, a member of the Examinations Sub-Committee of the American Association of State Psychology Boards, was present at the February meeting to answer questions about the EPPP. His explanation for the jump in the national mean for the October exam was simply that the October exam was easier than previous exams. In Dr. Hoffman's opinion, the next three or four years could see a drastic restructuring of the exam.

The examination has also been the subject of a study authored by Eric Werner of the Department of Consumer Affairs and presented at the January, 1981 PEC meeting. Mr. Werner collected data on the April 1980 EPPP pursuant to California law, which prohibits adverse impact on any group of candidates unless the examination has been validated for job-relatedness. The review of the April EPPP revealed a significant adverse impact on ethnic minorities and older examinees, raising the legal issues of the exam's relevance to the profession. Mr. Werner concluded that there was doubtful "practice relevance" of EPPP score in relation to the fundamental purpose of licensure: ensuring public health and welfare. He therefore recommended that the Board reconsider the use of the national mean cutoff.

Interestingly, Dr. Antonio Madrid intends to investigate the possibility of giving the April exam to a group of recognized competent psychologists to see how their raw scores compare to the national mean.

RECENT MEETINGS:

The controversy surrounding the PEC's licensing examination (*see* CRLR Vol. 1, No. 1 (Spring, 1981)), continues to plague the Board. In March, the Examination Subcommittee decided against recommending waiver of licensure requirements for several minority candidates who had failed the written examination. The Subcommittee decided that waiver simply could not be granted under present regulations. However, Dr. Antonio Madrid, Subcommittee chair, recommended that the Board authorize the Subcommittee to investigate the manner in which candidates may have the written examination waived and develop waiver guidelines.

The disappointed candidates attended the full Board meeting to plead their cases. One of them, a Vietnamese psychologist, stressed the uniqueness and importance of his services to Vietnamese living in the San Francisco area. A second candidate adopted a much more hostile tack. He attacked the validity of the examination, also charging that the cutoff score is arbitrary, there is no relationship between passing the examination and competency to practice, and that requiring passage of the examination does not serve the Board's duty to protect the public. Board members, in response, cited their continuing efforts to improve the examination and a court decision upholding the cutoff score. The Board voted to accept the Subcommittee's recommendation to deny the waivers and also to adopt Dr. Madrid's suggestion for the development of guidelines.

Since the March meeting, one of the candidates denied waiver has filed a complaint with the Department of Fair Employment and Housing, alleging that the Examination for Professional Practice in Psychology (EPPP) discriminates on the basis of race. As of May, four additional complaints were filed against the PEC with regard to the examination, three alleging age discrimination and one alleging national origin discrimination.

At its February 1981 meeting, the PEC also considered a paper prepared by Arthur N. Wiens, Ph.D. and Herbert Dorken, Ph.D. which proposed major changes in standards and enforcement with regard to unprofessional conduct. The Board expressed strong reservations to the proposal and Dr. Dorken has been invited to attend the later Board meetings to express his views.

Board member Dr. Matthew Buttiglieri briefly discussed the extensive statistical

profile he has prepared on candidates who pass the licensing exam. His analysis indicated that 90% of the candidates are in the clinical and counseling specialties and that candidates from out-of-state schools pass the exam at significantly higher rates than those from California schools. The study contains the pass rates for the individual schools.

Dr. Madrid discussed the oral exam and presented statistical evidence that of the 60-75% of the states which administer an oral exam, California has the lowest pass rate. Dr. Madrid will be working on the establishment of an attitude scale for the oral exam.

Dr. Joseph White, the new chairman of the PEC, abolished the Budget, Legislative and Public Information Subcommittees, replacing them with liasons. The budget liason is Ms. Rita Walker; Ms. Luana Marctilla will act as both legislative and public information liason. Dr. White appointed members to the remaining subcommittees as follows: Credential Subcommittee: Dr. Maria Nemeth (Chair), Dr. Antonio Madrid and Dr. Matthew Buttiglieri; Examinations Subcommittee: Dr. Antonio Madrid (Chair), Dr. Edward Burke, Ms. Rita Walker and Dr. Buttiglieri.

AB 1111:

Board members are preparing issue papers on the Rules and Regulations of the PEC. The papers should be ready for dissemination by August 1.

Gregory Gorges, legal counsel for the PEC, reported at the May meeting that the Office of Administrative Law wants the completion date of the review moved forward from June, 1982 to January, 1982. Gorges refused OAL's request because the shorter period would be inadequate for complete review.

LEGISLATION:

AB 2199: Sponsored by California State Psychological Association (CSPA) the bill contains provisions which would broaden the standards for denial, suspension or revocation of licenses by the PEC; increase the maximum fine for violations of Psychology Licensing Law; and mandate PEC investigation when certain types of judgments are obtained against licensees. PEC opposes the bill on the grounds that its provisions are unnecessary, inappropriate, overbroad and unprecedented.

AB 1014: To require that agency policies be promulgated as administrative regulations. PEC opposes; requirements will result in a proliferation of unnecessary regulations.

SB 257: Establishes detailed reporting and timing requirements for the processing of permits and licenses. PEC opposes unless amended to exempt PEC.

SB 871: Changes county Short-Doyle personnel utilization requirement from "community professional personnel" to "qualified practitioners of psychiatry, clinical psychology, psychiatric nursing and clinical social work." PEC opposes; specification of selected professional is inappropriate.

SB 382: Sponsored by CSPA. Permits examination of police officers by licensed clinical psychologists with specified experience. PEC opposes unless amended to include all licensed psychologists. Bill died on Senate floor. CSPA is seeking reintroduction as an amendment. Present PEC position is to "watch."

FUTURE MEETINGS:

The next meeting of the PEC will be in April, 1981.

SPEECH PATHOLOGY AND AUDIOLOGY EXAMINING COMMITTEE

Executive Officer: Carol Richards (916) 920-6388

The Board of Medical Quality Assurance's Speech Pathology and Audiology Examining Committee consists of 9 members; 3 Speech Pathologists, 3 Audiologists and 3 public members (one of whom is a physician or surgeon). The Committee is responsible for the examination of applicants for licensure. The Committee hears all matters assigned to it by the Board, including but not limited to any contested case or any petition for reinstatement, restoration or modification of probation. Decisions of the Committee are forwarded to the Board for final adoption.

MAJOR PROJECTS:

Since AB 1111 was not contemplated in its original budget, the Committee needs $2,000 extra to meet the AB 1111 requirements. However, the Department of Finance rejected the request and the Office of Administrative Law is evaluating it. If the request is not approved, the Committee feels it may not be able to review existing regulations properly, as required by AB 1111.

The Committee, in conjunction with the Board of Medical Quality Assurance, will be holding public hearings in Burlingame (September 12, 1981) and Los Angeles (September 25, 1981) to solicit input regarding regulation changes pursuant to the AB 1111 mandate. An "issue publication" will be distributed to interested public groups to provide background information regarding the regulations.

A major ongoing problem facing the Committee is reestablishing the status of the Severe Language Disorder/Aphasia (SLD/A) public school training program.

Qualified applicants must complete 9 months (full time, 30 hours/week) of supervised Required Professional Experience (RPE) after Committee examination in order to obtain final licensure. The SLD/A program is one of several acceptable types of RPE for this purpose. SLD/A training programs were previously given full credit if the applicant was to teach in the school setting on a full-time basis.

The Committee has settled the problem of the status of the Severe Language Disorder/Aphasia (SLD/A) public school training program as a specific setting for RPE. As of April 24, 1981, this particular RPE will receive only half credit.

Those fulfilling their RPE in this setting prior to April 24, 1981 (approximately 75 applicants) will have their individual program settings evaluated by the Committee to determine if the RPE requirement is adequately met. The Committee will consider the age, number and specific language disorders of the pupils taught in making its decision. It is expected that most will be allowed to receive full credit.

RECENT MEETINGS:

On March 6, 1981, the Speech Pathology and Audiology Examining Committee met and established a subcommittee to formulate input into "standards of practice" being drawn up by the Hearing Aid Dispensers Committee. The "standards," which will outline the minimum required function of a "dispenser" in his/her practice, interact critically with audiology practice by the licensees of the Committee.

The Committee announced at the March meeting that the licenses of 75 applicants who have "completed" the SLD/A program under previous requirements are being held pending the outcome of the Committee's decision about SLD/A credits. Much debate followed a preliminary subcommittee report on this problem, but a final decision was postponed until the next meeting when the final report is due.

LEGISLATION:

In March 1981 Assemblyperson Rosenthal introduced AB 1022. This bill would require the Department of Health Services "to establish one demonstration site to screen newborn infants at risk for congenital deafness and to create and maintain a system of following, assessment and cost effectiveness of benefits for infants identified by the screening."

Because of the cost of such a program, the Committee feels that the Department of Health Services will oppose the bill. The Committee itself is taking a nonpartisan stance.

The bill is sponsored by an individual physician from the California Medical Association's Pediatric Academy.

FUTURE MEETINGS:
June 26, 1981, Airporter Inn at Irvine,
September 18, 1981, San Francisco,
November 6, 1981, Southern California.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Hal Tindall
(916) 445-8435

The Board of Examiners of Nursing Home Administrators is empowered to develop, impose and enforce standards for individuals desiring to receive and maintain a license as a Nursing Home Administrator. The Board may revoke or suspend a license after an administrative hearing on findings of: gross negligence, incompetence relevant to performance in the trade, fraud or deception in applying, treating any mental or physical condition without a license and violation of any rules adopted by the Board.

MAJOR PROJECTS:

Prior regulations provided that an applicant could qualify for the nursing home administrator's examination either by completing a general education course of study or by combining general education and experience. The revised regulation provides that an applicant may also qualify for the examination through relevant "work experience."

The National Association of Boards of Examiners of Nursing Home Administrators has recommended that the minimum passing score for the National Nursing Home Administrator Examination be set by the various states at 75% (113 out of 150 questions). At its December 11, 1980 meeting the California Board decided to accept the recommendations of the National Association. The California Board changed the minimum passing score on the state exam from 70% to 75% (38 out of its 50 questions). This change is effective February 1, 1981. The Board has been devoting substantial time to review of its regulations under the mandate of AB 1111.

On June 29, 1981, the Board will be meeting in Sacramento to discuss further changes in its regulations and to solicit public input.

The regulations to be considered are Sections 3118, 3119, 3119.5, 3175, 3176, 3160-3167, 3100-3110 and 3173 of Title 16, CAC.

RECENT MEETINGS:

1. The Board was recently billed $5,000 for the cost of preparing a transcript for the appeal of a Board decision by an applicant. The Board is concerned that administrative hearings necessary when a license is denied may create enormous expenses if the Board (on a limited budget) has to pay the high cost of the hearing reporter's first copy of the transcript. The Board will seek an Attorney General Opinion as to whether the existing appropriations of an administrative agency (such as the Board) can be forced to bear this burden.

2. The Board is discussing the large number of accredited continuing education programs which are of poor quality and irrelevant to the practice of nursing home administration. In the past, extensive continuing education requirements "justified" the several thousand programs approved. But now, as fewer hours are needed, the Board feels that quality demands the elimination of many previously acceptable courses. At present, the Board lacks an established mechanism to "weed out" irrelevant and low quality programs.

The issue has been tabled for further discussion.

3. Establishing the qualifications of applicants to take the NHA licensure exam is one of the major concerns of the Board. For example, in a typical decision in February of 1981, the Board was called upon to decide if the qualifications of a particular applicant (Mr. Axel) met the criterion of the newly amended Section 3116. Specifically, whether his work experience was sufficient to allow waiver of the 1000 hour administrator-in-training requirement. It was decided in closed session that Mr. Axel did meet the requirements and will be allowed to take the exam.

Figures were recently made available to show the impact of the amended regulations (Section 3116 effective October 1980) on qualification for the Administrator in Training (AIT) program.

Since the minimum requirements to become an AIT were changed to allow qualification based solely on "relevant work experience," 29 of 81 who have qualified have done so under the new criteria.

The Board discussed AB 1551, recently introduced by Assemblyperson Bates. It is expected that the impact of the bill will be to exclude small intermediate care developmentally disabled habilitative facilities (ICF/DDH) from the legal definition of "nursing homes" and therefore from the Nursing Home Administration Licensing Act. A committee was formed to review the bill, identify its main issues and recommend a position for the Board to adopt.

FUTURE MEETINGS:

August, Los Angeles; October, San Diego; December, Los Angeles.

BOARD OF OPTOMETRY

Executive Officer: John Quinn
(916) 445-2095

The Board of Optometry consists of nine members appointed by the Governor. Six are licensed optometrists and three are non-licensees from "the community." The full-time Executive Officer, John T. Quinn, was appointed in early 1980. The Board holds meetings eight times a year at various locations throughout the state.

The purpose of the Board is to protect the consumer from harm caused by unsatisfactory eye care. This purpose is accomplished by the setting of minimum standards for entry into the profession and the monitoring of established practitioners. One exam is given each year to those wishing to become optometrists. The exam is given at one location only, either Berkeley School of Optometry or the Southern California College of Optometry in Fullerton, the two sites alternating. The Board monitors the established profession by investigating some of complaints directed to the Board. First, however, the Executive Officer screens the complaints and determines which should be investigated by the Division of Investigation of the Department of Consumer Affairs and which can be answered by his office. Generally, the complaints answered by the Executive Office are those "which do not involve a violation of statutes or Board regulations." The Executive Office estimates that 95% of all complaints received fall into this category.

RECENT MEETINGS:

The Board of Optometry held a public meeting on May 31, 1981. Jerome S. Lieblein has been appointed to the Board and was attending his first meeting. Two vacancies still exist on the Board.

Although there was a variety of items on the agenda, the Board discussed only the licensure of foreign graduates. A delegation of graduates from the Philippines was present to help resolve the problem of how to determine whether these graduates are qualified to practice in California. The issues incited some heated debate concerning the requirements of those who wish to take the state optometrist examination. Some Board members indicated that anyone who wishes to take the test should be allowed to and the question of educational equivalency dropped altogether. Others expressed concern about possible legal problems in relying on a test if the test had a racially discriminatory effect on the make-up of the profession. Still others felt that the educational requirements were important in themselves and should not be dropped as a prerequisite for taking the test. The Board adjourned without coming to any conclusion.

Shortly after the general Board meeting, the Credentials Committee of the Board met to find a solution to the foreign graduate problem. The Committee decided to present a compromise proposal to the Board. It decided not to attempt to decide equivalency of education but to use the National Board Exam as a screening device. If the applicant passed this exam, he or she would be eligible to take the California Optometrist Exam. This proposal will be presented to the Board on July 10 and 11.

The Board of Optometry Regulatory Review Advisory Committee recently met to continue its AB 1111 mandated review. The Committee generally accepted the previous meeting's minutes and began its review with Article 3. The Committee decided that the listing of instruments in Section 1510 was not an accurate method to determine inefficiency in the profession and moved to have the director, John T. Quinn, rewrite the section in general terms. Section 1520 was also passed over to Mr. Quinn for revision and streamlining. Section 1512 was rewritten by the Committee but not substantively changed. Sections 1516 and 1517 were referred to legal counsel and will be discussed at later meetings. Sections 1513, 1514 and 1518 were also held over for future meetings. The Committee is awaiting the outcome of pending legislation that may affect Section 1514.

Section 1513(c) sparked most of the debate and questions. 1513(c) involves the time that a successor can use a predecessor optometrist's name. The code now has a 2 year limit. Comments from the trade included a desire to increase the limit to 4 years. Ruth Harmer, Vice President of the Board, felt that using a predecessor's name at all was fraudulent. The matter has not yet been resolved.

FUTURE MEETINGS:

July 11, 1981 Griswold's Inn in Fullerton, California.

BOARD OF PHARMACY

Executive Secretary:
Claudia Klingensmith
(916) 445-5014

The Board of Pharmacy licenses pharmacists, pharmacies, drug manufacturers and wholesalers and sellers of hypodermic needles. It also regulates the sale of dangerous drugs and poisons. The Board employs inspectors, conducts disciplinary hearings and suspends and revokes licenses and permits. The Board is composed of nine members, three of whom are public members. One public member position is currently vacant.

MAJOR PROJECTS:

The Board is considering the establishment of an Impaired Pharmacists Program. Board members have met with BMQA representatives to discuss the Impaired Physicians Program, an individualized treatment referral program for physicians with drug or alcohol problems. The BMQA Liaison Committee is preparing a report to implement a similar program for pharmacists.

At recent meetings, the Board has discussed the controversial issue of nurses prescribing medication. An Attorney General's Opinion is pending on the question. The Board has contacted the California Council of Nurse Practitioners and the Physician's Assistants Program to indicate its interest in working with them to propose legislation broadening the roles of nurses and physician's assistants.

A major concern of the Board has been whether or not to allow the use of pharmacy technicians to dispense prescriptions. In December, 1979, the Board authorized Dr. William E. Smith to conduct a study at the Outpatient Pharmacy of Memorial Hospital Medical Center, Long Beach. The purpose of the study was to answer the following questions: Can pharmacy technicians help dispense medications safely, efficiently and appropriately? Will pharmacists spend more time consulting and evaluating patients with pharmacy technicians involved in dispensing? Dr. Smith presented his results at the February Board meeting: the answer to both questions was a very definite "yes."

Five pharmacists and two technicians participated in the study. The error rate for both groups, pharmacists and technicians, was approximately equal. The total percentage of error was 5.15% for pharmacists and 5.15% for technicians. The adjusted error rate, calculated by factoring out auxiliary label errors, was 3.23% for pharmacists and 3.79% for technicians. In addition, the average patient consultation time rose from 2.89 minutes to 3.89 minutes — a statistically significant difference. While technicians required slightly more time to fill prescriptions, the cost per prescription for technicians was 30¢, as opposed to 61¢ for pharmacists.

Dr. Smith stated unequivocally that, as a result of the study, he would employ technicians to dispense prescriptions if allowed to do so; however, the efficiencies could be somewhat lessened since the technician's work would still have to be checked by a pharmacist. He urged the Board to change the regulations to permit use of technicians. Dr. Smith added that he hoped the study would be widely disseminated since he has been verbally attacked by pharmacists who strongly oppose any expansion of the role of technicians.

RECENT MEETINGS:

At its April meeting the Board decided to close the San Francisco office. The Executive Secretary had reported at an earlier meeting that the functional operations of the Board were fragmented and decentralized, causing delays, backlogs and unnecessary hidden costs. The Board decided to transfer the functions of the San Francisco office to Sacramento; more efficient operations will offset the disadvantages to San Francisco area licensees of losing a local office.

At the March meeting, Dr. William Smith requested that the Board allow continued use of pharmacy technicians in the Memorial Hospital Pharmacy. The Board denied Dr. Smith's request. However, the Board indicated that it would reconsider if Dr. Smith submitted a protocol for a system study using a double check to answer two additional questions:

1. Whether or not, under the double check system, the error rate among pharmacists and technicians was substantially diminished.
2. Whether increased consultation time was maintained.

In November of 1980, the Board repealed a regulation requiring the Executive Secretary to be a pharmacist. Claudia Klingensmith, a non-pharmacist, was subsequently appointed to fill that position.

It was reported at the February of 1981 meeting that the Board's revenue from 1980-81 license renewals has fallen short of expenses. The Board is therefore facing a deficit of approximately $239,000 on July 1, 1981. As a temporary stopgap measure, the Board has been attempting to pass a regulation increasing the biennial renewal fees for pharmacists from $60 to $75. However, the Office of Administrative Law is requiring the Board to justify its decision to impose a fee increase on pharmacists, rather than pharmacies. Ms. Klingensmith presented figures at the meeting showing that 62% of the Board's budget is spent on pharmacist-related activities. Since pharmacist licensing renewal revenue is presently less than 62%, she contends the fee increase is justified and equitable. It is anticipated that the Board will be facing financial problems in fiscal '81-82 even with this increase; future meetings will have to deal with the problem of increasing fees or cutting programs.

The Board is currently in the process of revising both its competency statement and policy guidelines for disciplinary proceedings. The present policy guidelines are considered too simplistic. The Board often disagrees with punishments imposed by administrative law judges under its disciplinary guidelines. The Board is revising the guidelines to distinguish mere technical

licensing violations from those of a more serious and substantial nature.

AB 1111:

The Board is now discussing the specifics of rule change proposals and eliminations. Section 1761 of the Rules and Regulations of the Pharmacy Board prohibits a pharmacist from filling a questionable prescription; i.e., a prescription which the pharmacist knows or suspects was not written for a legitimate medical purpose but solely to provide a means of obtaining controlled drugs. The California Pharmacists Association (CPhA) has taken the position that Section 1761 should be repealed as it offers no further guidelines as to what constitutes a valid prescription other than those provided by existing statutes and prevailing standards of practice. The Attorney General's office, however, has suggested that the regulation be retained but amended. Calvin Torrance, Deputy Attorney General, estimated at the April Board meeting that the Board has expended between $35,000 and $60,000 in additional legal costs since 1977 to enforce this regulation. Licensees charged with a violation of Section 1761 routinely claim as their defense that the regulation lacks clarity and specificity and therefore they had no knowledge that their actions were prohibited. The prosecuting Attorney General must expend extra time and money retaining expert witnesses who testify to the prevailing standards of practice. Mr. Torrance testified that a clearer, more detailed restatement of Section 1761 would put licensees on notice as to what constitutes unprofessional conduct in this area and would result in significant cost reductions for the Board.

At the May Board meeting, Mr. Torrance presented a draft of proposed changes in the wording of Section 1761. Board members were concerned that such a detailed regulation could be used by accused licensees as a defense tool. They also expressed philosophical objections to any attempt to define "professional judgment" by regulation. The Board instructed the Rules and Regulations Committee to draft a revision of Section 1761 which would achieve the desired cost-cutting goal but with a miminum of specificity. A public hearing on Section 1761 is planned for July. The Board also decided to work on a joint statement with CPhA on this issue.

The continuing education regulations are also being amended pursuant to AB 1111. While the proposed revisions are not yet finalized, indications are that they will broaden the definition of acceptable coursework for continuing education credit.

The Board began its AB 1111 regulation review at the February 1981 meeting with a review of Articles One and Seven. The Board plans to review a few regulations at each meeting, making its way through the pharmacy code by March, 1982. Because there is some question about adequate notice to the public, the time period for written comments on these regulations has been extended to April 28, 1981.

LEGISLATION:

AB 1527: Sponsored by the Board; would allow fee increases beyond the statutory limit. The bill provides for annual fees for pharmacies of $120 (up from $95) and a biennial fee for pharmacists of $100 (down from $110). The bill contains a Sunsetting provision effective three years from enactment date.

AB 1132: Sponsored by the Board; would change licensing requirements for foreign graduates (*see* CRLR Vol. 1, No. 1 (Spring, 1981)).

AB 551: Increases jail terms for pharmacy crimes from 5 to 10 years. Board supports.

SB 306: Enables pharmacists to form professional corporations. The Board's original position was neutral; its position changed to support after hearing testimony from CPhA.

The Board is working on legislation which would change the licensing prerequisites for foreign graduates by allowing them to make up course deficiencies in U.S. schools. A second proposed change, eliminating the requirement that foreign graduates first be licensed in the foreign country, is being opposed by the California Pharmacy Association. CPhA is fearful that, without the licensing requirement, American students who cannot get into American pharmacy schools will obtain an inferior education abroad and then return to the U.S. for licensing. The Board hopes to hammer out a compromise with CPhA by making the "foreign graduate" designation contingent on a foreign country residency requirement.

FUTURE MEETINGS:

The next meeting of the Board is July 28 in San Francisco.

BOARD OF REGISTERED NURSING

Executive Secretary:
Barbara Brusstar
(916) 322-3350

The Board of Nursing Education and Nurse Registration (Board of Registered Nursing) licenses all Registered Nurses and regulates trade entry and specifies practices under its licensing power. The Legislature has provided the Board with legal authority to include more sophisticated patient care activities and the Board determines the requisites for those certain activities. The Board also issues certificates to practice nurse-midwifery to qualified applicants. The nine members include three public members; three active licensed registered nurses; one licensed nurse who is an administrator of a nursing service; and one licensed physician.

The Board is empowered to take disciplinary action against a temporary licensee, a licensed nurse or an applicant for a license. A license may be suspended, revoked, or subjected to a probationary period for nursing violations.

MAJOR PROJECTS:

The Board is currently discussing better methods of publicizing disciplinary actions taken against nurses. Some of the more fervent members of the Board are seeking to publish a list of charges made against nurses at the initial accusatory stage.

The Board prepares and maintains a list of accredited schools of nursing in California. It determines required subjects of instruction, and number of units of instruction and clinical training necessary to guarantee competence. The Board shall deny or revoke accreditation to any school of nursing which does not meet Board requirements.

The National Council of State Boards of Nursing controls the licensing test used by all states to certify nurses. The California Board of Registered Nursing at its March meeting unanimously voted to develop its own nurse licensing exam. According to California law, (Fair Housing and Employment Act of 1979) a licensing exam must be nondiscriminatory and be directly related to job competence. The Board believes the national exam violates the California law and negotiations to ameliorate this problem between the Board and the NCSBN have proven fruitless. The NCSBN is preparing a new test for 1982, but the Board feels the proposed test will not meet the non-discriminatory requirement.

The reason for having a different test is to solve California's problems pertaining to foreign trained and minority nursing candidates. Record numbers of foreign born nursing candidates and foreign graduates fail the national exam and are deported. The Board is considering extending interim permits to foreign graduates that would allow them to work as registered nurses for 24 months before taking the exam. A claimed purpose of the separate California exam is to keep hospitals open and running. Supporters of the new exam cite the danger of a nursing shortage to the viability of California hospitals.

Many nurses oppose the Board's separation from the NCSBN. Diane Fletcher, a

registered nurse in Sacramento, authored a petition protesting the Board's action. The petition has the support of many nursing associations and 20,000 nurses have signed.

According to Fletcher, many American trained nurses have left the nursing profession because of poor working conditions, low salaries and bad working hours in under staffed hospitals. Fletcher argues that relieving the "nursing shortage" by easing certification requirements for foreign graduates is dangerous because the quality of nursing care is at stake. Fletcher contends that for the benefit of the consumer, the health care field and the registered nurses there should be a validation of nursing competency.

Foreign graduates who choose not to become U.S. citizens do not have the right to vote. Essentially they lack a political voice concerning issues in the nursing profession. Nurses who are U.S. citizens fear this will dissipate the political impact of the nursing profession on health care issues.

Proponents of the petition opposing the Board fear that if California employs a separate exam, the other states may retract their reciprocity agreements.

SB 617 asks for reciprocity for any nurse in the world who comes to California to practice without taking an exam. Many nurses argue this move could only lower the quality of patient care.

RECENT MEETINGS:

In March, the Board officially adopted three changes of the regulations in Chapter 14, Title 16 of the California Administration Code. The adopted Section 1442 defines "gross negligence" as an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent nurse. The previous version of Section 1442 referred to a "substantial departure" from the above standard of care, as opposed to an extreme departure.

The new Section 1443 defines "incompetence" as the lack of possession of or the failure to exercise that degree of learning skill, care and experience ordinarily possessed and exercised by responsible registered nurses. The new Section 1443 is stricter than the old Section, which required both the lack of possession of and the failure to exercise the degree of competence described above.

The announced purpose of new Section 1460(a)(2)a is to increase the availability of nurse-midwives to give more women the obstetric care they choose. The adopted regulation permits nurse-midwife applicants to remediate areas of deficiency in programs other than Board approved nurse-midwifery programs. The old regulation required stipulated remediation in a Board approved nurse-midwifery program.

The Board predicts the adopted regulations will have no fiscal impact on local, state or federal governments.

Senator Barry Keene's bill, SB 670, died in April. It would have regulated the practice of midwifery and defined the scope of the requirements. Keene said the bill would provide consumers a viable alternative to doctor assisted births.

Nurses in California are required to take 30 hours of continuing education. Several problems are identified with continuing education. The multimillion dollar continuing education industry is essentially unmonitored because of a lack of funds to do so. Presently, there is no way to verify if the nurses have actually taken the courses they have reported as taken.

Many nurses oppose continuing education requirements although they originally supported the program. The courses are expensive relative to a nurse's salary. A nurse has the option of taking a test instead of continuing education, but this option is rarely exercised.

The continuing education industry is lobbying to maintain the continuing education requirements, but it has not policed itself and resists attempts at state regulation.

The Board has changed its continuing education regulations and the OAL is reviewing the changes. The proposed continuing education courses are limited to those courses with scientific content pertaining to nursing administration, education or research.

Courses no longer acceptable for certification credit include self-improvement, attitude adjustment and financial management.

Nurses may now complete all certification requirements through home study. Previously, only six of the 30 units could be taken by mail.

FUTURE MEETINGS:

The Board's next meetings are July 23 and 24 in San Diego and September 17 and 18 in San Francisco.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS

Executive Secretary: James W. Baetge (916) 445-5544

The Board of Registration for Professional Engineers regulates the practice of engineering and land surveying. Only persons registered with the Board may practice civil, structural, mechanical or electrical engineering or land surveying in the state, unless exempt. Other branches of engineering may be registered at the discretion of the Board. It should be noted that ninety-two percent of California's engineers are exempt from regulation.

Since 1978, the Board has included thirteen members, seven from the public. Five members must be registered as professional engineers, and one must be licensed as a land surveyor. The professional members must have twelve years experience in their respective fields.

The Board has established nineteen review committees; eighteen deal with various areas of engineering and one with land surveying. Each committee member is subject to the same rules and regulations as if he were a member of the Board. The committees must each have at least three members. Each member must be a registered engineer for the engineering committees or a licensed land surveyor for the land surveying committee.

To be registered as a "professional engineer," the applicant must be of good moral character, have six or more years experience as a professional engineer (graduation from an accredited engineering school counts as four years) and pass an examination applying engineering fundamentals to factual situations. The applicant must also specify the branch of engineering for which he desires registration. To qualify as an "engineer in training," the applicant must be of good moral character, have 4 years experience and successfully pass an examination applying engineering fundamentals to factual situations. The qualifications, experience requirements and examinations are essentially similar for licensure as a land surveyor and land surveyor in training.

The Board regularly considers the Proposed Opinions of Administrative Law Judges who hear the appeals of engineering applicants denied registration. In most cases, the judges affirm the registration denial recommended by Board staff, and the Board affirms that decision on appeal.

The eighteen committees dealing with the specialties of engineering approve or deny applications for exams and register engineers who pass the examinations. The Board routinely approves their actions.

MAJOR PROJECTS:

Public comment will soon be solicited concerning Board member I. Michael Schulman's report on Title Registration. His proposals would substantially alter the regulation of engineering in California. Mr. Schulman made five recommendations. (1) Eliminate all "titles" established by Board regulations; (2) Eliminate all "titles" established by statute; (3) Register all exempt engineers who are in-responsible-charge (i.e., who maintain independent control and direction of engineering work) in licensed disciplines. (Note: engineers, except for civil engineers, are presently

exempt from registration if they work for industry, public utilities, or the federal government); (4) Establish criteria to determine if a discipline should be covered by practice registration; (5) Review all titled disciplines to determine whether they should become practice disciplines. (There is a distinction between practice registration and title registration. Practice registration requires that in order to call oneself the name of a discipline and in order to perform the work of the discipline, one must register with the Board unless otherwise exempted. In contrast, title registration requires that in order to call oneself by the name of the discipline, one must register. However, one may perform the work of one of these disciplines without registering.)

The Board has begun its review of regulations pursuant to AB 1111.

RECENT MEETINGS:

At the April 3, 1981, meeting the Board approved the attendance of Board members at various industry group meetings, the state Architect's Board and the state engineer boards of Oregon and Washington.

The decisions of Administrative Law Judges were affirmed. Applicants were denied registration in three cases, one request for assignment to an individual examination instead of the usual written examination was denied and one engineer's license was suspended.

The Board realigned its standing committees, which examine and register applicants in the various branches of engineering and land surveying. The special committees which deal with enforcement, personnel, finance, etc. were also realigned.

The actions taken by the standing committees were approved. Seventy-three applicants were granted registration as engineers and three were denied. Two engineers-in-training were registered, 285 applications to take an engineering examination were accepted and 33 were denied. Four applications to take the land surveying examination were accepted. On the recommendation of the Executive Secretary, three abandoned applications were cancelled.

Two of the five special committees had reports. The Enforcement Committee recommended a one hour Professional Responsibility Examination. The Board approved and directed the staff to do further research. The Legislative Committee reported on SB 602, which provides for a California Association of Professional Engineers which would assume the functions of the present Board. The Association would be a public corporation consisting of nine board members, two of whom would be public members. The Board voted to oppose this bill because it provides for fewer public members than the present Board. (The Board now has a majority of public members.) The Legislative Committee also reported that a schedule of hearings for regulation review had been sent out to all interested parties.

One of the seven ad hoc committees had a report. The Professional Development Committee submitted for discussion professional development activities for the next fiscal year.

FUTURE MEETINGS:

Hearings for public comment on the recommendations of Mr. Schulman's report and review of regulations are now being scheduled.

BOARD OF CERTIFIED SHORTHAND REPORTERS

Executive Secretary: Judy Tafoya
(916) 445-5101

The Board of CSR was established to protect the consumer in two ways. The Board attempts to protect those who use shorthand reporters by requiring a minimum competency standard for reporters. To achieve this goal, the Board requires testing and licensing of prospective reporters. A licensed reporter may be stripped of his/her license where gross incompetence or professional misconduct is found.

The Board also certifies shorthand "schools." The Board considers the educational quality of shorthand reporting schools by reviewing the pass rates of their students on the reporters' exam. The Board will grant or withhold certification from a school. The Board may also "decertify" a currently accredited school.

MAJOR PROJECTS/
RECENT MEETINGS:

The Board has already encountered problems with the Transcript Reimbursement Fund. The Fund, which commences operations on July 1, 1981, was basically created to provide indigents with no-cost transcripts. However, the law which created the Fund does not provide for direct application by an indigent for a no-cost transcript. The law only authorizes applications by representatives of indigents. The Board has received a number of applications from indigents and has not yet decided how to handle this problem.

The Fund is financed by a huge increase in the renewal fees charged to Board licensees. (There are 4,200 licensees.) Fees have increased from $25 biennially to $125 annually. The Board is under pressure to reduce the fee, and Executive Secretary Judy Tafoya has indicated that fees might be reduced by 10-20% for 1982. The Fund has a Sunset date of 1986 and a report on its success must be submitted to the legislature by September, 1982.

As previously mentioned, the Board certifies reporting schools. One regulation pertaining to Board certification of schools states that the Board may decertify a school if the passage rate of its graduates falls below the statewide average for five consecutive Board-administered exams. Two schools, Moore's Business School and the Imperial College of Court Reporting sued the Board over this regulation. However, the Board and the two Colleges have recently agreed to stay the litigation pending OAL review of the contested regulation. Both Colleges will participate in review of the regulation and then await OAL's determination. As a gesture of good faith, during its May meeting the Board agreed to postpone enforcement of the contested regulation. This decision is extremely important in light of the fact that the Board's May exam results were released in late June. The May exam was the fifth exam since the enactment of the disputed regulation and could have triggered a decertification resolution.

Tafoya has stated that the Board strongly supports the regulation and believes the statistics derived from exam analysis provide invaluable information to prospective reporting school students. The Board freely distributes statistics on "first-time" student examinees to the general public and prospective students. Tafoya also indicated that if OAL does not uphold the regulation, the Board will either repromulgate the regulation with a fortified rulemaking file or seek legislation that will give the Board undisputed authority to decertify schools on the basis of persistent poor exam performance by their graduates.

The Board's Examination Specification Project (ESP) continues to make progress. The project is designed to ensure high professional quality among Board licensees by informing reporting schools and students of the basic knowledge and skills required of competent shorthand reporters. The project will also propose corresponding changes and improvements in the Board exam.

Earlier this spring, Assemblyperson Filante, Chairman of the Assembly Business and Professions Committee, held a series of hearings during which his Committee scrutinized the activities of many of the boards and bureaus within the Department of Consumer Affairs. During one of these hearings, Filante was critical of the Board's uncompromising opposition to electronic reporting. As a result of that criticism, the Board has decided to begin some general research into the question of electronic reporting. Tafoya stated that the Board is beginning to rethink its opposition to electronic reporting and will pursue the research in an unbiased manner. Included in the research will be a study of computer recording and computer assisted tran-

scripts. In this system reporters using computer terminals type the testimony directly into a computer which returns a complete transcript. Transcription costs are eliminated.

A new problem facing the Board is that of firm owners who exploit their employee-recorders. Individuals who run reporting services are not licensed by the Board (unless a reporter him/herself) and are therefore beyond the jurisdiction of the Board. However, the Board has received a significant number of complaints in recent months from licensees about employer-firm owners. There are two typical complaints: 1) the owner interferes with the final product by editing the transcript after the reporter has certified it; and 2) the owner-employer interferes with the delivery of the transcript, thereby depriving the recorder of payment. Presently, the Board has no authority to regulate the abusive reporting service owner. However, to defend its licensees (and ultimately the public) the Board will soon schedule a hearing to publicize the problem.

The Board, at the request of OAL, has agreed to complete the review of its existing regulations by March, 1982 instead of May, 1982 as originally planned.

AB 328, a relatively minor "cleanup" bill relating to shorthand reporters passed the Assembly on a 70-5 vote and is now in Senate Finance Committee.

FUTURE MEETINGS:

The next Board meeting will be on July 17, 1981 at the LAX Hyatt in Los Angeles. The Board will meet in Sacramento in September.

STRUCTURAL PEST CONTROL BOARD

Executive Officer: Rodney N. Stine (916) 920-6323

The Structural Pest Control Board (SPCB) is empowered to license structural pest control operators and structural pest control field representatives. Field representatives secure pest control work for operators. SPCB licensees are classified for either: (1) fumigation, the control of household and wood-destroying pests by fumigants; (2) general pest, the control of general pests without fumigants; or (3) termite, the control of wood-destroying organisms with insecticides and structural repairs and corrections, but excluding the use of fumigants.

In addition to licensing, SPCB also requires otherwise unlicensed individuals employed by its licensees to take a written exam on pesticide equipment, formulation, application and label directions if they apply pesticides. The SPCB licenses approximately 2,000 individuals.

The SPCB has six members, four of whom are public members. One public member position and one industry position are vacant. The SPCB's enabling statute is in Business and Professions Code Section 8500 et seq. and its regulations in Title 16, CAC Section 1900 et seq.

MAJOR PROJECTS:

It is widely agreed that the SPCB has one of the most innovative disciplinary and consumer complaint handling systems within the DCA. The SPCB has recently received a budget of $1.6+ million for fiscal 1981-1982. This figure represents a considerable increase from the fiscal 1980-81 budget, $1,381,000. The $1.6 million figure includes funds for two new enforcement programs. $160,000 has been authorized for a new pesticide enforcement and inspection program. Although the fumigants and pesticides the SPCB licensees use are of relatively low toxicity, Executive Officer Stine stated that a serious abuse could result in a health hazard. The new program will insure that potentially dangerous chemicals are used only as prescribed and after all required precautionary measures have been taken. Also, a portion of the money will be used to inspect licensees' records and so guarantee compliance with the various reporting requirements.

There has been $60,000 allocated for an undercover pre-inspection quality control program. The program works in this manner: The SPCB contracts with a homeowner and thoroughly inspects his/her home. The homeowner then contacts 3 licensees whom the SPCB suspects of unprofessional conduct. If the licensee's inspection does not produce results essentially similar to the SPCB's pre-inspection, the Board may take disciplinary action against the licensee.

The program is not entirely new; it was initiated by the SPCB this year out of existing funds. Executive Officer Stine stated that 21 accusations were filed against licensees as a result of this year's pre-inspection program. Many of the 21 cases are still unresolved, but thus far 2 revocations, 1 45-day suspension and 5 stipulations have occurred. The stipulation imposes a 5-10 day suspension and a 3 year probation period. Additionally, the licensee agrees to pay for as many as 15 random inspections of his work over the probation period. An inspection takes 4-5 hours and costs $38.00 an hour at the current Division of Investigation rate.

In addition to the two new programs, the SPCB has a consumer complaint mediation program; if an investigation shows the licensee's work is not in compliance with law and/or regulation, the operator is notified. The operator then has 30 days to bring the property into compliance and pay an inspection fee of not more than $125. After SPCB reinspection to insure compliance, the operator is charged a second inspection fee not exceeding $125.

Stine told the *Reporter* that 600 complaints have been referred to the Division of Investigation this year. This figure compares to 1,700 complaints referred in 1976. Stine believes these figures indicate the success of SPCB's consumer mediation program both in satisfying the consumer and eliminating the need to pursue the cumbersome and expensive formal disciplinary route.

Recent amendments to the Structural Pest Control Act permit the SPCB to impose a fine in lieu of suspending the licensee; this may only be done after an administrative hearing. The law further states that the civil penalty cannot exceed $2,000 for suspensions up to 19 days and $5,000 for suspensions lasting 20-45 days. Civil penalties cannot replace suspensions which exceed 45 days. The SPCB has proposed an amendment to its fining authority. SB 129 (Johnson) would permit the SPCB to impose a fine in lieu of a suspension prior to an administrative hearing if the licensee so stipulates. Stine said this would give the SPCB greater flexibility in punishing licensees for minor infractions. If a licensee fails to post the required surety bond, purchase the required liability insurance or keep adequate records, both SPCB and the licensee can stipulate to a fine, thus avoiding the lengthy administrative hearing process. SB 129 passed the Senate on May 21, 1981 by a 36-0 vote and has been referred to the Assembly Business and Professions Committee.

The SPCB is also developing its continuing education program and refining its exams. Passage rates for recent exams have been very low. Only 30% of examinees passed the recent field representative exam and only 23% passed the recent operators exam. Stine admitted the exams are "imperfect." He stated that some individuals who fail the exam are well-qualified to practice, while others who do pass or are presently practicing are not. Stine stated that there are a number of reasons for this paradox. Basically, the structural pest control business is a rapidly evolving profession which is becoming more and more sophisticated. New chemicals are being discovered while dangers of old ones are being uncovered. Old licensees, not required to keep pace with these developments, are "out of touch" with technological advances.

The Integrated Pest Management approach to pest control is a new theory that requires familiarity with several new and rapidly developing concepts. In addition to understanding the new chemicals, licensees must also be knowledgeable about sanitation, insect life-styles and ecosystems. Old licensees are not familiar with these areas and rely almost exclusively on chemicals,

some of them dangerous and outlawed (DDT). In an effort to improve the calibre of its licensee, the SPCB is rewriting its exams and allowing examinees to substitute appropriate education for the work experience required to be eligible for the exam.

According to Stine, this last change has the additional salutary effects of ending a "serf system" and eliminating the chance of new licensees being exposed to bad work practices. Traditionally, new licensees earn their work experience with one or two licensees. If these licensees are unaware of recent developments in the profession, the new licensee will of course be equally unaware. The fact that new licensees are learning outmoded, less effective and perhaps dangerous procedures compounds the problem.

In another effort to improve the capabilities of its licensees, the SPCB now requires completion of certain continuing education requirements as a condition of license renewal. In lieu of taking courses, the license renewal applicant may take an SPCB administered exam designed to test knowledge of developments in the field of pest control since the issuance of the applicant's license. The SPCB has accredited one course and, pending some procedural changes, will soon accredit four others. The law also requires the SPCB to approve a correspondence course so that licensees in remote parts of the state will not be disadvantaged. The University of California at Berkeley is developing this course.

The new continuing education requirements have spawned an industry with many competitors vying for the mandatory continuing education dollar. AB 125 (Montoya) is an attempt by some of these competitors to establish a monopoly. SB 125 would not require the continuing education courses to be SPCB approved; instead, they would be conducted by (1) statewide trade associations of licensed structural pest control operators; (2) structural pest control companies, chemical manufacturers, distributors or retailers; or (3) private profit-making entities with expertise in structural pest control. The SPCB strongly opposes SB 125. SB 125 is presently in the Senate Finance Committee.

Existing law requires the SPCB and the Department of Food and Agriculture, in cooperation with the California Agricultural Commissioner's Association, to develop an interagency agreement to better coordinate pesticide enforcement against SPCB licensees. The deadline for the agreement is July 1, 1981. In April, 1981 the parties signed an interagency agreement, but the document is really nothing more than an agreement to agree to develop the required plan. Stine indicated dissatisfaction and frustration with Food and Agriculture in this respect. He stated that his Board's enforcement and consumer education programs are chronically hampered by a lack of discernible Food and Agriculture policy on many key pesticide issues. However, Stine stated that the SPCB is moving ahead and offered the new pesticide enforcement program as evidence.

It should be noted that until recently the SPCB had a number of committees, but they were recently disbanded. Stine cited problems with the State Open Meetings Act and said the committees were not productive enough to justify their continued existence. Other committees, such as the Technical Advisory Committee, Pesticide Advisory Committee and Accreditation Committee continue to meet with and advise the SPCB.

TAX PREPARER PROGRAM

Executive Secretary: Don Procida
(916) 920-6101

The Tax Preparer Program is responsible for the registration and investigation of tax preparers within the state of California. CPA's and PA's, attorneys, banks and trust companies, or persons authorized to practice before the IRS are exempt from the Tax Preparer Program's registration regulations. Anyone else wishing to become a registered tax preparer must submit an application, $25 application fee and a $1,000 bond to the Tax Preparer Program. There is no test for competency or ability to become a registered tax preparer but any "commercial" preparer must be registered with the program.

MAJOR PROJECTS:

The program handles consumer complaints about tax preparers. The administrator of the program determines the manner in which each complaint is handled. All complaints are handled by the Tax Preparer Program office. The office receives approximately 400 complaints a year. The Program has the right to suspend or revoke a certificate.

RECENT MEETINGS:

Public hearings are required only when there are changes in the existing procedures. Some "public hearings" are conducted through invitations to "write in" opinions. Director Procida indicates that most of the "changes" were actually explanations and extensions of existing rules and regulations.

The last year that the Program was funded for investigations was 1979-80. During that year the Program revoked 12 certificates and suspended 2. Since 1979-80, there have been no revocations or suspensions due to lack of investigation funding. The Program's major function is simply to maintain the current registry.

Recently, a bill has been introduced which would eliminate the Program. Assemblyman William Filante of San Rafael wrote AB 1110 to correspond with the state government's decision not to fund the Program for the next year. The bill is presently in the Ways and Means Committee with a hearing date of June 22, 1981. Although the bill is expected to pass, there has been some opposition by organized tax preparers.

Various assemblypersons have proposed that a department be added to the Franchise Tax Board to assist tax preparers and to fill the "void" left by the removal of the Tax Preparers Program. This objective could be accomplished when the unencumbered funds are transferred to the Franchise Tax Board as the bill proposes. Those who object to the bill feel that the money should be returned to the tax preparers and not "given" to the Franchise Tax Board.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Secretary: Gary K. Hill
(916) 322-4070

The six member Board of Examiners in Veterinary Medicine includes two public members. The seven member Animal Health Technician Examining Committee consists of three licensed veterinarians, one of whom must be involved in the education of animal health technicians, three public members and one member who must be a registered animal health technician (AHT).

The Board licenses all veterinarians, veterinary hospitals, animal health care facilities and the animal health technicians. Under its licensing power, the Board regulates trade entry and specified practices. The professional qualifications of all applicants for licenses to practice veterinary medicine are ascertained by means of a written exam and a practical exam. The Board establishes the appropriate degree of supervision required for those animal care tasks which may be performed by an unregistered assistant, a registered "animal health technician" or a licensed veterinarian. The Board may at any time inspect the premises in which veterinary medicine, dentistry or surgery are being practiced. All such premises must be registered and meet the minimum standards for operation set forth by law. The Board can revoke or suspend this registration after the matter has been adjudicated in an administrative hearing.

The Board may also revoke or suspend the license or registration of any veterinarian or AHT found in violation of the regulations after a proper hearing. It may also impose fines.

RECENT MEETINGS:

The Board has approved teaching hospitals which provide one year of practical instruction for candidates graduating from unapproved veterinary colleges, usually foreign schools. This program is designed to train U.S. citizens who graduate from an unapproved foreign veterinary school as well as the foreign born and trained graduate in the standard of veterinary practice in the U.S. and prepare them to take the veterinary exam. The Board is currently modifying the program to assure that the education of the foreign graduates makes them competent to pass the test and enter the trade. At present the failure rate of foreign graduates is above 75%.

In February, the Foreign Teaching Hospitals Committee discussed recent and pending legislation that may affect the Board.

In January, the Board heard a report on the Pesticide Meeting concerning the effect of pesticides on large animals. The Board also compared the practice of medicine on privately and publicly owned animals. Apparently the treatment attitude of the veterinarian varies depending upon animal ownership and this variation is not well known to those outside the trade.

The Committee and Board are concerned because interns as unlicensed trainees are extremely limited in what they can do. The Board considered loopholing current limits by declaring interns "animal health technicians." They rejected the concept as unworkable since the interns seek to assist the veterinarian across a wide range of animal health practice. Hence, the Board may seek introduction of a bill to license interns and to designate broad permissible practices under the guidance of a veterinarian.

The AHT is to the vet what the nurse is to the medical doctor. The benefit of the AHT is the increased quality of animal care. One goal of the Board is to encourage veterinarians to employ AHTs.

The radiation exam and the AHT exam will be combined after the administration of the next AHT exam. A combined test will be easier to regulate and reduce examination costs.

The Board maintains that it is within the veterinarian's discretion to either administer intravenous (I.V.) anesthesia personally or authorize an AHT to do it. Some veterinarians argue the AHT needs more than the standard two years of training and that only vets have had sufficient training to administer I.V. anesthesia.

The veterinary exam is fair, practical and legally defensible according to Donald Chang, the Deputy A.G. The Board voted for the exam to remain with the national criteria. California practices reciprocity with Florida, Illinois, Missouri, Massachusetts and Minnesota. Ohio has retracted its reciprocity agreement. Under a reciprocity agreement, states agree to honor each other's license approval. California, however, requires a licensee from a reciprocating state to pass the California Clinical Simulation exam before the Board will license a veterinarian for California practice.

The Board is attempting to establish a drug and alcohol rehabilitation program for its licensees. The program would be modeled after the Board of Medical Quality Assurance program for alcohol and drug diversion.

The Board is closely following AB 616 (Wray) requiring signs posted stating that personnel are not present on the premises during specific time periods. The purpose of the posted signs is to inform the consumer. However, the result has been to tell burglars that personnel are not present on the premises at certain times. Drug related burglaries are very common and Ketamine, an animal tranquilizer known as "angel dust," is the major reason for the burglaries.

The Board opposes AB 616 but promotes the concept of consumer information.

On June 10 the Board meets in Los Angeles. The June agenda includes an item on the Foreign Graduate Program. The Board is concerned about the communication skills and English competency of the foreign graduate.

Presently, the foreign graduate is not permitted by California law to perform "hands on" work. The Board is considering changing the statute to allow the foreign graduate to perform all procedures the vet does, under immediate or visual supervision of the veterinarian. The scope of what a foreign graduate may do is currently limited to what an AHT is permitted to perform.

The legal ramifications of the proposal for only foreign graduates to participate in an internship will be discussed and evaluated. The Board will also consider the foreign teaching hospitals that have been approved for foreign graduates.

FUTURE MEETINGS:

The next Board meeting is July 8, 1981 in Sacramento.

BOARD OF VOCATIONAL NURSES AND PSYCHIATRIC TECHNICIAN EXAMINERS

Executive Secretary: Billie Haynes (916) 445-0793

The eleven member Board of Vocational Nurse and Psychiatric Technician Examiners includes three licensed vocational nurses, two licensed psychiatric technicians, one vocational or registered nurse with a teaching or administrative background and five public members. The Board licenses all vocational nurses and psychiatric technicians and regulates trade entry and specified practices under its licensing power.

MAJOR PROJECTS:

The Board is considering regulations requiring a school teaching vocational nursing or a school for psychiatric technicians to establish a policy for granting credit for previous nursing education and experience. The regulations would require use of written examinations to determine credit for previous education and experience in the nursing or behavioral sciences fields.

The staff of the Executive Secretary, Billie Haynes, are consultants to the Board. One of the consultants' duties concerns accreditation of vocational nursing and psychiatric technician schools. Each consultant is assigned several already accredited schools and schools proposed for accreditation. The Board considers the quality of the faculty as one of several factors in its review for accreditation decisions.

The schools are subject to a Survey Visit Report to maintain accreditation. The consultant files a report with the Board. The purpose of the Survey Visit Reports is to ensure that the schools follow the standards set forth by regulation. If a school fails to meet a requirement, the consultant recommends the Board require some corrective action. The Board may either accept the recommendation or choose an alternative method of correction. Usually, the corrections are made before the Board convenes again.

FUTURE MEETINGS:

The next meeting of the Board will carry an open agenda. It will be held on July 9, 1981 in San Diego, California.

Business & Transportation Agency

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Baxter Rice
(916) 445-3221

The Department of Alcoholic Beverage Control (ABC) is a constitutionally authorized State department. The Alcoholic Beverage Control Act vests the Department with the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the state. The Department issues liquor licenses and investigates violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by the ABC are printed in the liquor industry trade publication, *Beverage Bulletin.*

The ABC divides the State into various districts, with field offices to regulate its many licensees. The ABC Director, Baxter Rice, is appointed by the Governor. During 1979-80, Mr. Rice was in charge of a $12.2 million budget.

The ABC is restricted from allowing alcoholic beverages to be sold in an area locally zoned otherwise and must submit copies of liquor license applications to the "interested" Boards of Supervisors and Police Departments.

RECENT MEETINGS:

The Department of Alocholic Beverage Control does not have regular meetings, and since it is not a multimember Board it is not subject to the Open Meetings Act. It is a constitutionally empowered "department," not a "commission," and its powers are substantially vested in its Director, Baxter Rice.

Public hearings are held for proposed rule changes or when licensure disputes arise under the Administrative Procedures Act. If the ABC denies an application or the issuance of a license is protested, there is a right to a hearing before an administrative law judge of the Office of Administrative Hearings Department of General Services. Further, there is a quasi-judicial Alcoholic Beverage Control Appeals Board to review ABC adjudicative actions.

MAJOR PROJECTS:

Vertical Pricefixing: Competition struggles have been occupying much of the ABC's attention in recent years. In the *Corsetti* case in 1978, liquor retailer Corsetti refused to abide by the stipulated resale price set by a liquor manufacturer. To justify cutting the vertical price fix figure, Corsetti argued that the statute authorizing manufacturer-set resale prices was unconstitutional as an unlawful delegation of legislative powers and in restraint of trade. The Supreme Court rejected the statute and upheld Corsetti's right to price as he pleased. In a successor case applying to identical price fixing in the wine industry (*MidCal*), the District Court of Appeals applied the same concepts to eliminate vertical price fixing there. The ABC was prepared to accept the court's judgment when wine industry intervenors took further appeals to the State and finally the United States Supreme Court. The United States Supreme Court upheld the invalidation of vertical pricefixing. These two cases resulted in the repeal (effective 1-1-82) of language in Rule 105 which was contradictory to the cases' holdings.

The industry has responded to the courts' and the ABC's actions regarding beer sales with AB 429. This bill would reimpose by statute the anticompetitive agreement not to discount where economies of scale effect cost savings and would allow exclusive sales restraints by beer manufacturers. On March 18 this legislation passed out of committee and the bill is now in the Senate. The ABC is opposing the bill.

Primary Source Rule: The second area of struggle concerns AB 499. Historically, when vertical price fixing (sometimes called "fair trade" by its supporters) was legal, the law stipulated that a wholesaler must receive his supply from a manufacturer or his agent. This is commonly referred to as the "primary source rule." It prevents distributors from searching for the best deal from other wholesalers or manufacturer's representatives in other parts of the country, since the wholesaler can only buy from the manufacturer or his representative assigned to the area where he does business. With the end of vertical price fixing, the "primary source rule" was extinguished as well. Small retailers started buying directly from Oklahoma and undercutting the big California sellers. Why Oklahoma? Because Oklahoma had passed a state statute called an "affirmation" law, analogous to "most favored nation" clauses in international treaties. The Oklahoma law provided that all manufacturers' sales in Oklahoma must be at or below the lowest price at which that firm sells to anyone in any other state. Further, Oklahoma had no strict franchise arrangements permitting manufacturer control of prices down the chain of distribution.

The liquor industry was very concerned about the end of the primary source rule. They therefore approached the ABC and negotiated a deal. If the ABC would support reenactment of the primary source law (contained in AB 499), anti-competitive impact notwithstanding, it would not oppose an "affirmation" statute like Oklahoma's for California. This would guarantee California prices at least as low as the lowest offered in any other part of the nation (contained in SB 570). Then a problem developed. Both AB 499 and SB 570 passed, but a lawsuit was immediately filed (*Rice v. Williams*) enjoining enforcement of AB 499. The suit is now pending before the United States Supreme Court. The consensus is AB 499 will not survive. "Affirmation," however, has not been challenged.

Licensing Limitations: The most interesting project of the ABC is a major deregulation effort. Director Rice is challenging the current "cap" to general liquor licenses. The law now limits the number of licenses to one per 2,500 population for on-sale (drinking on premises) and one per 2,000 population for off-sale (liquor stores). The limits are set county by county, and the law grandfathered in all those licensed when it passed. As a result of the grandfathering, there have been no new on-sale licenses in San Francisco (where there were many bars when the law was passed) and no new off-sale licenses in Los Angeles (which by contrast had many liquor stores) since 1939. The effect of the limit has been some monopoly power control for liquor establishments and the growth of a very high barrier to entry for new firms. The only way for a new entrepeneur to start up is to buy someone's existing license. Their value is now enormous, in many places $60,000 and over. This price is a market reflection of the excess profit derived from the protection against competition enjoyed by license holders. In and of itself, it is a barrier to entry that deserving entrepeneurs from lower or lower middle class backgrounds may not easily overcome.

At the same time, many current licensees have invested their life savings in their liquor licenses and to remove their value suddenly might cause hardship and possible politically manifested outrage. Rice wants to grant current licensees a two-year moratorium on new licenses, even in areas where population growth may warrant additions. He would eliminate the county-by-county basis for limitation. The current licensees would not be troubled by additional licenses, but they could take their licenses

to other counties. Some counties would have a much higher density of liquor stores or bars than others. The market would create new entrants from other counties where demand was high while preserving much of the value of the license. Then after two years of evening out through intercounty movement, Rice would end the limits, allowing local zoning rules and the marketplace to determine the number of liquor establishments, as with shoe stores and most American retail commerce. Rice would throw a creative wrinkle into this scheme. He would charge about $6,000 for a license, not an overwhelming amount, and apply this money to a trust fund. The interest would finance the ABC. If the license were sold or turned in the licensee would receive his money back. However, should the licensee engage in flagrant violation of rules, he could be fined up to the amount of the deposit. Since the license is the basis for much of the ABC's pervasive power over liquor establishments, a license which may be sold or turned in, combined with a returnable fund in trust would give the ABC some disciplinary muscle when the value of the licenses is diminished by competitive forces.

Alcoholic Beverage Tax: An important aspect of the ABC is its effect on the social welfare of consumers. Although the industry supplies the economy with much needed income, it also creates huge costs due to alcohol related problems. It is apparent that these problems increase the sums which must be channeled into alcoholism rehabilitation and educational programs. The ABC hopes to continue its being-under-the-influence seminars, a pilot project started by an assistant to Rice in 1980. The grant-financed program included intensive seminars for owners, landlords and employees of licensees on how to recognize the signs of excessive alcohol consumption and other obligations to cease service or otherwise take action to protect the public.

While this is a noteworthy effort, it does not substantially decrease alcohol problems. It is obvious to those who work in "alcohol abuse" professions that money for rehabilitation should come directly from the source of the problem – the sale of alcohol. Recently such an attempt was made. Assemblyperson Art Torres (Los Angeles) proposed a bill which would substantially increase liquor, beer and wine taxes. The increased tax would then be used for detoxification-type programs. Currently revenue from alcohol tax goes for general government operations, not to rehabilitation programs. The bill was bitterly opposed by the liquor industry and failed on a 2-9 vote of the Assembly Revenue and Taxation Committee. Those voting against the bill attempted to analogize a liquor tax to property taxes, claiming that the public had already spoken on the matter.

The ABC revoked the license of a liquor store selling to an "intoxicated" person. The consumer was "intoxicated" by drugs rather than alcohol and the ABC Appeals Board reversed the ABC, contending that sales to an "intoxicated" person (prohibited by statute) means intoxicated by alcohol. The California Court of Appeals reversed the Appeals Board and upheld the ABC's broader definition of "intoxicated" (*see* litigation section).

AB 1111:

A major project of the ABC is the regulation review mandated by AB 1111. The Department has extended the initial public comment period through July 15, 1981 (written comments). The Department has also set up various public hearings at which oral or written testimony will be accepted. The hearings will be held in Sacramento on August 31 and September 1, Los Angeles on September 10 and 11, and Oakland on September 24 and 25 of this year. Those wishing additional information can direct questions to Jerry L. Whitfield of the ABC at 1580 Chabot Court, Hayward, California 94545. Mr. Whitfield's phone number is (415) 881-3951.

STATE BANKING DEPARTMENT

Superintendent: Richard Dominguez
(415) 557-3232

The State Banking Department enforces all laws applicable to corporations engaging in commercial banking or the trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation and discontinuance of various types of offices of these entities; and the establishment, operation, relocation and discontinuance of various types of offices of foreign banks. The Superintendent is the chief officer of the Department. He is appointed by and holds office at the pleasure of the Governor.

The Superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application the Superintendent must consider:

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

2. The need for banking or trust facilities in the proposed community.

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

4. The character, financial responsibility, banking or trust experience and business qualifications of the proposed officers.

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

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

If the Superintendent finds that the proposed bank or trust company has fulfilled all the conditions precedent to commencing business, he then issues a certificate of authorization to transact business as a bank or trust company.

The Superintendent must also approve any changes in the location of a head office, the establishment or relocation of branch offices within the state or in foreign countries, and the establishment or relocation of other places of business. A foreign corporation must obtain a license from the Superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue travelers checks unless licensed. The Superintendent also regulates the safe-deposit business.

The Superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

The Superintendent licenses business and industrial development corporations which provide financial and management

assistance to business firms in California.

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

MAJOR PROJECTS:

The Superintendent of Banks recently began review of the Banking Regulations required by AB 1111. As the first step in the review process, the Superintendent invited all interested persons to submit their comments and suggestions concerning the regulations by May 29, 1981. He is currently forming a Task Force of banking industry representatives, independent experts (attorneys, accountants and economists) and the State Banking Department. The Task Force will study the comments and suggestions received, examine the regulations in detail and recommend changes. The Superintendent will give notice of the recommended changes prior to their adoption and provide an opportunity for comment.

Acting ex officio as Administrator of Local Agency Security, the Superintendent has begun a similar procedure to review the Local Agency Deposit Security Regulations. Since these regulations relate to securing deposits of local agency funds in banks and savings and loan associations, the Task Force includes representatives of local agencies, banks and savings and loan associations.

RECENT MEETINGS:

At the close of business on March 31, 1981, the 238 state-chartered banks of deposit, with 1,509 branches, had total assets of $55.2 billion. This marks an increase of $7.5 billion, or 15.8% over March 31, 1980. As of March 31, 1981 total securities were $8.3 million; total loans, excluding unearned income, $32.8 billion; total deposits, $44.3 billion. Notes and debentures were $390 million and total equity capital was $3.2 million. The ratio of equity capital to assets was 5 to 7 and loans to deposits 74 to 1.

Fiduciary assets of the trust departments of 34 state-chartered banks, two title insurance companies and thirteen non-deposit trust companies totaled $63.4 billion, an increase of $22.8 billion or 56.2%.

The assets of the 92 branches of foreign banks increased 31% to $33.3 billion.

During the first quarter of 1981 three applications for new banks were filed, seven applications for new banks were approved and Certificates of Authority were issued to eight new banks. Three merger applications were approved and five mergers were effected. One application for a California Business and Industrial Development Corporation was filed and one pending application was withdrawn. Four applications for branch offices of foreign banking corporations were filed, four such applications were approved and Certificates of Authority were issued to two branch offices of foreign banking corporations which opened for business. One application for a license to engage in the business of issuing travelers checks was filed. One application for a license to engage in the business of transmitting money abroad was filed.

Thirty-one applications for new branch offices were filed, thirty-four were approved, two were withdrawn and twenty-two new branch offices were licensed. Three applications for new places of business were filed, seven were approved, one was withdrawn and six were licensed. Six applications for extension of banking offices were filed and three were approved. Fifteen applications for a license to establish and maintain an office as a representative of a foreign banking corporation were filed, nine were approved, one was withdrawn, twelve were licensed and five licenses were cancelled.

Two head office relocation applications were filed, one was approved and two were licensed. Six branch office relocation applications were filed, seven were approved, one was withdrawn and ten were licensed. Two applications for foreign banking corporation relocations were filed, one was approved and one license was issued. One application to relocate an extension of a banking office was filed and one approved. One representative office relocation application was approved and one license was issued.

One application for discontinuance of a branch office was filed, one approved and two discontinued. One representative office was discontinued.

Five applications for change of name were filed. One application was denied.

The application of American Pacific State Bank to acquire the assets and assume the liabilities of the Granada Hills Office of Manufacturers' Bank was approved.

One application for permission to engage in the trust business was filed.

An application was filed and approved for a foreign banking corporation to discontinue accepting foreign deposits.

DEPARTMENT OF CORPORATIONS

Commissioner: Geraldine D. Green
(916) 445-7205

The Department of Corporations is a part of the cabinet level Business and Transportation Agency. It is overseen by a Commissioner of Corporations appointed by the Governor. There is no formal Board. Hence, there are no regular hearings and the Open Meetings Act does not apply. There are irregular public hearings pursuant to the Administrative Procedure Act, but only when there is an adjudicatory matter (e.g., the revocation of a license) or where there is a rule change proposal.

The Department, as a part of the Executive, administers several major statutes. The most important is the Corporate Securities Act of 1968. This statute requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934 and 1940. If not under federal qualification, a "permit" for security sales in California must be issued by the Commissioner.

The Commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable." The Commissioner may refuse to grant a permit (unless the securities are properly and publicly offered under the federal securities statutes). A suspension or stop order gives rise to APA notice and hearing rights. The Commissioner may require records to be kept by all securities issuers, may inspect those records and may require a prospectus or proxy statement to be given each potential buyer unless the seller is proceeding under federal law.

The Commissioner also licenses Agents, Broker-Dealers and Investment Advisers. Those brokers and advisers without a place of business in the state and operating under federal law are exempt. Deception or fraud or violation of any regulation of the Commissioner is cause for license suspension of up to one year or revocation.

The Commissioner also has the authority to suspend trading in any security by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The Commissioner has particularly broad civil investigative discovery powers; he can compel witnesses to be deposed and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The Commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony. Securities fraud is a felony. These criminal violations are referred by the Department to local district attorneys for prosecution.

The Commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plans Law, Escrow Law, Check Sellers and Cashers Law, Securities Depositor Law, California Small Loan Law, Security Owner Protection Law.

MAJOR PROJECTS:

The California Securities Regulatory Reform Panel has proposed legislation to deregulate new security offering requirements for "limited offerings" to under 35 persons and for major offerings under federal standards. The legislation is expected to be sponsored by Rains. The Commission will oppose part of it.

The major "inside" project of the Commissioner is AB 111 rule review. The Commissioner is well along in this required review of all existing rules for "clarity, authority and necessity." Hearings have been held on the review of those portions of the California Administrative Code affecting the Commissioner and the Department. The proposed changes were announced to the public on May 22, 1981. Most of the changes are for clarification purposes. The most substantive changes specify for the first time which mailing lists are maintained by the Department and the price charged for being on them.

On June 5, 1981, the Commissioner announced "Phase 2" of the AB 1111 review. Pursuant to the overall schedule already approved by the Office of Administrative Law, the next review hearings will concern changes in Chapter 3 of Title 10 of the Administrative Code. This includes most of the substantive regulatory rules of the Department, covering all of the statutes noted above. Comments and suggestions should be submitted to the Department by July 31, 1981 although the Department will consider suggestions until August 17, 1981 when proposed changes will be noticed. After notice, those proposals adopted by staff will be subject to public hearing and additional public comment.

In addition to AB 1111, the Commissioner has been unusually active in proposing rule changes in specific areas. One of the more important of these occurred in June and is effective as of July 5, 1981. It allows state chartered credit unions to charge interest at the maximum interest rate allowed to be charged by federally chartered credit unions. The rule is in effect until January 1, 1983. Its intent is to prevent disparity between federal and state chartered credit union interest ceilings. A large difference would affect the competitive position of both federal and state regulated institutions.

On May 27 and May 28, 1981 the Commissioner issued a group of notices of proposed changes to rules implementing four statutes: the Corporate Securities Law, the Personal Property Brokers Law, the Industrial Loan Law and the Escrow Law. The most significant proposals include the following:

***Corporate Securities Law of 1968:** The changes concern real estate investment trusts (REIT's). Operating expenses are limited more specifically (to 2% of assets or 25% of net income for a year, whichever is less); REIT investment in commodity futures contracts is prohibited; more than 10% of asset investment in raw land or in risky trust deeds as defined by the rule is prohibited; removal of a trustee without cause by a vote of the majority of the security holders is allowed; the same security holders are given right of inspection of books of the REIT; and REIT conflict of interest standards re trustees and officers are provided.

***Personal Property Brokers Law:** The changes eliminate restrictions on "other businesses" operated by personal property brokers and clarifies the fact that licensees are responsible for the acts of their employees.

***Industrial Loan Law:** The changes essentially lessen the degree of regulation. Sections requiring notice before opening or closing a branch office or moving a branch office, requiring reporting stock ownership changes in licensed firms and similar sections would be repealed.

***Escrow Law:** The changes here are similar to the changes made in the Industrial Loan Law noted above.

In addition to these proposed changes, the Commissioner acts on a routine basis to license brokers, agents and advisers. The Commissioner licenses the businesses covered by the miscellaneous laws listed above which are subject to her jurisdiction.

FUTURE MEETINGS:

The Department will be considering AB 1111 proceedings in its "Phase 2," including review of most of its substantive rules. Hearings are expected in August and September.

Hearings on the changes in the four areas listed above are tentatively set for July 27-28, 1981 in Sacramento.

DEPARTMENT OF INSURANCE

Commissioner: Robert C. Quinn
(415) 557-1126

The Department of Insurance is vested with the right and duty to regulate the insurance industry in California. The Department is directed by a Commissioner and divided into various divisions, each responsible for a particular task. For example, the License Bureau processes applications for insurance licenses, prepares and administers written qualifying license exams and maintains license records. The Receipts and Disbursements Division manages security deposits and collects fees, gross premium taxes, surplus line taxes and other revenues. The Rate Regulation Division is responsible for the enforcement of California's insurance rate regulatory laws. The Consumer Affairs Division handles complaints and makes investigations of producers and insurers. In all, there are some seven divisions doing the work of the Insurance Department.

The Department has no regular meetings, but does hold public hearings pursuant to the Administrative Procedures Act when rule changes are proposed or licensing controversies arise. The Department publishes a monthly Bulletin in order to keep interested parties informed of its activities.

A major project is the AB 1111 review of the Department's many regulations. Leo Hirsch is directing the review. No public hearings are presently scheduled but public comments are invited.

The Bureau of Fraudulent Claims which the Department established in 1978 is now active. In April, there were 236 suspected fraudulent claims. The Department caused the arrests of nine individuals.

An important recent case involved liquidating an insurance company and assigning its claims to the "California Insurance Guarantee Association" (CIGA). The Eldorado Insurance Company went bankrupt, and a portion of their Workmens' Compensation benefits were assigned to CIGA. CIGA is designed to protect policy holders from loss due to the insolvency of insurance firms. Such protection is a major function of the Department. The accepted claimants to the CIGA fund had filed within the six month limitation. Some 500 other claimants were rejected because they did not file within the limitation. The rejected claimants contend someone should have informed them of the six month filing deadline; they should not be punished for someone else's mistake. They filed suit to compel payment of the claims. However, Superior Court Judge Robert J. Weil held that the funds could not be assigned after the six month filing period. The case is now on appeal.

The issue of territorial rating is presently in controversy due to *County of Los Angeles v. The Insurance Commission*. The main issue in the case is whether to abolish the "territorial rating," which may determine insurance premiums. This, of course, has been a continuing controversy within the insurance industry and a quick remedy is not anticipated.

The Department of Insurance holds between 20 and 30 regulatory hearings a year. Proposed legislation affecting the insurance industry can reach 100-200 proposed bills per year.

Under the direction of Leo Hirsch, the Department has begun review of the Department's thousands of regulations. This review, required by AB 1111, is still in the in-house stage. Mr. Hirsch is distributing various existing regulations to those Department members best equipped to review particular rules. Although not many public hearings are scheduled, various public members will be contacted for input. Mr. Hirsch intends to make a bona fide attempt to meet the difficult June, 1982 deadline.

DEPARTMENT OF REAL ESTATE

Commissioner: David H. Fox
(916) 445-3996

The Real Estate Commissioner is the chief officer of the Department of Real Estate. He is appointed by the Governor and must have five years experience as a real estate broker. The Commissioner appoints a Real Estate Advisory Commission. The Department issues licenses necessary to practice as real estate brokers or real estate salespersons. A separate license is required for a mineral, oil and gas broker. Both brokers and salespersons must pass examinations; in addition, a prospective broker must work as a salesperson under a licensed broker.

MAJOR PROJECTS:

A provision in the Real Estate Law provides for a Real Estate Advisory Commission to advise the Commissioner. The Advisory Commission holds public meetings to solicit the views of the public and the licensees of the Department. The statutory provision was recently amended to provide for a ten member Advisory Commission; six members must be licensed real estate brokers and four must be public members. There were eight members previously, five brokers and three public.

One of the main functions of the Department is the licensing of real estate salespersons and brokers. A recent statutory change provides for a continuing education requirement. Those whose licenses expire after January 1, 1981 are subject to this requirement. A renewal applicant must attend 45 clock-hours of approved courses within the four-year period preceeding license renewal. The entity offering the course must provide the attendee with a certificate of attendance. Evidence of attendance must be furnished with the renewal application; the application must be filed no earlier than 60 days prior to the date of expiration. Any combination of approved offerings equal to 45 clock-hours will satisfy the requirement.

Only those course offerings which have been approved by the Commissioner will satisfy the requirement. The new statute empowers the Commissioner to establish standards for courses "which will assure reasonable currency of knowledge as a basis of a level of real estate practice which will provide a high level of consumer protection and service." Course offerings must be at least three class hours. There are also requirements for attendance and instructor qualifications.

Equivalent activities qualifying the applicant for renewal without taking courses include: instruction in approved continuing education programs; authorship of published professional articles on current real estate practices and procedures; or any other activity which in the judgment of the real estate Commissioner assures reasonable currency of real estate knowledge. An extension of time for completing the continuing education requirements may be obtained in some instances.

There was also a recent change in the ethics and professional conduct regulation. Previously, it was unethical for a licensee to disclose the language of any question used in a real estate examination to any entity conducting a preparatory course for the examination. This provision was deleted.

Recently, the Department conducted an investigation of mortgage loan broker ads. As a result, the Department issued cease and desist orders to 81 brokerage firms for deceptive advertising and other violations. The orders allow the companies to remain in business but prohibit any repitition of the violations. One firm was charged with fraud in a civil action by the Department, which obtained a temporary restraining order to keep the company from doing business. A conservator has been appointed to take control of the company's assets and preserve them for investors. Another firm, which said it was closing down its mortgage loan brokerage business, agreed to an order from the Department forbidding it to issue personal guarantees on its trust deeds. Some salesmen allegedly offered personally signed guarantees promising investors protection against losses in violation of state real estate laws. The Department has introduced legislation, SB 391, to put additional restraints on mortgage brokers.

From September to November 1980, the following disciplinary actions were taken: licenses revoked, 20; licenses revoked with a right to a restricted license, 13; licenses suspended with stays, 12; and indefinite suspensions under recovery fund provisions, 2.

SUBDIVISION REGULATIONS:

Recent statutory changes give the Department jurisdiction over time-share projects. Time share projects consisting of 12 or more time-share estates and time-share uses having terms of five years or more, or having terms of less than five years or more, or having terms of less than five years which also include options to renew are all subject to the jurisdiction of the Department.

The statute defines a time-share project as "one in which a purchaser receives the right in perpetuity, for life, or for a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, or segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided." There are two types of time-share projects. A time-share estate is a right of occupancy in a time-share project which is coupled with an estate in the real property. A time-share use is a license or contractual right of occupancy in a time-share project not coupled with an estate in the real property.

Pursuant to authority under the statutory amendments, the Department has drafted and approved comprehensive regulations dealing with time-share projects. The Office of Administrative Law has refused to approve these regulations. The following is a summary of these regulations, which are 62 pages long.

Some provisions specify certain requirements for the issuance of a public report. A subdivision cannot be offered for sale in California until a public report is issued by the Department. The report contains certain information designed to protect a buyer from fraud. The developer must supply this information in his or her application for a public report. When the application is "substantially complete," the Department will issue a public report. The applicant for a public report for a time-share project must submit evidence that each unit is fit for occupancy or that financial arrangements acceptable to the Commissioner have been made to make it fit for occupancy, that there is sufficient property interest in the project to allow for its completion and that the project is permissible under local ordinance, if any. The regulations also define what constitutes a "substantially complete" application and requires the applicant to notify the Department of any material change in the project after a public report has been issued.

Funds received for the purchase of interests in a time-share project must be deposited and held intact in an escrow depository acceptable to the commissioner until a prescribed percentage of time-share offerings have been sold.

The sponsor of a time-share project

would be required to record a declaration prior to the first sale in the project, dedicating the dwelling units to the time-share project and incorporating the following provisions: 1. Organization of an Owners' Association; 2. A description of the real and personal property for the common ownership and/or use by the time-share interest owners; 3. A description of the services to be made available to time-share interest owners; 4. Transfer to the Association of control over the property and services comprising the project; 5. Procedures for calculating and collecting regular and special assessments from time-share owners to defray expenses of the project and for related purposes; 6. Preparation and dissemination to time-share owners of budgets, financial statements and other information related to the project; 7. Procedures for terminating the membership and selling the interest of a time-share owner for failure to pay regular or special assessments; 8. Policies and procedures for the disciplining of members for failure to comply with provisions of the governing instruments for the project, including late payments of assessments; 9. Procedures for employing and terminating the employment of a managing agent for the project; 10. Adoption of standards and rules of conduct for the use of dwelling units by time-share interest owners; 11. Establishment of the rights of owners to use a dwelling unit according to schedule or on a first reserved, first served priority system; 12. Compensating use periods or monetary compensation for an owner in a time-share estate project if a dwelling unit cannot be made available for the period of use to which the owner is entitled by schedule or under a reservation system because of an error by the Association or managing agent; 13. Comprehensive general liability insurance for death, bodily injury and property damage resulting from the use of a dwelling unit within the project by time-share owners, their guests and other users; 14. Restrictions upon partition of a time-share estate project; 15. Policies and procedures for the use of dwelling units for transient accommodations or other income-producing purposes during periods of non-use by time-share owners; 16. Policies and procedures for the inspection of the books and records of the project by time-share owners; 17. Procedures for the amendment of the declaration and other governing instruments of the project; 18. Where applicable, annexation of additional dwelling units to the time-share project; 19. Policies and procedures in the event of condemnation, destruction or extensive damage to a dwelling unit or units including provisions for the disposition of insurance proceeds or damages payable on account of damage or condemnation; 20. Policies and procedures on regular termination of the project; 21. Policies and procedures for collective decision making and the undertaking of action by or in the name of the Association including, where applicable, representation of time-share dwelling units in an Association for the common-interest subdivision in which the dwelling units are located; 22. Where applicable, allocation of the costs of maintenance and operation between those dwelling units in a hotel, motel or similar commercial lodging establishment dedicated to a time-share project and dwelling units in the same establishment being used for transient accommodations; 23. Policies and procedures for entry into dwelling units of the project under authority granted by the Association for the purpose of cleaning, maid service, maintenance and repair including emergency repairs and for the purpose of abating a nuisance or a known or suspected dangerous or unlawful activity.

The Declaration must also incorporate all covenants of the grantor or lessor. The remainder of the regulations specify procedural requirements which must be followed by the sponsor of the project and the owners' association to implement the provisions of the Declaration. Again, it must be pointed out that these regulations have not been approved by the Office of Administrative Law and are not yet in effect.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: Linda Tsao Yang
(415) 557-3666

The Department of Savings and Loan is directed by a Commissioner. The Commissioner is charged with the administration and enforcement of all laws relating to or affecting state licensed savings and loan associations. As an executive department, the Commissioner does not hold regular meetings and is not subject to the Open Meetings Act. Public hearings are held only where required by the APA.

MAJOR PROJECTS:

Proposals have been made to review various regulations of the Department.

The Department itself has proposed the review of two areas of regulations pursuant to AB 1111. In the first instance, these regulations govern the administration of Accounting Procedures and Uniform Classification of Accounts, Supplementary Loan Report and Documentation of Accounts, Supplementary Loan Report and Documentation Requirements, Statutory Net Worth Requirements and Appraiser Classifications and Qualifications. In the second, the Department would review regulations governing administration of Advertising, Applications and Hearings, New Facilities, Branches, Changes of Location, Mobile Facilities and Executive or Administrative Headquarters Offices, Other Reports Required by the Commissioner, Independent Audits and Data Processing at Service Centers.

The Cabinet-level Business, Transportation and Housing Agency, which includes the Department of Savings & Loan, has proposed a review of all existing regulations which govern administration of the Housing Financial Discrimination Act of 1977. This Act and its implementation have been discussed previously (*see* CRLR Vol. 1, No. 1 (Spring, 1981) at 40).

The proposed reviews are to ensure conformity with statutory guidelines established for regulations; necessity, authority, clarity and consistency.

Both the Department and the Business, Transportation and Housing Agency will solicit written public comment concerning existing rules prior to any action.

The Department has also amended the Financial Code for parity purposes.

In November 1980, the Federal Home Loan Bank Board adopted regulations which comprehensively revised and expanded the real estate lending authority of federal savings and loans. Thus, federally chartered associations are now authorized to make, sell, purchase and participate in loans on residential property that have already existing liens. Prior to amendment, the California Financial Code restricted the ability of state chartered savings and loans to deal in residential real estate encumbered by one or more liens. The amendment, adopted March 25, 1981, will allow lien priority to apply to all residential real property. As with all parity regulations, the intent of this amendment is to maintain relative equality of powers between the state and federal associations in California.

Apart from regulatory modifications, the department deals with routine matters pursuant to its statutory duties. Thus, it approves or denies applications for branch licenses, mergers, location changes, articles of incorporation, etc. Applicants are entitled to a hearing. The Department announces pending applications and the status of previously submitted applications on a weekly basis.

DEPARTMENT OF TRANSPORTATION OUTDOOR ADVERTISING CONTROL BRANCH

Chief: Stan Lancaster
(916) 445-3337

The Outdoor Advertising Control Branch (OACB) regulates the construction of advertising displays along California's

Interstate and Federal and Primary Highways. The OACB administers and enforces the California Outdoor Advertising Act and operates under the control of the Director of CalTrans.

The purpose for regulation of outdoor advertising is to bring signs along the highways into some pattern of uniformity and phase out non-conforming signs by requiring their removal. California has entered into several agreements with the Federal Department of Transportation. Through these agreements, California receives subsidies for enforcing the Federal Highway Beautification Act of 1965.

Permits and licenses are the mechanisms used to control the outdoor advertising business. Any person engaging in the business must obtain a license and renew it annually. Licensees must also secure a permit for each display erected within the OACB's jurisdiction. Each permit is valid for one year and must be renewed on January 1. Since the first of the year, 12,515 permits have been renewed and another 1,000 are expected. There were only 589 new permits issued in all of 1980. The OACB never denies permit renewals. Once a permit application is found to be in full compliance with the Act, the licensees merely mail in their fees to renew. In 1980 there were 1,694 citations issued for violations of the Act. The OACB, however, keeps no record of how many permits were revoked and how many were simply put into compliance.

There are currently 356 licensees in California. There are no qualifications for licensure. Applicants need only remit the required fee in order to obtain a license. Each license must be renewed every year on July 1. To date, there have been no new license applications this year. The Act provides for revocation of licenses for violation of the Act; however, no revocation has ever occurred. The Branch's Legal Division is in the process of setting up a revocation procedure at this time.

The OACB has no board or commission and as such it has no meetings.

Department of Industrial Relations

DEPARTMENT OF INDUSTRIAL RELATIONS CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Director: Don Vial
(415) 557-3356

Ensuring the safety and health of California's wageamers is the responsibility of the Department of Industrial Relations. It is charged with reducing, if not eliminating, injuries and illnesses in the workplace. To fulfill this responsibility, DIR's Occupational Safety and Health Standards Board (OSB) adopts, amends and repeals safety and health orders applying to all employers and employees. The Standards Board also has the power to grant employers variances when they can demonstrate that the proposed alternatives will provide employment conditions which are at least as safe and healthful as the existing orders.

Enforcement of the safety and health orders is the duty of the Division of Occupational Safety and Health (DOSH). DOSH has the power to issue citations and abatement orders (a specific time period for remedying the violation) and to levy civil and criminal penalties for serious, willful and repeated violations. Besides making routine inspections, DOSH is required by law to investigate employee complaints, any accident causing serious injury and make follow-up inspections at the end of the abatement period.

Within DOSH is a subdivision which conducts research on occupational safety and health and another that administers a consultation service. The consultation service provides safety and health recommendations to employers who request assistance. According to the San Francisco regional manager, it is generally only the larger companies who make use of the service. They recognize they have to live with OSHA, he said, whereas the attitude of smaller companies tends to be more hostile.

MAJOR PROJECTS:

As with most other state agencies, one of DIR's major ongoing projects is complying with AB 1111. There are currently over 3,000 pages of health and safety standards. The Standards Board submitted a plan to OAL that called for reevaluation of the health and safety standards over the next four years. However, the plan assumed the Board would be able to fill nine new positions to aid in the AB 1111 project. Since it now appears federal matching funds will not be forthcoming, only four of those positions will be filled. Consequently it must be assumed the completion date of the project will be pushed back.

The Standards Board's major projects include the amendment and repeal of existing safety orders to conform with current industrial working conditions. It also devotes a great deal of time to consideration of variance applications submitted by employers. If an employer can demonstrate by a preponderance of the evidence that its proposed variance in the "condition, practices, means, methods, operations or processes" will provide employment conditions which are at least as safe and healthful as existing safety orders require, the Standards Board may grant a variance.

The Standards Board recently adopted General Industry Safety Orders 5194 and 3204 which require employers to maintain "material safety data sheets" on all hazardous materials present in the workplace and to assure they are accessible to employees, their representatives and physicians. The controversial orders generated a good deal of opposition from industry spokespersons. They felt the list of hazardous materials was too long and argued that assuring access to the material safety data sheets would violate employees' rights to privacy.

FUTURE MEETINGS:

In future meetings, the Board will continue working on revising safety orders to remove differences between state and federal requirements for permissible exposure to chlorine and explosive blasting safety requirements in proximity to radio transmitters.

Department of Food & Agriculture

Marketing orders may be covered in future issues.

Health & Welfare Agency

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Director: Henry W. Zaretsky, Ph.D.
(916) 322-5834

The Office of Statewide Health Planning and Development has the authority to adopt rules and regulations concerning health care facilities and services in the state. The Office has approximately 80 employees. The 1980-81 budget was $16,751,086.

The Office is divided into several divisions: the Administrative Division, the Health Professions Division, the Certificate of Need Division, the Facilities Development Division and the Health Planning Division. In addition, there are special offices for gathering health data and administering Hill-Burton funds as well as a legal office. The Office has its own information officer to handle public relations.

There are 3 statutorily created commissions and boards within the Office. They are the Health Manpower Policy Commission, the Advisory Health Council and the Building Safety Board. Of these, the Advisory Health Council is the largest with 21 members, most of whom are public members.

The Health Systems Agencies also participate in the Certificate of Need program. A Certificate of Need (CON) is essentially an advance approval by the state of health care projects. A CON must be obtained by anyone who wants to establish a new health facility, or to expand an existing health facility, add certain services or make a major capital expenditure. The certificate represents a finding by the Office that the project is necessary and desirable.

The Advisory Health Council has power to:

1. Divide the state into health planning areas;
2. Evaluate and designate one area agency for each health planning area annually;
3. Integrate area plans into a single statewide health facilities and services plan;
4. Adopt a statewide health facilities and services plan;
5. Hear appeals of certificate of need decisions rendered by the Office;
6. Request public agencies to submit data on health programs pertinent to effective planning and coordination;
7. Advise the office about health planning activities, regulations and the setting of priorities in accordance with the statewide health facilities and services plan.

The area agencies referred to above are the Health Systems Agencies (HSA) created pursuant to Federal law. California has 14 of these agencies, which submit local health plans to the Advisory Health Council for integration into the Statewide Health Facilities and Services Plan.

The procedure for obtaining a Certificate of Need is complex. The process begins when the applicant files a Notice of Intent (NOI) with the Division of Certificate of Need. The applicant must also file a Notice of Intent with the local Health Systems Agency. Then there is a 60 day waiting period before the CON application may be filed. After this waiting period and once the CON application is filed, a Senior Project Officer (reviewer) goes over the application to see if it is complete. The reviewer, in cooperation with the local HSA, must determine within 15 days of receipt whether the application is complete. If not, the reviewer notifies the applicant, the applicant submits the additional information, and a new 15 day review period begins.

When the application is found to be complete and within 50 days of that finding, the Office must have started a public hearing on the application. In the meantime, the local Health Systems Agency will hold a public meeting on the application and forward recommendations to the Office.

The public hearing is held in the area of the applicant's planned project. A hearing officer – an administrative law judge who works for the state – presides over the hearing. The applicant, the Division's reviewer, representatives of the local HSA and interested members of the public all have an opportunity to make statements on the application. The "parties" to the hearing, those with formal standing and the right to cross-examine witnesses, are the applicant, the Division of Certificate of Need and the Health Systems Agency. The hearing is an adjudicative type of hearing and a full record of the proceedings is made.

As part of the review process, the Division of Certificate of Need will make a statement of support or opposition to the plan. If the application is opposed by the Division or is otherwise controversial, the hearing may be spread over several days. The hearing may have to be postponed and resumed at a later date for further testimony.

After the hearing, the hearing officer may leave the record open for up to 30 days so that the parties can submit additional information. Then the hearing officer has 10 days (and an additional 20 days, if necessary) to write the proposed decision and send it to the Director of the Office, who makes the final decision.

If the decision is unfavorable to the applicant, he may appeal. (Most applicants, however, will usually withdraw the application before the decision is reached.) The appeal may be to the Advisory Health Council which can uphold the Director's decision, reverse it, or remand the application for further public hearing. The Council's decision may be appealed to the courts. The applicant may also appeal the Director's decision directly to the courts, bypassing the Council.

The Certificate of Need requirements are a reflection of governmental concern about the rapid increase in the cost of health care services. The government feels that the usual market incentives to economize do not exist in the health care field. The government points out that health care services and facilities are poorly distributed geographically. Some areas are underserviced, while in others too many facilities and expensive services are needlessly duplicated. Certificate of Need laws also reflect a concern that health care facilities and services be accessible to everyone: rural and urban populations at all economic levels.

The Certificate of Need requirements are in addition to required approval by the Division of Facilities Development of the Office and the Division of Licensing and Certification of the Department of Health Services.

Certificate of Need requirements do not apply to all types of health care providers. Doctors in private office practices do not have to comply. However, clinics – free-standing facilities not part of a hospital – may have to comply. This is especially true

of specialty clinics such as surgical clinics, chronic dialysis clinics, rehabilitation clinics and substance abuse clinics.

Inpatient facilities, including general acute care hospitals, acute psychiatric hospitals, skilled nursing facilities, psychiatric health facilities, general acute care/rehabilitation hospitals and chemical dependency recovery hospitals also must submit to Certificate of Need requirements. In contrast, Health Maintenance Organization projects (HMO's) are largely exempt even when the facilities listed above are involved.

The budget of the Certificate of Need program is $2,633,566 for the year ending 7/1/81. This figure represents approximately 15% of the budget of the Office of Statewide Health Planning and Development. In 1980, 360 Notice of Intent documents were filed. Of these, 109 came to final decision; 103 were approved and 6 denied.

MAJOR PROJECTS:

Recent activities of the Office include:

1. Creation of a 23 member statewide cardiac care task force to adopt planning methods, reimbursement and licensing policies to regulate health facilities engaged in cardiac care, especially cardiac care requiring surgery.

2. Adoption of procedures to cope with the Reagan administration's shift from a "regulatory" model to a "competition" model. For example, it does not now seem that the Health Systems Agencies which are Federal agencies will be refunded in 1982. Some of these agencies may be able to survive without renewed funding, but others will not. The extinction of some of the local HSA's will create problems for the Office, especially with regard to local planning. The Office may have to take over some local planning functions not carried out by the HSA's.

The Certificate of Need program will probably not be as seriously affected by the loss of the HSA's. Although the Certificate of Need program was originally a Federal program, existing state law also supports this program. Nevertheless the Office has proposed 2 bills (AB 643 and AB 1147) which seek to reduce both costs and HSA participation in the Certificate of Need process by waiving public hearings and meetings in cases of uncontested applications.

The Office itself receives only about 20% of its funds from the Federal government and therefore the direct impact of the Federal government's "defunding" may not be that great.

One area in which the impact of the Federal government's new policies will be felt is Appropriateness Review (AR). Originally mandated by the Federal Government in 1974, Appropriateness Review prefigured the current Certificate of Need process. While the Certificate of Need program approves new health facilities and services, the proposed Appropriateness Review Program would approve existing health care services, eliminating those no longer used or outdated.

Unlike Certificate of Need, however, Appropriateness Review has not found its way into state law. There is no enabling legislation for AR at the state level. Nevertheless the Office was able to adopt a regulation last year requiring the HSA's to do Appropriateness Review as part of their planning activities. The Appropriateness Review which was authorized was not an institution-specific activity as originally contemplated. Rather, the HSA would concentrate on areawide facilities and services and generally assess their adequacy. Now that the HSA's are being "phased-out," this activity may cease altogether.

FUTURE MEETINGS:

July 31, 1981 – San Francisco.

Resources Agency

AIR RESOURCES BOARD

Chairwoman: Mary Nichols
(916) 322-5840

The California Legislature created the Air Resources Board in 1967 to control air pollutant emissions and improve air quality throughout the state. The Board evolved from the merger of two former agencies: the Bureau of Air Sanitation within the Department of Health and the Motor Vehicle Pollution Control Board. The five members of the Board are appointed by the Governor and have experience in chemistry, meteorology, physics, law, administration and engineering and related scientific fields.

The Board approves all regulations and rules of local air pollution control districts, oversees the enforcement activities of these organizations and provides them with technical and financial assistance.

The Board staff numbers 425 and is divided into seven divisions: Technical Services, Legal and Enforcement, Stationary Source Control, Planning, Research and Administrative Services.

MAJOR PROJECTS:

Projects of the Board include consideration of: amendments to exhaust emission standards and test procedures for 1983 and subsequent model passenger cars, light duty trucks and medium duty vehicles; the Board Subvention Program; an Alternative Emission Control Measure (Bubble Rule); and implementation of AB 1111.

Section 43101 of the California Health and Safety Code authorized the Air Resources Board (ARB) to adopt and implement emission standards for new motor vehicles, providing the Board finds the standards to be necessary and technologically feasible and taking into account the impact of such standards on the economy of the state, including fuel efficiency.

California exhaust emission standards currently require that passenger cars and light-duty trucks and medium-duty vehicles under 4000 pounds (inertia weight) meet a 0.4 gram per mile nitrogen oxides standard in 1983 and subsequent years. The California Administrative Code also requires that these vehicles meet a 7.0 grams/mile (or, for trucks, 9.0 grams/mile) carbon monoxide (CO) standard and a 0.39 grams/mile non-methane hydrocarbon standard.

The current regulations also provide an optional alternative to the 0.4 grams/mile NOx standard. For 1983 and subsequent years, a nitrogen oxide standard of 1.0 grams/mile is allowed for passenger cars and for light-duty trucks and medium-duty vehicles under 4000 pounds if they can pass a 100,000 mile durability test rather than the standard 50,000 mile durability test.

Several vehicle manufacturers have petitioned the Board to reconsider implementing the 1983 nitrogen oxide standard because they believe they may be unable technologically or financially to meet the 0.4 grams/mile nitrogen oxide standard in 1983 across their entire product line.

The ARB staff report says: "After conducting a thorough review of the technology available and now in use, the staff believes that most manufacturers will be able to meet the 0.4 gm/mile NOx standards in 1983.

Three-way catalyst systems appear to be the only control strategy for nitrogen oxides currently available that will allow vehicles to meet a 0.4 grams/mile standard." Most

1981 California engine families are already equipped with three-way catalyst and "closed loop fuel control" systems in order to meet the 1981 0.7 grams/mile nitrogen oxide standard. Through the use of these systems, 36% of all 1981 California passenger car engine families are already certified at 0.4 grams/mile nitrogen oxide or below.

In general, domestic manufacturers lag behind foreign competitors in the use of multipoint fuel injection systems (which are superior to carburation for distributing fuel uniformly) although the trend is in that direction. These same manufacturers are facing serious economic problems stemming in part from their inability to compete with the more fuel efficient imported vehicles. They are devoting substantial capital to making their vehicles smaller so as to become competitive in the area of fuel economy. Poor sales have reduced the total amount of capital available for development work. The need to upgrade carburated engines to fuel injection and to design new emission controls over a wide range of vehicle size is an additional drain on their limited development budgets.

The staff report recommends new exhaust emission standards "in order to reduce the emission control development burden on the domestic and small volume manufacturers without adversely affecting air quality." The new standards would be for 1983 and subsequent years:

Grams/mile	Passenger Cars	Light-duty trucks, Medium-duty Vehicles
Non methane Hydro-Carbon	0.39	0.39
CO	7.0	9.0
Nitrogen Oxides	0.7	0.7

A 75,000 mile durability test would be used to demonstrate compliance with these standards instead of the current 50,000 mile or optional 100,000 mile tests. Accompanying the durability test would be a limited warranty requirement. After the current 50,000 mile warranty, an additional 25,000 miles of warranty coverage would be required for catalysts, air pumps, and other emission control systems. (Carburetors, distributors and other parts would not be covered beyond 50,000 miles.)

ARB staff predicts that the average emissions of 1983 vehicles will exceed the 1983 hydrocarbon, CO and nitrogen oxide standards in the first 5,000 or 15,000 miles of useful life. Improving the reliability and durability of emission control standards could be as effective as a more stringent nitrogen oxide standard, however.

The staff bases its belief that no emissions increase will result (over the 50,000 mile 0.4 grams/mile cars) if the proposed standards are adopted on several factors. Manufacturers which can meet the 0.4 g/mi NOx standard in 1983 will do so to avoid the extended testing and warranty requirement. Manufacturers which cannot meet the 0.4 g/mi standard and wish to take advantage of the 75,000 miles certification will be compelled to increase the durability of their emission controls. Finally, the staff believes that the advanced electronic controls and fuel injection will be introduced as fuel economy and driveability measures as soon as is practicable, so improved emission control systems will continue to be developed.

There is some danger associated with the adoption of the proposed 75,000 mile 1983 emission standards; manufacturers might choose to try to certify current technology vehicles with no improvements and accept the warranty risk. Some of these vehicles may possibly qualify for certifications and, if their emission performance is typical of the current fleet, some emissions increase over staff projections for 1983 could result.

Prior to January 1, 1981, California law provided that the Board could only subvene funds to local districts which were "actively and effectively" engaged in the reduction of air contaminants pursuant to specific programs.

In 1980, AB 1473 deleted the "actively and effectively" requirement. Board staff have proposed amendments (minor program adjustments primarily administrative in nature) to the Board's regulations to bring them into conformity with AB 1473.

The proposed local district program objectives for fiscal year 1981-82 are generally the same as those the Board adopted for 1980-81:

1. Requirement for area source emission updates is revised;
2. Specific requirements for bulk plant and bulk terminal inspections are revised;
3. Requirement for inspection of service station stage II vapor recovery equipment is made more specific and extensive;
4. Consideration of a new Source (of air pollutants) Review/Prevention of Significant Deterioration rule is required. The Board adopted these amendments.

RECENT MEETINGS:

"Incineration as an acceptable technology for PCB disposal" was on the March 25th meeting agenda (Sacramento). At the conclusion of testimony, Chairperson Mary Nichols directed the ARB staff to focus its research on other methods of PCB disposal. Although Nichols told the staff its research over-emphasized the cement kiln incineration method, she and the Board endorsed it as an acceptable method of PCB disposal.

The Board heard testimony on its proposed regulation to limit the sulphur content of vehicular diesel fuel to .05% (suphur by weight) at the April 22-23 meeting (San Francisco). The proposed regulation would allow refiners who found it economically or technologically impossible to comply with its provisions to apply for a variance. That topic will receive further consideration July 29 in Los Angeles. A new staff report suggests limiting the proposed regulation to the South Coast Air Basin (all of Orange County, most of Los Angeles County and portions of Riverside and San Bernardino Counties). Testimony at the April 22 meeting revealed that one-half of the production of diesel fuel is by small refiners in the Los Angeles area. They produce about 14,000 to 15,000 barrels of oil per day. The South Coast Air Basin, which consumes about 40% of the state's fuel, would receive the most benefit (in terms of reduced atmospheric sulphur dioxide) from the proposed regulation.

An estimated 200 people were present for the public hearing, March 26 (Sacramento), on problems with gasoline vapor recovery systems at service stations.

Routine transfers of gasoline from refinery to bulk terminal to service station to vehicles result in the evaporation of significant amounts of gasoline. The vapors release hydrocarbons into the air, which form smog.

California law and local district rules and regulations require that most gasoline bulk plants, gasoline tank trucks and service stations be equipped with vapor recovery systems. Gasoline vapor recovery systems collect, store and recycle gasoline vapors which would otherwise be lost to the atmosphere. In 1980, vapor recovery systems reduced hydrocarbon emissions by 420 tons each day (or 15 percent), and prevented the loss of 49 million gallons of gasoline. The service station program is still being phased in in some areas of the state. When fully implemented, the program will prevent the emissions of 455 tons of hydrocarbons per day and will save about 53 million gallons of gasoline per year.

Gasoline marketing occurs in two stages. Stage I vapor recovery systems are used during bulk transfers of gasoline into and out of stationary storage tanks and cargo tank trucks. In the second stage of marketing, individual passenger vehicles are fueled at service stations. Stage II vapor recovery systems are used during vehicle fueling at service stations.

Before a vapor recovery system can be approved for use in California, the system must be certified as being 95 percent effective and safe. Certification, accomplished by state agencies, is based on authority contained in state law. It is conducted according to procedures and standards developed by the ARB, the Office of the State Fire Marshal and the Division of

Measurement Standards in the Department of Food and Agriculture in cooperation with private industry and other government agencies.

Stage I vapor recovery systems have been in use at most terminals for over 20 years and are operated by trained personnel. Their operation and maintenance has become well-known and routine. Stage II vapor recovery systems are relatively new, however. Often operated by consumers at self-serve stations, they have operation and maintenance problems which have affected their acceptability.

Without vapor recovery systems, the gasoline pumped into a vehicle tank releases an equal volume of gasoline vapor into the air. At the same time fresh air is sucked into the underground tank causing gasoline in the storage tank to evaporate.

Stage II vapor recovery systems capture gasoline vapors which are forced out of vehicle gas tanks when the tanks are filled and return them to the storage tanks, preventing the emission of the hydrocarbon vapors into the atmosphere.

Without Stage II vapor recovery systems, service station operations would produce 163 tons of hydrocarbons per day statewide, or 5 percent of emissions of hydrocarbons from all sources, an ARB staff report indicates.

Two different types of Stage II vapor recovery systems have been certified. The most commonly used system is the "balance system," which depends upon the pressure created in the vehicle fuel tank by the incoming liquid to force the vapor through the return line to the underground storage tank. The vapor recovery nozzle latch opens a return passageway which conducts gasoline vapor displaced from the vehicle tank to the vapor return hose, through the underground piping, and back to the underground tank. The ARB has certified two balance systems — the "Emco Wheaton" and the "OPW."

The other type of Stage II vapor recovery system which has been certified is the "assist system." This system relies on a vacuum-inducing device such as an aspirator (aspirator-assist) or a pump (vacuum-assist) to draw the gasoline vapors from the vehicle tank to the storage tank. The vacuum created directs gasoline vapors to the underground tank. The ARC has certified five assist systems.

The major difference between the balance and assist systems is the degree of vacuum created by the system in order to draw in the fugitive hydrocarbon emissions. Little vacuum is created in the balance system, partial vacuum in the aspirator assist system and a great degree of suction in the vacuum assist system.

Since Phase II vapor recovery has been required at service stations in various areas of California, ARB staff has received complaints from operators and consumers using the equipment. Thus, early in February 1981 ARB Executive Officer Tom Austin ordered the Enforcement Division to survey Sacramento area gasoline stations to determine vapor recovery system reliability. ARB Enforcement staff members surveyed 478 retail service stations in Sacramento County from February 5 through February 17, 1981.

The staff report listed the following conclusions, among others:

1. Of the three types of vapor recovery systems examined, the balance type vapor recovery system was found to have the most maintenance problems. (This type of system was also disliked the most by service station operators.)

2. Emco Wheaton nozzles showed a much smaller percentage of maintenance problems than the OPW nozzles (8% as opposed to 31%, respectively).

3. Customer use of a nozzle unit as compared to operator use of a nozzle unit did not significantly increase maintenance problems.

4. Phase II gasoline vapor recovery systems not only help to significantly control air pollution but also reduce California dependence on oil by approximately 32 million gallons per year.

The report recommended that the Board consider regulations to require gas station operators to better inform the public on the proper use of balance-type nozzles. Another recommendation was that local air pollution control districts increase their efforts to enforce service station vapor recovery rules.

At the March 26 meeting the Board heard the impassioned testimony of gasoline service station owners and operators, most of whom asked for decertification of the vapor recovery systems. Several attested to consumer spillage of gasoline because they (the consumers) don't know how to operate the nozzles. The owners and operators also attested to the abuse they are subjected to by irate consumers. One owner testified that he received duty claims for dry-cleaning by customers who had splashed gasoline on themselves in using the nozzles. One female service station attendant testified that the nozzles did not fit into all makes of cars. She called the vapor recovery system a "save the fumes and waste the gas" system.

A disabled World War II veteran testified that the heaviness of the hose make it impossible for him to fill his tank.

Several operators indicated they had problems with recirculation of gasoline (with the vapors) into the underground tanks.

To reduce the cost of emission control and provide more flexibility to source operators in complying with the requirements of state law and district regulations, the ARB staff is proposing the alternative emission control measure, also known as the "bubble rule." Bubbling enables the source operator to juggle levels of pollutants emitted from the source's different components (e.g., an incinerator may be one component of an industrial plant) so that the total emission level is generally acceptable. That is, specific emission reductions are not required from each source or each component of a source. The proposed measure would prohibit emissions increases of such hazardous components as might result from use of a bubble.

Generally, any compound demonstrated to have the potential for inducing a carcinogenic, mutagenic, teratogenic or otherwise toxic response by well-conducted mammalian bioassays or human epidemiological studies or is designated as a hazardous air pollutant pursuant to Section 112 of the Clean Air Act could not be "bubbled" with other hazardous or traditional air pollutants (e.g., those to which ambient standards are applicable, except for vinyl chloride). These compounds, demonstrated to be hazardous, would be required to meet the emission limitation specified in the specific district rule or regulation. However, intrapollutant "bubbling" (e.g., tradeoffs within the facility of smaller sources of the same compound) would be allowed for those compounds exhibiting suggestive evidence of the potential for inducing a carcinogenic, mutagenic, teratogenic or toxic response. The proposal includes criteria to be used to determine which compounds should be treated as hazardous for the purpose of administration of the bubble rule and identifies those compounds that meet these criteria. However, an Air Pollution Control Officer may approve a bubble plan in instances where a demonstration can be made that the "bubbling" of a hazardous compound would not result in any adverse environmental or human health impacts.

If approved by the Board as a suggested control measure, this proposal will be forwarded to the appropriate air pollution control districts for consideration and adoption into regulatory form to the extent necessary to provide for attainment and maintenance of the ambient air quality standards.

LEGISLATION:

Two bills would eliminate the vapor recovery system: AB 127 (Kelley) and SB 1208 (O'Keefe). AB 127 encountered resistance in the Ways and Means Committee and was subsequently amended to require *improvement* of the vapor recovery system.

SB 1208 asks for a moratorium from 1982 to 1983 so that improvements can be

made on the vapor recovery system. This bill is on the Senate floor but the last 4 or 5 times it has been scheduled to be heard, the author asked it be passed over. It appears the author may have trouble gathering support for SB 1208. The ARB opposed both bills.

SB 33 (Presley) which would require implementation of an annual motor vehicles inspection program is presently out of the Senate Finance Committee. It has been amended to require "decentralized" inspection; that is, the inspections will be done through privately owned garages rather than through state operated facilities. Neither the ARB nor service stations are opposing this bill.

AB 1005 would give the ARB authority to set emission standards for airborne toxic substances. No such standard exists statewide. The ARB supports this bill.

SB 900 (Montoya) increases the number of Air Resources Board members from 5 to 7 and requires that 3 be local representatives: one each from the Bay Area and South Coast Air Quality Management Districts and another chosen by the County Supervisors' Association of California. The Board is opposed to this bill for two reasons. First, since the Board was originally intended to have oversight authority over local districts, having local representatives on the Board would create a conflict of interest. Second, the larger the Board, the more difficult it will be to obtain a consensus.

SB 900, which is being pushed by the South Coast Air Basin, would also:

1. Restrict delegation of powers to the Executive Officer;
2. Channel subventions to local districts through the State Controller instead of the ARB;
3. Require that any plan submitted by local districts be either accepted or rejected by the ARB but not revised as is currently done.

The bill is on the Senate floor.

Thus far the ARB has received public comments on two sets of administrative regulations: Agricultural Burning Standard and Ambient Air Quality Standard. The comments numbered from 15 to 20. The ARB sends notices of AB 1111 review to the approximately 4,000 names on its mailing list. Legal Advisor Bill Lockett thinks the lack of public comment is itself confirmation of the soundness of the regulations. The ARB has until July 1, 1982 to complete the AB 1111 review process.

FUTURE MEETINGS:

July 29, Los Angeles, State Building Auditorium, 10 a.m.

CALIFORNIA COASTAL COMMISSION

Director: Michael Fischer
(415) 543-8555

The California Coastal Commission (CCC) is responsible for land use regulation of the coastal areas of California, supplementing local land use controls. Where a land use change or major building project possibly invokes the jurisdiction of the Commission, plans must be submitted to the applicable "Regional Commission" for review. Changes affecting the coastal area of the state cannot be started without a Commission permit where Commission jurisdiction exists. The six Regional Commissions handle most matters by a notice and consent calendar summary proceeding. All property owners within a specified area are sent formal notice of land use or building change plans. If there is no protest and no staff objection, the matter is routinely approved on a Regional Commission consent calendar. If there is an objection or protest and either goes to one of the statutory criteria guiding Commission decisions, the Regional Commission may prohibit the change or impose conditions. The Regional decision may be appealed to the State Commission which can and often does reverse local decisions.

MAJOR PROJECTS:

One of the most pressing projects facing the Commission is a wholesale office reorganization required by the July 1, 1982 expiration of the six Regional Commissions. Upon the expiration of the Regional Commissions, the offices of the North Central Coast Regional Commissions (Sonoma, Marin and San Francisco counties) will become Commission "district" offices.

The July 1, 1981 expiration date will also change the composition of the Commission. Prior to July 1, 1981, the Governor, the Senate Rules Committee and the Speaker of the Assembly each appointed two state commissioners. The remaining six commissioners were selected by the Regional Commissions, each Commission selecting one of its own members to serve on the State Commission.

The process will be different after July 1, 1981. The first six positions will be filled in the same manner, but the latter six, those formerly selected and filled by regional commissioners, will be filled differently. Within 30 days after the termination of a Regional Commission, the county boards of supervisors and city selection committee of each county within the terminated region must nominate supervisors and city councilpersons to serve as state commissioners. The nominations are forwarded to the Governor, the Senate Rules Committee and the Speaker of the Assembly; each will appoint two of the nominees from different regions to serve as state commissioners. The composition of the State Commission will therefore be six public members and a combination of six county supervisors and city councilpersons after July 1, 1981.

The July 1, 1981 date is important in another respect. On that date all Local Coastal Programs (LCP) are statutorily required to be complete. There are 67 distinct geographic areas required to have Commission-approved LCP's. However, as of June 10, 1981, only 13 jurisdictions had obtained LCP approval. Another 15 jurisdictions had received Commission approval of the Land Use Plan (LUP) portion of their LCP, which means those 15 jurisdictions need only obtain approval of the zoning implementation portion of their LCP to achieve complete LCP approval. The remaining 39 jurisdictions are still in the relatively early stages of the LCP process, not having yet obtained Commission approval of their LUP's.

As the law is presently written, after July 1, 1981 the Commission will assume responsibility for processing and approving unfinished LCP's and issuing coastal developmental permits for those jurisdictions that have not yet received LCP approval. Two bills, AB 385 (Hannigan) and AB 1069 (Bosco), would dramatically revise these procedures. Of the two, AB 385 appears to be making more progress and is labelled "most watched" by Commission staff.

AB 385 is a comprehensive and complex bill. Basically, AB 385 would:

1. Require the Commission to establish a schedule for submission of all LUPs to the Commission before January 1, 1983 and of zoning ordinances and other implementing action before January 1, 1984;
2. Return coastal developmental permit issuing authority to local governments after Commission approval of the LUP, instead of after Commission approval of the entire LCP as now required;
3. Revise appeal procedures to the Commission;
4. Extend exemptions from the developmental permit requirements of the Coastal Act to more developments within the coastal zone;
5. Declare inoperative any provision of the bill that is judicially determined to be inconsistent with the requirements of the Federal Coastal Zone Management Act of 1972. In such a case, AB 385 reinstates, largely unamended, the extant provisions of the law.

On April 29, 1981 the Commission filed suit against James Watt, the Secretary of the Interior. The object of the much pub-

licized suit is to stop the scheduled federal lease sales for oil and gas exploration off California's central and north coast. The suit alleges that Watt's actions violated four federal laws:

1. Watt violated the Outer Continental Shelf Act by improperly ignoring Governor Brown's suggestions as to the size, timing and location of the lease sales. The law requires Watt, as Secretary of the Interior, to give full and careful consideration to the Governor's suggestions and to "accept the recommendations of the Governor if they provide for a reasonable balance between the national interest and the well-being of the citizens of the affected state." The suit alleges that Watt made his decision to proceed with the lease sales only 22 hours after receiving the Governor's lengthy recommendations, hardly sufficient time to allow for serious consideration.

2. Watt improperly applied the consistency provisions of the Coastal Zone Management Act by refusing to allow California to participate in the decision to proceed with the lease sales. The suit alleges that the law requires the Secretary to consult with California at the lease sale stage of the drilling project.

3. Watt violated both the Endangered Species Act and the Marine Mammals Protection Act by not providing sufficient safeguards for two endangered species — the sea otter and the California grey whale. The EIS prepared in connection with the lease sales projects a minimum of 5 oil spills in the next 20 years. Both animals, particularly the sea otter, are susceptible to oil spill related injuries.

On May 27 this year the Commission (one of many plaintiffs) obtained a preliminary injunction temporarily delaying the lease sales. A trial date has not been scheduled.

The Commission is approaching the end of a long series of administrative, legislative and court battles involving 2,300 lots in Sonoma County known as Sea Ranch. The Sea Ranch development extends for 10 miles along the coast and as originally dedicated did not include any public access easements to the sea for the entire 10 miles. Additionally, the development planted many trees along Highway 1 which obstructed visual access to the sea. In an effort to restore physical and visual access the Commission imposed conditions on the permits of individual landowners as they sought to develop their lots. Basically, the Commission required as a condition for any single development that the Sea Ranch Homeowners Association dedicate 5 access points within the Ranch to the public and remove some of the offending trees. The individual landowners responded by claiming they were powerless to grant access easements on other people's private property and the Commission was acting illegally by conditioning individual permits upon dedication of the 5 public access easements.

The court battles became so expensive and entangled that the Legislature intervened in 1980 and approved AB 2706 (Bane; Chapter 1371, Statutes of 1980) which appropriated $500,000 to buy the contested easements. AB 2706 specifies that the Association must accept the offer (by depositing all necessary documents in escrow) by July 1, 1981. In May, 1981 the 9th Circuit Court of Appeals upheld the Commission's authority to impose the disputed conditions. Consequently, it appears that the Association will accept AB 2706's offer, but recent conversation with the staff has revealed that another lawsuit has been filed which might further complicate the issue. Details of the lawsuit were not available.

The Commission recently amended its controversial housing guidelines. The Commission has for a long time imposed something akin to inclusionary zoning requirements on certain coastal developments. Formerly, any development of 5 or more units was required to have at least 25% of the units listed as affordable housing. The amended guidelines state that the inclusionary zoning requirements will only apply to developments of 10 or more units. Additionally, the amendments provide for alternative means of meeting the affordable housing requirement, such as: in lieu of fees, land grants or off-site units. On June 18, 1981 the Senate by a vote of 28-2 approved a measure by Senator Mello that would remove all housing authority from Commission jurisdiction. SB 626 would return housing control to local governments which have had housing plans approved by the State Department of Housing and Community Development. Although the bill passed the Senate, it is still being negotiated and several amendments are anticipated.

The Commission has made significant progress in its AB 1111 review of existing regulation. The Commission has already filed its Statement of Review Completion for Chapters 1, 2 and 3. The public comment period for its remaining regulations (Chapters 5-10) has expired and Statements of Review Completion will be filed with OAL shortly. Staff told us that the review has revealed a number of outdated, arguably unauthorized (or unnecessary) and poorly-written regulations. Many of the regulations will be rewritten during the review process, but staff indicated this is more the result of the July 1, 1981 expiration date (deletions of references to the Regional Commissions, clarifications of the appeal procedures from local government entities to the Commission, etc.) than AB 1111 review.

BOARD OF FORESTRY

Director: David Pesonen
(916) 445-2921

The State Board of Forestry establishes general forest policies: it protects the state's interests in privately owned forests (through logging restrictions, etc.), maintains the state forests, operates a statewide system of fire protection and provides research in the technical phases of forest management, such as erosion or pest control. The Board also licenses Registered Professional Foresters. These foresters plan the sale and harvesting of timber, determine the environmental impact of management decisions, appraise the market value of a timber stand, direct the control of tree diseases, etc. They may work as consultants for private companies or for the state.

There are a total of nine members on the Board. The law requires that "some" of the members have backgrounds in the forest products and range livestock industries.

MAJOR PROJECTS:

The Board is considering proposed silviculture rules dealing with the practice of controlling the growth of forests. They deal especially with regeneration, including the type and extent of cutting allowable to maintain the land at or near its productive capacity. The Board is currently considering these rules and the hearing is now closed. Final Board action is expected by January of 1982.

One of the major projects still before the Board is the proposed Water Course and Lake Protection Rules. The draft presently being considered by the Board breaks watercourses and lakes into four separate classes. Certain protective measures are made dependent upon both the class of water affected and the degree of the slope of the land adjacent to the body of water. water.

The four classes of water are "based on key beneficial uses." These key uses include such things as domestic water supplies, presence of fish and presence of other aquatic life. The two most important classes of water, I and II, are to be protected by buffer zones. These zones range from a minimum of 50 feet where the land slopes less than 30% to a minimum of 200 feet where the land slopes more than 70%. Within these zones, some logging practices may be limited, such as the use of certain heavy equipment and the amount of shading canopy which may be cut. Other protective measures may also be required, such as clearly identifying the protected

zone on the ground by paint or flagging.

While these "key" beneficial uses have specific protections, many other beneficial uses are set forth in the proposal, ranging from aesthetic enjoyment to hydropower generation. These beneficial uses are to be given "feasible protection," and measures to do so shall be developed by the Registered Professional Forester in charge or by the Director of the Department of Forestry on a site-specific basis. Alternatives to any of the protective measures may also be developed on a site-specific basis, subject to the approval of the Director. Such alternatives will have to provide protection at least equal to that which would result under the other relevant regulations.

Protective measures go to the means, but the end result is the most controversial portion of these proposed regulations. Entitled "General Limitations Near Watercourses, Lakes, Marshes, Meadows, and Other Wet Areas," the section reads, "during timber operations, the timber operator shall not place, discharge, or dispose of in such a manner as to permit to pass into the water of this state any soil, silt, bark, slash, sawdust, petroleum, or any substance or material deleterious to any of the beneficial uses of water." This section may be close to a "zero-discharge" requirement, prohibiting any logging activity which would cause any matter to be placed in nearby water. Industry opponents of this section argue that such a ban is unreasonable and that the regulation should only prohibit "discharge . . . in quantities deleterious." State agencies counter that a "quantities deleterious" standard, requiring actual harm to any of the beneficial uses of water, would be very difficult to prove in cases short of ecological disaster. This difficulty, along with the expense of the testing required to effectively enforce such a standard, is the reason behind the support for the proposed regulation. Further, state agencies have assured the Board that they will not waste their resources prosecuting for small violations.

Because of the amounts of land and timber involved, as well as water and animal life, the issuance of a reasonable but enforceable standard to protect these resources is important. Either of the two standards argued for in this area may be arbitrarily enforced. Another alternative would prohibit discharge in amounts which a reasonable person (or forest) would believe to be deleterious to any of the beneficial uses of water. The Board is scheduled to complete its review of these proposed regulations and finalize its decision in July, 1981.

The Board is also conducting hearings to adopt regulations establishing standards to be used by the Director of the Department of Forestry when dealing with planned and beneficial, or prescribed burnings. Specifically, the state is to share the costs of such burnings where the public benefits of a prescribed burning operation will equal or exceed any forseeable damage. The stated reasoning behind this law is that the number of landowners doing these burnings has fallen due to an increase in liability where fires have unintentionally spread. Therefore needed brush removal is not ocurring. Cost-sharing of prescribed burnings was the method chosen to encourage the needed brush removal.

Under the draft regulations, the state may enter into a cost-sharing contract where the estimated public benefit in preventing or reducing damage caused by wildfires will be greater than or equal to the forseeable damage that will result from the project over a ten year period. Seven benefits are to be considered: fire hazard reduction, water yield, watershed stabilization with respect to large fires, wildlife habitat improvement, fisheries habitat improvement, air quality protection/improvement and range forage improvement. Charts are presently being developed breaking down these considerations and giving relative weight, in the form of point score, to public and private interests for each sub-category. The state's share of the cost will be equal to the percentage of the public benefits divided by the total benefits, not to exceed 90% of the total costs. Also, the one contracting with the state is to be allowed to choose the method of paying its share from any combination of money, materials, services or equipment.

LEGISLATION:

SB 856: Existing law requires the Department of Forestry to make inspections of timber operations at certain specified times. While these inspections are mandatory, they apparently are not always being carried out, due to staff shortages. This bill would make those inspections optional.

AB 1600: Under present law, a willful violation of the Forest Practices Act of 1973, a Board rule or regulation is a misdemeanor. This bill would eliminate the requirement that the violation be willful, authorize the Board to designate violations of certain rules and regulations as infractions and prescribe penalties for later convictions of the same offense. The bill would also provide for civil liability in addition to criminal or administrative sanctions.

SB 720: Presently, timber operations conform with the rules and regulations of the Board of Forestry, as well as with the more general California Environmental Quality Act. This bill would provide that those activities conducted under the Forest Practice Act of 1973 be exempt from the California Environmental Quality Act.

RECENT MEETINGS:

On June 2, the Board passed regulations allowing prescribed burning in cost-sharing partnerships between the state and private landowners.

Forestry licensees will abide by local Air Pollution Control District rules, according to a proposed rule. Burning shall be allowed on Burn Days as determined by the Air Resources Board, except in areas declared to be fire hazards. A permit to burn on No-Burn Days may be obtained only when "imminent and substantial economic loss" would otherwise result. The rule passed as written at the June 2 meeting.

In addition, the Board on June 2 approved the "Chaparral Management Program: Final Environmental Impact Report" (EIR), dated May 18, 1981. This is only the second program EIR passed by a state board. Once a "Program EIR" is passed, the relevant environmental concerns are thereafter deemed to have been addressed for the entire state. Thereafter, no site-specific EIR's need be written where work is done under that program. Only a management plan consistent with the program need be written for that individual site. This particular program EIR considered such things as environmental effects, mitigation measures, alternatives and energy relationships.

WATER COURSE AND LAKE PROTECTION REGULATIONS:

Rather than using the zero-discharge standard previously discussed, the Board is presently leaning toward a subjective standard. The Board may add to "any substance or material deleterious to any of the beneficial uses of water," an exception "for such depositions which are the accidental result of prudent operations."

Field tests of the Water Course and Lake Protection Regulations will be held in all three state forest districts, northern, southern and coastal, and are scheduled to be concluded by mid-June.

SOLID WASTE MANAGEMENT BOARD

Chairman: Terry Trumbull
Executive officer: John W. Hagerty
(916) 322-3330

The Solid Waste Management Board (SWMB) is charged with managing solid wastes in this state to protect the public health, safety and to preserve the environment. The Board must provide for the maximum reutilization and conversion to other uses of the state's diminishing resources. The Board is comprised of two representatives from local government; three public members; two members from the private sector of the solid waste management industry; a civil engineer; a representative of

the public with specialized education and experience in natural resources conservation and resources recovery; and three nonvoting ex officio members.

MAJOR PROJECTS/RECENT MEETINGS:

The SWMB is funded by the California State Government for the purposes of 1) ensuring that nonhazardous wastes are handled and disposed of in an environmentally sound manner, 2) reducing the amount of waste produced and 3) encouraging the recovery of materials and energy from the waste stream. SB 1855 (1978) and SB 650 (1977) provide, respectively, for financial assistance to waste-to-energy proposals and for recycling and resource recovery grants to public agencies or private entities. SB 650 also provides for financing public awareness and educational programs with respect to the management of solid waste.

At the June 3-4, May 14-15 and April 27-28 meetings the Board conducted a wide range of business including a review of proposed projects and studies; the recommendation of educational allocations; and the review of submitted solid waste management plans and revisions for a number of counties.

In the April 27-28 Board meeting, the SWMB renewed its contract with Solem and Associates, a private public relations firm, for $450,000 yearly. Solem and Associates engineered the recent "Great California Resource Rally" throughout California from April 20-26. This media event was designed to solicit the support of the public in recovering otherwise wasted resources.

In the educational field, the SWMD contracted with SWRL (Southwest Regional Laboratory) for the third consecutive year. The $98,500 program is designed to introduce waste management problems and solutions to school children.

SB 1855 appropriated $2,000,000 in grant funds which the board allocated to six projects. As of June 3, 1981, the Board had encumbered all of its allocation except $32,570. Aware of the impending deadline for allocation of the balance of this fund (June 30, 1981), the Board awarded the San Diego waste-to-energy project the remaining $32,570 to conduct an analysis of solid waste composition in the San Diego area. The purposes of this study are 1) to predict air emissions resulting from resource recovery, 2) to give accurate information to public agencies negotiating with the vendor of the facility and 3) to estimate the percentage of recoverable material in the waste stream.

Because the conversion of waste materials to energy produces a residual ash, the Board approved a resolution instructing the executive officer to contract with an independent agency for an analysis of the ash. The cost of the study is not to exceed $50,000. The Department of Health Services presently classifies the ash as hazardous waste, despite the SWMB belief that the ash is not hazardous. In any event, the study will determine 1) whether the ash residue is harmful, 2) if it can be used in the manufacture of other products and 3) how it can be disposed of.

With $75,244 remaining in the "Resource Recovery Grant Fund," the SWMB passed a resolution to grant West County Agency $45,000 for preliminary planning of a waste-to-energy project and grant CVC (Central Valley Cooperative) the remaining $30,244 for a heat exchanger on the CVC's gin trash energy recovery system. A representative from the CVC assured the Board that with the purchase of the heat exchanger, the gin trash recovery system will alleviate all remaining cotton waste conversion problems.

In the April 27-28 meeting, the Board allocated $10,000 for a contract with Geotechnics for construction of a model of landfill gas migration. The purpose of this model is to assist in the planning of effective recapture of methane gas released by buried waste.

In addition to allocating funds for resource recovery projects, the SWMB is responsible for approving permits for new solid waste disposal facilities and modification of existing facilities. All new proposals or modifications must conform to county plans and remain consistent with state policy. In its last few meetings, the Board approved a number of proposals. The Board also designated the Palos Verdes landfill as part of the Environmental Protection Agency's "Open Dump" Inventory.

The federal 1976 Resource Conservation and Recovery Act requires all states requesting federal grants for waste management to formulate a state plan on solid waste management. The Board has prepared a report on solid waste management in California which assesses current and potential management recommendations for future actions. Public comment was invited up until June 11, 1981. One of the more notable public comments came from a representative of Getty Oil Co., who criticized the Board's adoption of certain findings on the recapture of methane gas from landfill sites. The representative also admonished the SWMB for interfering in an area where the Board allegedly lacks technical skill. After considerable discussion, the Board agreed to have its staff meet with the Getty advisors to discuss the possible amendment of objectionable findings. It is expected that the SWMB will adopt an official version of the California state plan soon.

The committee responsible for the AB 1111 review is presently revising Chapter 3, Minimum Standards for Solid Waste Handling and Disposal. The deadline for review of all nine chapters is January 31, 1982, but it is contemplated that additional time will be necessary.

LEGISLATION:

The SWMB is sponsoring five bills this session.

1. SB 447: Would require that recycling grants be used for planning and development of curbside collection systems in urban areas and community recycling centers in rural areas. This bill would also change the name of the Board to the Waste Resources Board and allocate $500,000 from recycling funds to be spent on marketing. This bill is presently before the Senate Committee on Finance.

2. AB 1619: Would allocate $400,000 from the environmental license plate fund to develop techniques to control landfill gas migration without inhibiting gas recovery. This bill is presently before the Assembly Committee on Ways and Means.

3. AB 467: This bill would exempt smaller oil recyclers from regulation and require large volume haulers/collectors to give receipts to businesses from whom they collect used oil. This bill has passed the Assembly.

4. AB 1861: Would create a rebuttable presumption that a person or company whose name is found on three or more separate items of illegally dumped material committed the dumping. This bill is presently before the Assembly Committee on Energy and Natural Resources.

5. AB 1860: Would require operators of waste disposal or processing plants to get county approval before the state SWMB grants approval. In turn, the county could levy an administrative fee on the operator. This fee would be used to support the enforcement program of the county solid waste management agency.

Another bill pertaining to waste but not sponsored by the SWMB is SB 4. This bill is a reintroduction of a mandatory reusable beer and soft drink bottle proposal. It would require purveyors of beer and soft drinks to charge a minimum of five cents per bottle deposit, refundable upon return of the bottle. Although it would have a significant impact on the recovery of normally wasted resources, strong special interest groups have previously lobbied successfully against similar proposals.

FUTURE MEETINGS:

The Solid Waste Management Board will meet next on July 16 and 17, 1981 in Southern California.

Future meetings are set for August 16-17, 1981 in Sacramento and August 27-28, 1981 in Northern California.

REGULATORY AGENCY ACTION

STATE LANDS COMMISSION

Executive Officer:
William F. Northrop
(916) 322-4105

The State Lands Commission consists of the State Controller, the Lieutenant Governor and the State Director of Finance. The Commission has exclusive jurisdiction over all ungranted tidelands and submerged lands owned by the State. It also controls approximately 610,000 acres of "school lands" granted to the State by the Federal Government in the 1800's. Altogether the Commission's jurisdiction extends over approximately 4.5 million acres. The Commission administers and controls all such lands and may lease or otherwise dispose of them as provided by law and in accordance with such rules and regulations as the Commission adopts.

MAJOR PROJECTS:

The major activities of the Commission include the issuance of permits for oil and gas wells and the development of procedures to avoid pollution caused by these wells. The Commission also leases lands for marinas, wharves, timber harvest, grazing, mining and development of geothermal electric power generation.

RECENT MEETINGS:

The Commission generally meets on the last Thursday of each month. Because of the technical nature of most of the items on the Commission's calendar, the Commission is assisted by a staff of more than 250 specialists. A typical Commission meeting lasts only 1-2 hours as the Commission Chairman, Kenneth Cory, quickly disposes of 40-50 agenda items. In the course of its last 4 meetings, the Commission has failed to disapprove a single agenda item.

The Commission has held 3 meetings since the last issue of the *Reporter*, in April, May and June.

On April 29, 1981, the Commission approved a "joint powers agreement" between the state and the City of Newport Beach. The agreement provides for the acquisition of tidelands by the city for construction of oil pumping and storage facilities. In an agreement with Western Pacific Construction Materials Co., the Commission approved a 5 year mineral extraction lease on 110 acres of tidelands and submerged lands near Middle Ground Island in Suisun Bay. These lands are in Contra Costa and Solano Counties. Shell Oil was given permission to resume drilling operations for oil and gas under its lease in the Pierpont Area in Ventura County. Additionally, 3 royalty oil sales contracts were approved for the Huntington Beach Field in Orange County as were several in the Lindsey Slough Area of Solano County.

At its May 28 meeting, the Commission awarded a 40 year general lease to Bruce Conn for construction of a commercial retail complex on sovereign land in Seal Beach. Approval was also granted to the Independent Valley Energy Co. for a 20 year lease of sovereign land in Kern County to install and maintain a 10 inch diameter crude oil pipeline. The Commission also approved another royalty oil sales contract for the Huntington Beach Field and a contract with Westec Services for a study of dust abatement in the Owens Lake.

At this writing the Commission had not yet held its June 24 meeting. However, matters scheduled to be discussed include the following:

1. Great Western Cities, Inc. is seeking approval of a 1 year core drilling permit that would allow a maximum of 30 holes to be drilled on a 16,000 acre area of patented "school lands." The drilling is to determine the mineral content of the area in order to facilitate long range planning. All mineral rights are reserved to the state.
2. William and Ann Cameron are seeking a 30 year lease for the development of a commercial Marina on the Sacramento River in Isleton.
3. The Beacon Oil Co. has applied for a royalty oil sales contract involving its leases in Carpinteria and Sumner in Santa Barbara County.
4. The Geothermal Resources Power Corporation is seeking a Geothermal Resources lease. The area under consideration is near Geyser's Steamfield in Lake County.

FUTURE MEETINGS:

The next meeting is scheduled for July 23, 1981, Room 2170, State Capitol Building, Sacramento.

STATE WATER RESOURCES CONTROL BOARD

Executive Director: Clint Whitney
(916) 322-7273

The Water Resources Control Board, established in 1967, regulates state water resources. The State Board and the nine California Regional Water Quality Control Boards are the state agencies principally responsible for the control of water quality in California. The State Board consists of five full-time members who are appointed by the Governor. Each regional board consists of nine part-time members appointed by the Governor for four year terms.

MAJOR PROJECTS:

The State Board has used its broad powers to institute diverse programs. Water quality regulatory activity includes issuance of waste discharge orders, surveillance and monitoring of discharges and enforcement of effluent limitations. The Board engages in areawide water quality control planning and assistance to wastewater facility construction. It does research and provides technical assistance on agricultural pollution control, wastewater reclamation, groundwater degradation and the impact of discharges on the marine environment. The Board is responsible for administering California's water rights laws. In performing this duty, the Board licenses appropriative rights. The Board may exercise its investigative and enforcement powers to prevent illegal diversions, wasteful use of water and violation of license terms.

Board activity affecting water quality in California operates at two levels. The first level consists of regional control. Each of nine Regional Water Quality Control Boards adopts Water Quality Control Plans, referred to as Basin Plans, for its area. These plans list uses of the waters within the region and establish the standards of water quality required to support those uses. Basin Plans serve as a basis for further Regional Board action. For example, waste discharge permits will not be issued unless they conform to the requirements of the Basin Plan, applicable state plans and federal standards. The second aspect of water resource control is at the state level. The State Water Resources Control Board is charged with approving all regional Basin Plans and Basin Plan Amendments. In addition the State Board acts on petition of any interested party who is dissatisfied with a Regional Board decision.

As a consequence of this agency structure, regional board meetings often consist of public hearings on Basin Plan Amendments and waste discharge requirements for various facilities, as well as discussion of whether to issue cease and desist orders against dischargers. At State Board meetings, petitions relating to Regional Board actions are heard and items independent of Regional Board activity are addressed. These matters include authorization of construction grants, determination of water rights and negotiation of agreements with other state agencies such as the Department of Fish and Game.

Detailed documents prepared by either Regional or State Board full-time staff often serve as the focus for testimony and argument at meetings. For example, specific language in a proposed National Pollutant Discharge Elimination System (NPDES) permit has been commented upon by representatives of Water Districts, the Department of Fish and Game, city governments and private parties. These documents, when approved by the Board, become the

regulations upon which enforcement is based.

RECENT MEETINGS:

At its May 21, 1981 meeting the State Board was asked to authorize the Executive Director to transmit certain documents regarding the proposed San Luis Drain to the United States Water and Power Resources Bureau (Water and Power) and the public. The purpose of the document is to provide Water and Power with an estimate of waste discharge requirements for the proposed San Luis Drain. The Drain will serve agricultural areas north of Kettleman City, discharging to surface waters including those of the San Francisco Bay Delta estuary. Formal requirements for the NPDES permit will probably not be available until 1984. Discharge to surface waters from any facility of the San Luis Drain is prohibited until requirements are issued. Mr. T. Phillips of the Department of Fish and Game disputed the wording of the acute toxicity provisions. Testimony was also heard on receiving water and effluent limitations including levels of dissolved oxygen, particles and grease, pH, temperature and salinity. A representative of Water and Power said the boundary designated in the document required adjustment and the Board agreed. The Guidance Document was unanimously accepted by the Board.

The Board also unanimously approved renegotiation of its contract with the University of California Institute of Marine Resources for consultation services. For 5½ years, the University has provided the Board consultation services consisting of marine and estuarine surveillance and research. The new contract will be for services from June 30, 1981 to December 31, 1982 at a cost of $60,000. The $60,000 is to be paid from the Toxic Substances Control Program Fiscal Year 1980-81 Research Budget and the Division of Water Quality Fiscal Year 1980-81 Budget.

A factfinding meeting was held on April 27, 1981 to consider the recent decline in the number of young striped bass in the San Francisco Bay Delta Estuary. For five consecutive years, 1976-1980, young bass survival has dropped below half of the 1959-1975 average according to the Department of Fish and Game. This meeting was followed up by a workshop on June 3, 1981. State Board members and staff, the Department of Fish and Game, the Delta Environmental Advisory Committee of the Department of Water Resources and the Associated Bay Area Government (ABAG) Citizens' Committee attended the workshop. No definitive decisions resulted from these meetings. The decline will continue to be a point of concern and study; the State Board staff intends to present a status report at the Board's triannual review of output requirements schedules for the Delta on September 1, 1981.

INTERAGENCY CONFLICT:

Regulation of water quality has led to jurisdictional conflicts at three levels: Regional Boards vs. local governmental entities; the State Board vs. other State agencies; and state vs. federal.

On the local level, Emily Durbin of the San Diego Regional Board commented that there is a basic conflict between the county land use planning division and the Regional Board. Housing developments are approved by the Planning Commission without adequate consideration of the suitability of water supply and waste systems for the location. Its actions create sewage hook-up and water line approval problems for the Regional Board. The Regional Board has the power to prohibit septic tanks for reasons of subsurface water quality and may prohibit additional connections to the community sewer system. At its March 23, 1981 meeting the Regional Board directed its staff to communicate with the appropriate city agencies to avoid these conflicts.

On the state level, there is a dispute between the State and Regional Boards and the Department of Food and Agriculture over pesticide jurisdiction. Legislative attempts, e.g., AB 1274 (Lehman) have been proposed to divest the State and Regional Boards of authority to regulate the agricultural use of pesticides. On May 19, 1981 a State Board hearing was held to discuss the North Coast Basin Plan Amendments for control of herbicide 2-4-D wastes from timber production operations. The assistant director of the Department of Food and Agriculture criticized strict limitations of 10ppb imposed by the North Coast Regional Board. Andrea Tuttle, chairperson of the Regional Board, contended there is no duplication of function because Food and Agriculture is concerned with the quality of agriculture and the State and Regional Boards are charged with protecting water quality.

The 10ppb limit has been in place since April 20, 1978 and has been applied by the Regional Board on a case-by-case application for aerial herbicide spraying. When first ordered, the industry indicated "it could live with the 10ppb limit."

The 10ppb limit is based on protecting the most sensitive beneficial use of the water. The aquatic organism most sensitive to 2-4-D appears to be the yolk sac developmental stage of certain salmon species. Fish and Game, which supports the Amendment, indicated that 10ppb limits have to be low enough to protect "fish food organisms," i.e., the food chain.

Most opposition testimony contended that the former 10ppb limit was adequate to protect human health. They did not understand that the central issue was the protection of water life.

The other major opposition issue was the need for deregulation rather than more regulation. Opponents of further regulation, including Department of Food and Agriculture, contended that Food and Agriculture has *primary jurisdiction* over agricultural pesticides. The State Board does not dispute that Food and Agriculture is the *lead* agency but insists on jurisdiction to protect the beneficial uses of water.

On the state-Federal level, an agreement was entered into by the United States Environmental Protection Agency, The Department of Health Services, and the State Water Resources Control Board to ease administration of the State Hazardous Waste Management Program. The agreement establishes information exchange requirements and allocates responsibilities.

REGULATORY REVIEW:

The State Board is conducting regulatory review per AB 1111. Few substantive changes are being suggested by the Board's staff. Most proposed changes have been aimed at improving clarity and consistency or eliminating redundancy. One substantive change is the expansion of purposes for which public agency loans are made (Sections 2001-2-22, Subch. 5, Ch. 3, Title 23 CAC). The proposed expansion would make construction of facilities or devices to conserve water eligible for public agency loans. This change would conform to a recent amendment to Water Code Section 13400 (Stats 1978, Ch. 436).

LITIGATION:

The California Court of Appeals, Fourth District, ruled against the State Board in *Southern California Edison Co.* vs. *State Water Resources Control Board*, 4 Civ. No. 22160, March 11, 1981. The Board had ordered the San Onofre nuclear plant, which had installed its own secondary sewage treatment plant for employees, to comply with comparable municipal system standards instead of private facility standards. The Board also proposed to measure the gross waste discharge, which includes pollutants pre-existing in the water before it entered the system, rather than only net waste. The court ruled that the Board did not support the need for such changes with sufficient evidence. However, the court stated that on proper hearings and proof that the standards are needed to protect specific beneficial uses of the ocean, the Board might have the power to make the proposed changes.

FUTURE MEETINGS:

The next regular State Board meetings are July 16, 1981 and August 20, 1981 at the Resources Building Auditorium Room, 1416 9th Street, Sacramento, California.

Independents

BOARD OF CHIROPRACTIC EXAMINERS

Executive Secretary:
Edward Hoefling
(916) 445-3244

The Board of Chiropractic Examiners was created by an initiative measure approved by the citizens of California on November 7, 1922. The Board's duties include examining chiropractic applicants; licensing successful candidates; approving chiropractic schools and colleges; approving continuing educational requirements and courses; and maintaining professional standards through the invocation of prescribed disciplinary measures.

The Board has seven members, two public members and five licensed professionals. It convenes twelve times a year.

MAJOR PROJECTS:

The Board administers its examination twice a year. In order to be eligible to take the exam, a candidate must attend a Board approved and accredited chiropractic institution for a minimum of three academic years. The Board recognizes only those chiropractic institutions accredited by the National Council on Chiropractic Education (CCE).

In 1979, the Board instituted a new mandatory continuing education program. As a condition of license renewal, each licentiate is required to complete a minimum of 12 hours per year of Board approved courses.

A significant portion of the Board's $392,000 1980-81 fiscal year budget is devoted to the resolution of consumer complaints. (The Board's projected fiscal 1981-82 budget is $405,000.) Recently appointed Executive Secretary Hoefling told us that the majority of consumer complaints are in the areas of fraud, incompetence and patient molestation.

The Board does not have its own investigative office, but contracts with the Department of Consumer Affairs, Division of Investigation Services for these services. Likewise, the Board relies on the Office of the Attorney General for legal counsel.

Executive Secretary Hoefling told us the Board regulates approximately 5,300 chiropractors. He was unable to provide recent statistics on the type and number of consumer complaints.

Executive Secretary Edward Hoefling told us that the Board's most important contemporary project is the AB 1111 mandated review of existing regulation. The Board has already held some AB 1111 informational hearings, but Hoefling stated that there has not yet been any controversial testimony. The most significant testimony to date has been on the issue of Board certification of chiropractic colleges in California. A number of years ago, the Board delegated its accreditation authority to the National Council on Chiropractic Education (CCE). The Board only recognizes those chiropractic institutions that receive CCE accreditation. Consequently, there is some question as to the necessity of the Board retaining many of its regulations pertaining to scholastic institution requirements. (*See* 16 CAC Section 330 et seq.)

The Board's future AB 1111 review process includes public informational hearings on Articles 3, 4, and 5 on September 16, 1981 and Articles 1, 2, 6 and 7 on September 17, 1981. Additional public informational hearings are tentatively scheduled for December 10, 1981. The Board intends to file its Statement of Review Completion with OAL on February 18, 1982.

The Board is closely following the progress of two bills. AB 868 (Lehman) is a Board-supported bill that would, according to Executive Secretary Hoefling, "more clearly define the scope of chiropractic practice." For instance, the bill would clearly provide that chiropractors are permitted to engage in nutritional counseling. Many chiropractors presently believe that the law permits them to provide nutritional counseling and they do so. AB 868 would lay this question and similar ones to rest. Some individuals perceive AB 868 as an attempt by chiropractors to expand the lawful limits of their practice. The California Medical Association (CMA) is one such group and strongly opposed AB 868 when debated in Assembly Health Committee. CMA was successful in obtaining some amendments, but the bill was approved by the Health Committee on May 5, 1981 by a 9-2 vote. As presently written, AB 868 is still supported by the Board and apparently palatable to CMA.

At its June 25, 1981 meeting the Board was scheduled to take a position on AB 610 (Berman). AB 610 is a "patient's access to health records" bill and would require health care providers to allow patients to inspect their records within 5 days of receiving a written request to so inspect and provide patients reasonably priced copies of their records when requested to do so. In conversation prior to the June 25, 1981 hearing, Hoefling stated that the Board has supported this concept in the past and in all likelihood would support it again this year.

FUTURE MEETINGS:

The Board has released a tentative meeting schedule for the remainder of 1981. The meetings are scheduled for: July 30, Costa Mesa; September 17, Los Angeles; However, Hoefling has indicated that the July meeting might be cancelled for lack of a quorum.

CALIFORNIA ENERGY COMMISSION

Chairman: Russell Schweickert
(916) 920-6811

In 1974, the Legislature created the state Energy Resource Conservation and Development Commission, better known by its short name, the California Energy Commission. The Commission is generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of energy sources alternative to gas and electricity; developing contingency plans to deal with possible fuel or electrical energy shortages; and, in its major regulatory function, siting power plants.

There are five Commissioners appointed by the Governor for five year terms. Four Commissioners have experience in engineering, physical science, environmental protection, administrative law, economics and natural resource management. One Commissioner is a public member.

Each Commissioner has a special adviser and supporting staff. The entire Commission staff numbers 500.

The five divisions within the Energy Commission are: Conservation; Development, which studies alternative energy sources e.g., geothermal, wind, solar; Assessment, which is responsible for forecasting the state energy needs; Engineering and Environment, which does evaluative work in connection with the siting of power plants; and Administrative Services.

MAJOR PROJECTS:

Current ongoing projects of the Commission include implementation of the Residential Conservation Service, an investigation into electric system reliability and AB 1111 review.

By July 1981 all the major utilities will have begun Residential Conservation Service (RCS) energy audits. The Energy Commission estimates that the RCS Program can save approximately 49 trillion British thermal units in California by the end of 1983. This represents a savings of 5-6 percent of annual residential use.

The RCS Plan is a step toward transformation of gas and electric utilities from energy producers and distributors to "energy service corporations (providing the services of comfort, heat, light and motion)." The Commission recommended such a transformation in its 1979 biennial report: "California's utilities must expand their promotion of conservation and alternative energy sources . . . [Energy] corporations would receive financial and regulatory incentives to promote conservation and alternative energy sources. In exchange, they would be responsible for assuring sufficient energy services to homes, offices, farms and industries."

Alternative energy sources (e.g., wind, solar, etc.) are becoming increasingly attractive to the utilities. These sources are renewable; the facilities cost less to construct and operate and have a much lower environmental impact than do traditional energy sources.

Conservation actually represents an unrealized source of energy supply. Consumer interest in conservation has created a booming market for energy products and processes. As one Commission staff report put it, when consumers economize on energy by purchasing insulation or an energy management system, "they are redirecting their expenditures from the fuel suppliers to myriad marketers of these energy service products . . . therefore, a subtle but compelling reason for the utilities' growing interest in conservation is simply to capture a portion of the demand that they once thought they had an exclusive franchise to serve."

The Commission's 1981 biennial report predicts almost zero growth in total energy demand by the year 2000. The Commission projects a growth rate in electricity sales of 1.44 percent a year over the next 20 years.

All taxpayers are eligible for a tax credit on the cost of:

- Ceiling insulation;
- Weatherstripping;
- Water heater insulation blankets with an insulating value of at least R-6;
- Low flow shower head devices which restrict water flow to not more than three gallons per minute;
- Caulking and sealing;
- Duct and plenum insulation;
- Swimming pool and hot tub insulating covers.

To qualify, these measures must be installed on or before December 31, 1985 in multi-family dwellings, and on or before December 31, 1986 in single family dwellings and nonresidential buildings. Swimming pool and hot tub covers are only eligible through December 31, 1983.

Any other energy conservation measure receives a tax credit *only* if it has been recommended by an energy auditor and installed before December 31, 1983. Before the state invests 40% in the device, the legislature wants to make sure the device is cost-effective.

By order of the Public Utilities Commission, some utilities will finance at zero interest the installation of energy audit recommendations. The "Zero Interest Program" (ZIP) is in its pilot stages. Participating utilities are Pacific Power and Light, Pacific Gas and Electric and Southern California Edison.

The utility finances any amount up to the cost-effectiveness limit. The selected contractor is required to guarantee both material and workmanship to the utility and the dwelling owner. The customer has the option of repaying the utility in monthly installments or postponing any payment until the time of resale. In either case there is no interest on the amount loaned. For customers postponing payment until the time of resale, a subordinate lien would be attached to the property.

On March 11, 1981, the Energy Commission adopted a resolution formally establishing the Residential Conservation Service State Advisory Group. The purpose of the Advisory Group, as cited in the state plan adopted June, 1980, is "to review the conduct and performance of the state RCS plan . . . and provide the Energy Commission with recommendations regarding the overall effectiveness of the plan, the RCS measures, and general implementation strategies." An extensive application process has produced 31 group members from around the state. Another four will complete the group, which is composed of community representatives, business interests and representatives of various segments of the population (e.g., lower income). Their recommendations will be reviewed by the Commission staff. The Advisory group meets every six weeks.

The State Plan provides that a similar group be set up by each utility to advise how the program can be better implemented at the utility level.

The Commission approved a Statement of Review Completion and Statement of Findings summarizing the results of the current AB 1111 review of regulations at the June 17 meeting. Two members of the Commission's legal staff conducted the review in conjunction with two hearing advisors from the Commission's Office of General Counsel.

An extension was requested and received for the Power Plant Siting regulations and for the Data Collection regulations. The Siting regulations will be completed by August 31 (mostly changes in the wording of the regulations). The extension for Data Collection regulations lasts till the end of the year. The Commission is presently revising those regulations.

The next step for the bulk of the regulations that have gone through the initial notice and comment period is a hearing. At the July 1 meeting, the Commission will formally institute hearings to consider changes in the Commission's regulations implementing the California Environmental Quality Act. The Commission may also institute hearings to consider amendments to the Load Management Standards.

No changes and thus no hearings are proposed for Insulation Quality Standards (these were very recently revised) or the Solar Tax Credit regulations.

According to William Chamberlain, the Energy Commission's head counsel, public comment has been minimal, but what he has received has been helpful. Chamberlain feels that many unnecessary and outmoded regulations have been eliminated by the AB 1111 review process, although at substantial cost (in attorney time).

RECENT MEETINGS:

The Warren Alquist Act of 1974, which created the California Energy Commission, requires the Commission to periodically update energy conservation standards for new residential buildings. The current standards, adopted in 1977, are "prescriptive" standards. That is, they establish requirements for specific devices and systems. The Warren Alquist Act also requires the Commission to adopt "performance" standards. Performance standards establish a maximum level of energy consumption per square foot of floor space in a building. Performance standards allow the builder to choose his/her own devices and systems.

In January, 1981, Commissioner Suzanne Reed had directed her staff to come up with standards more flexible than the original Staff Proposal. As a result, a revised set of standards was released April 9. Hearings on these standards were held in May, at which time the staff recommended amendments that would make these standards more stringent. On June 3, a final set of proposed standards was issued for Commission and public review. The final set is more stringent than the revised set, but not as stringent as the original Staff Proposal. The June 17 hearing to consider possible adoption of the new Residential Building Standards was continued to June 30.

The new standards apply only to residential buildings with less than four habitable stories that are heated and mechanically cooled. They establish "energy budgets" for three residential building types: 1) a typical single family house, 2) one story duplex or triplexes and 3) multi-family buildings, in the 16 climate zones. There is a separate budget for each building type in each climate zone. The budget is expressed

in British thermal units per square foot per year and has two components: space conditioning (energy used both for heating and cooling the building) and water heating. The proposed standards allow for tradeoffs between the space conditioning and water heating components. For example, a more efficient water heater might allow a designer to use less insulation in meeting the overall budget.

For each climate zone there are three "alternative component packages" using lowest life cycle cost. Package "A" is a list of measures for a passive solar building. Such a building would require proper solar orientation. For example, all the window panes would face south (yielding a solar gain in winter) and would be properly shaded (for the summer months). Package "B," called a "thermos package," is for a building that doesn't use passive solar design. To make up for the lack of proper solar orientation, a thermos package building would use extra glazing (an additional window pane) and more insulation. A package "C" building doesn't use passive solar design either, but *does* use active solar water heating. Less insulation, less glazing and less fossil fuels (electricity and natural gas) are needed for such a building.

The 1977 regulations evidenced an extreme bias against electric resistance heating systems. They are not to be used except in very limited situations. The most limited of these is when the life cycle cost of the electric resistance heating system is lower than *any* other alternative. Electric resistence heating systems are not as energy efficient as gas systems. Electric heating makes inefficient use of primary energy; that is, gas is used in the power plant to generate electricity. "There are certain inefficiencies in the conversion process," said John Chandley, Special Adviser to Commissioner Reed. "Of the gas used in the power plants, 30% results in British Thermal units; the rest is lost in combustion. The electric system is an indirect method of heating. Gas is three times more efficient than electricity in heating." Nevertheless, the old regulation was somewhat unfair, according to John Chandley. Under the new standards use of electric resistance heating systems is permitted when gas heating is unavailable.

The Commission issued an Environmental Impact Report (EIR) on the new building standards as required by the California Environmental Quality Act. The purpose of an EIR is to provide the public with detailed information about a proposed project's effects on the environment, to list ways in which to minimize the significant effects of such a project and to indicate alternatives to the project. (The EIR does not pass on the acceptability of the proposed standards, however.)

Perhaps the most significant issue discussed in the EIR is the affordability of new housing. The proposed standards will increase the cost of new housing. The statewide cost increase in all climate zones averages $1,700 for a new Package A typical single family dwelling. The cost is significantly lower in the temperate areas of Southern California, where most new housing is built.

The Commission's June 3, 1981 report on the Residential Building Standards gives this example:

The purchaser of a Package A house in San Diego will see an increased initial cost of approximately $500 over that of a house built to current standards. This translates into an increased downpayment of approximately $100 and an additional annual mortgage payment of approximately $53. The buyer will benefit from a $170 state tax credit (for south glazing) and $50 in fuel savings in the first year following purchase, for an overall cash flow benefit of approximately $90 in the first year. Other Southern California (and north coastal) cities have similar short-term cash flow benefits. In Los Angeles, there is a positive cash flow within five years of purchase, and in Arcata there is a $270 positive cash flow in the first year. In San Francisco there is a positive cash flow in the ninth year, while in Fresno the cash flow becomes positive in the eleventh year.

The length of the initial payback period does not fully reflect the economic benefits to the new homebuyer, as annual fuel cost savings should increase with each passing year. Over a 30-year period the standards will save the Fresno homebuyer $17,200 and the San Diego homebuyer $8,000.

The original Staff Proposal would have increased the price of a new house by $5,000 to $8,000.

On March 26, 1981, the Commission sponsored a conference on lending practices and energy efficient housing. Government and financial community leaders attended and generally voiced support for considering energy efficiency in home loan decisions. The Commission is committed to the goal of incorporating energy in the residential mortgage decision. The Commission plans to:

1. Work with secondary mortgage markets to expand underwriting and appraisal guidelines to allow a preference for energy efficient building.

2. Establish an energy point system for appraisers to measure the energy efficiency of new homes and to facilitate transfer of such information to the lending institution.

3. Work with realtors and consumers to educate homebuyers and sellers about home energy features and ways to finance energy efficient homes.

4. Work to include energy data in new home listings.

To be incorporated into the Administrative Codes the Residential Building Standards, once adopted by the Commission, must be approved by the State Building Standards Commission (BSC), a part of the State and Consumer Services Agency. The BSC was established in 1979 to coordinate state building standards.

BSC approval of the proposed building standards is uncertain because most of the Building Standards Commissioners are hostile to the proposed regulations. As required by law, at least 4 of 10 members are the BSC's industry representatives. In addition, the statute is ambiguous on BSC authority to reject regulations. It is unclear whether the BSC may substitute its judgment for that of the Energy Commission.

At its March 25 business meeting, the Commission adopted the proposed amendments to the insulation quality standards.

LEGISLATION:

AB 760 (Felando) would abolish the Energy Commission, transferring some of its duties to the Public Utilities Commission and creating a Department of Energy directly accountable to the Governor. A series of deadlines during the legislative session prevents the accumulation of too many bills at the end of the session. Since the legislative session is 2 years long, bills can be passed in either the first or second year. AB 760 missed its first Policy Committee deadline for this legislative session so it automatically becomes a "two year bill." Therefore, the earliest it could pass would be in 1982.

SB 351 (Foran) would require that the components of building standards be cost-effective when considered individually and when compared to prevailing standards or practices at the time the new standards are adopted. (Present law requires new standards to be cost-effective considering historic practice. Historically, the building standards have not been very effective in conserving energy.)

The bill would also require the Commission to develop a common methodology for determining cost-effectiveness for its standards before July 1, 1982 and, in conjunction with the Public Utilities Commission, develop a common cost-effectiveness methodology for all energy efficiency building standards.

The Commission views the SB 351 requirements as unreasonable and is opposing it. "The bill's calculation requirements could be so oppressive we may never be able to adopt building standards again," Special Adviser John Chandley said. SB 351 passed the Senate Finance Committee and was amended so that it would not apply to the Energy Commission's proposed building standards if those are adopted by

July 30.

AB 781 requiring mandatory retrofit of new homes with six conservation measures (e.g., weatherstripping and caulking of external cracks) has become a two year bill. It was not heard by its first Policy Committee.

SB 178 (Boatwright) allows tax credits for converting automobiles to run on alcohol fuel. Pure alcohol is defined as containing at least 90% alcohol. Alcohol fuels are slightly more expensive than gasoline. One goal of SB 178 is to set up a market for alcohol fuels so they will eventually be mass produced. Converting a regular automobile to use alcohol fuel costs about $2,000. One company in the Bay Area and another in Sacramento specialize in this type of auto conversion. They own many cars and also own their own fueling stations. Owners of such "captive fleets" (e.g., utility companies, local governments, etc.) would most likely take advantage of SB 178. Ten percent of all cars in California are captive fleets.

The Energy Commission has been testing alcohol fuels for the past few years. Recently the Commission purchased 50 new Ford cars made specifically to run on alcohol fuel. (Ford worked in conjunction with a private developer.) AB 178 has passed the Senate Finance Committee and is on the senate floor.

AB 548, 549 and 550 (Ryan) would remove various legal impediments to and provide financial incentives for ridesharing. For example, ridesharers would receive a combination of tax credits and an exemption from payment of bridge tolls. AB 548 and 550 are in the Ways and Means Committee. AB 549 is in the Senate Industrial Relations Committee (its first Policy Committee).

AB 1031 and 1033 (Levine) would provide financial incentives for utilities to build alternative energy plants (e.g., wind energy, cogeneration or small hydroelectric plants). When a utility builds a conventional energy plant, the Public Utilities Commission authorizes a rate of return that is charged to rate payers. The annual cost of the plant is reflected in the monthly utility bills. If a utility builds an alternative energy plant, AB 1031 and 1033 would require the PUC to provide a higher rate of return for the utility (the cost of building alternative energy plants is considerably less than that of building conventional energy plants). These are two year bills.

FUTURE MEETINGS:

The Commission meets every Wednesday in Sacramento.

CALIFORNIA HORSE RACING BOARD

Chairman: Nathaniel Colley
(916) 322-9228

The California Horse Racing Board is an independent regulatory board consisting of seven members appointed by the Governor. If an individual, his or her spouse or dependent holds a financial interest or management position in a horse racing track, he cannot qualify for Board membership. An individual is also excluded from Board membership if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. Horse owners and breeders, however, are not barred from Board membership and the Legislature has declared that Board representation by these groups is in the public interest. The Board regulates by licensing horse racing tracks and allocating racing dates. The Board also has regulatory power over wagering, horse care and "all persons or things having to do with the operation" of horse racing meetings. As with the Athletic Commission, this board is not subject to Administrative Procedure Act notice, discovery and hearing requirements, and may regulate more freely than other agencies.

MAJOR PROJECTS:

The Board is currently in the process of allocating racing dates for 1982, '83 and '84. This is one of the Board's most important regulatory functions. The process begins with surveying licensed racetracks to see if improvements can be made over schedules set in previous years. The Board will then discuss these findings and formulate tentative racing schedules. Racetrack operators are then allowed to go before the Board and voice objections to the date allocations. The Board considers these objections when reaching its final decision. This allocation function would be a per se antitrust violation if done without state authority.

Another important area is the use of drugs on racehorses. The Board has recently proposed regulations that would strictly control the amounts and types of drugs administered to horses. These regulations, however, were rejected by the Office of Administrative Law. The OAL contended that conditions were insufficient to warrant a change. The Board, rather than contesting the OAL's substantive rejection as beyond the Office's authority, is now attempting to reformulate the regulations to make them acceptable.

RECENT MEETINGS:

The Board met on May 22, 1981 in Inglewood. The most hotly contested issue at this meeting was a request for a new Charity Distributing Agent for Hollywood Park. Under California law, certain horse racing dates are designated as charity dates. The profits from these meetings are distributed by the charitable foundation affiliated with the particular race track to local charities. The proposal at this meeting involved creating a new charitable foundation (Hollywood Park Racing Charities, Inc.) to share the duties of distributing agent with the present foundation (Hollywood Park Associated Charities, Inc.). The two charitable foundations would split the proceeds from the charity days equally, distributing the money as they saw fit. In order to qualify as a charitable distributing agent, the proposed foundation must be approved by the Attorney General and by the Board.

Many charitable organizations, most notably the United Way, spoke out in opposition to the new distributing agent. United Way spokesperson Lee Williams claimed that the intent of the charity distribution enabling statute was to keep charity dollars in local areas surrounding the race track. He also stated that the purpose of the distributee, according to legislative history, was to distribute money in the best interest of local charities and not the race track. Williams contended that the proposed distributing agent would not adequately represent the local charity interests, as evidenced by its proposed $50,000 distribution to the U.C. Davis Veterinary School. Williams and other representatives of charitable and community oriented organizations (such as the Urban League) argued that the present distributing agent satisfactorily allocated the charity dollars.

Commissioner Chatfield responded that the proposed distribution to the U.C. Davis Veterinary School would help the horse racing industry in general by producing more qualified veterinarians. He insisted that more vets would raise health standards of race horses, producing better races and increased gate receipts. The increased receipts would, therefore, provide more money for all charities.

Commissioner Brooks stated that without evidence that local charity distributions would be reduced, the Board should not speculate on the effect of a new distributing agent. She contended that the charities had not presented any evidence showing their distribution would be reduced. She also believed that the new distributing agent was preferable because it allowed direct solicitation by charities. The previous distributing agent had not allowed direct solicitation of funds, but had simply made distributions to organizations like United Way which in turn made distributions to other charities.

The new charity distributing agent was

approved with the only dissenting vote belonging to Chairman Nathaniel Colley.

The Board approved licenses for eight summer and fall horse racing meetings at various county fairgrounds. The license for the meeting at the San Jocquin County Fair in Stockton was approved subject to the condition that police officers be used in a law and order capacity and not as ushers. Chairman Colley had apparently experienced harrassment by officers performing usher functions at that meeting and requested the condition be attached. He stated that he didn't want others to experience the harrassment he had suffered.

NEW MOTOR VEHICLE BOARD

Executive Secretary:
Sam W. Jennings
(916) 445-1888

According to the Automobile Franchise Act of 1973, the major function of the New Motor Vehicle Board is to regulate the establishment of new motor vehicle dealerships, relocation of existing dealerships and manufacturer termination of franchises. The majority of those subject to the Board's authority deal in cars or motorcycles. For a discussion of the protest process, *see* CRLR Vol. 1, No. 1 (Spring, 1981) at 52.

Another function of the Board is to handle disputes arising out of warranty reimbursement schedules. When a dealer services or replaces parts in a car under warranty, he is reimbursed by the manufacturer. The manufacturer prepares a schedule of reimbursement rates which are occasionally challenged by the dealer for unreasonableness. Infrequently the Board handles disputes arising out of the manufacturer's failure to compensate the dealer for tests performed on vehicles.

The Board consists of four dealer members and five public members. It has no manufacturer members. The Speaker of the Assembly appoints one public member, the Senate Rules Committee appoints one public member and the Governor appoints the remaining seven. The Board's support staff consists of an Executive Secretary, three assistants (all graduates of or law students at McGeorge Law School) and two secretaries.

RECENT MEETINGS:

The Board met for the second time this year on April 16 in Burlingame. The Executive Secretary, Sam Jennings, reported that in *49er Chevrolet* v. *Chevrolet Motor Division, General Motors Corporation*, the Superior Court of San Francisco ruled the composition of the Board was unconstitutional on grounds of impartiality. Four Board positions are required by law to be filled by dealers, but there is no similar requirement that manufacturers be represented on the Board. Consequently, in *American Motor Sales Corporation* v. *New Motor Vehicle Board*, 69 Cal. App. 3d 983, 138 Cal. Rptr. 594 (1977), the Third District Court of Appeals held that insofar as the Board had the power to adjudicate disputes between dealers and manufacturers, it was invalidly constituted. To remedy this defect, the Legislature removed voting power from the four dealer members. Dealer members now participate fully in all phases of a protest except the final vote. In *Chevrolet Motor Division*, however, the court ruled that regardless of whether the dealers vote, the Board as now constituted is unconstitutional. Mr. Jennings reported that he consulted with the Deputy Attorney General who represents the Board; the Deputy A.G. intends to file an appeal to the First District Court of Appeals. Mr. Jennings said that an Orange County superior court had decided the Board was constitutional after a similar challenge. He is hopeful that the Board "will be found constitutional." For a discussion of other constitutional attacks on the Board, *see* CRLR Vol. 1, No. 1 (Spring, 1981) at 52.

Mr. Jennings reported confusion existed regarding what constitutes the date a dealer goes out of business. This date is important because a franchise which goes out of business but which is replaced by another within one year is exempt from protests by same-line, same-make dealers in the relevant market area. One Board member said that "since the purpose of the statute is to protect competing dealers," the date the franchise lacks capacity to sell should be the crucial date. The Board moved to draft a regulation declaring the date on which a franchise is not in operation for purposes of establishment and relocation protests. The issue arose after a ten minute recital of facts of an actual protest, an unnoticed agenda item. John Oakley of the Board commented that the Board could not decide the matter because it was unnoticed. However, Mr. Jennings disagreed, stating that he was merely asking for a policy direction and persuaded the Board to take action.

The Board considered the Proposed Decision of Administrative Law Judge Glorietta C. Fong in the protest of *Sportmotive Corp., Elba Cycle Sports v. BMW of North America, Inc., BMW Munich, Butler & Smith, Inc.* The Board typically enters into executive session when making decisions regarding protests. John Oakley of the Board said there was no reason to exclude observers from the Board's decisionmaking process; the philosophy reflected in the enabling statutes favors open meetings. Mr. Jennings disagreed. Mr. Oakley stated that someone must go on record if the Board wished the meeting to be held in secret. Mr. H. F. Bocekman, a dealer member of the Board, then moved for executive session. Mr. E. James Hanray, another dealer member of the Board, seconded the motion and it carried with Mr. Oakley dissenting. Consequently, the factors considered by the Board in adopting the proposed decision are unknown. The decision of the ALJ, however, reveals the following. The protest dealt with a challenge to the termination of Cycle Sports, a BMW motorcycle dealer. BMW in Germany has replaced Butler & Smith, its exclusive importer and distributor of twenty-five years, with BMW of North America, Inc. (BMW NA), a wholly owned subsidiary. Butler & Smith informed Cycle Sports it would cease to serve them as of September 30, 1980 and that BMW NA was reviewing the existing dealer network in the United States. In December, 1980 Cycle Sports learned they were among approximately one seventh of the dealers being terminated. Termination was based solely on history of wholesale purchases. Volume was too low, although no quality, credit or other inadequacies existed. BMW NA contended that by terminating its independent distributor, it could terminate all BMW motorcycle dealers' rights to sell BMW products. The Administrative Law Judge held such a scheme would circumvent the regulatory power of the Board by simply establishing an independent distributor between the manufacturer and dealer. The manufacturer could then terminate the distributor and avoid review of terminations by the Board. The decision states that the manufacturer has a duty not to arbitrarily terminate its franchisees. Because BMW NA did not comply with Section 3060 Vehicle Code notice provisions with respect to franchise terminations and because there was no good cause to terminate Cycle Sports, Cycle Sports' protest was sustained.

FUTURE MEETINGS:

None are scheduled.

BOARD OF OSTEOPATHIC EXAMINERS

Executive Secretary:
Gareth T. Williams
(916) 322-4306

The Board of Osteopathic Examiners was created by an initiative measure approved by California voters in 1922. The Board is charged with the duties of licensing Osteopathic Physicians (DO's) and medical corporations; administering its examinations; approving schools and colleges of osteopathic medicine (including intern and resident training); and enforcing professional standards by disciplining its licen-

sees. The Board consists of five licensed osteopathic physicians.

MAJOR PROJECTS:

The major projects of the Board are the continuing activities of test administration and investigation of consumer complaints.

The Board meets 6 times each year and the agendas for these meetings are fairly routine. The examination is offered three times a year. In order to qualify for the examination a candidate must have graduated from one of 14 Board approved educational institutions and successfully completed the post-graduate work in Board approved hospitals.

The Board enforces mandatory continuing educational requirements and requires each licensee to complete 150 hours of education every 3 years. The Board also requires each licentiate to maintain a valid CPR certificate.

The Board practices partial reciprocity with licensed DO's from other states, requiring only successful completion of the oral and practical examination once the reciprocity candidate has achieved a satisfactory score on the national written exam.

The Board has a small license population of approximately 1,200 DO's, of whom 425 practice in California. In 1980 the Board received 20 consumer complaints. Three complaints alleging excessive fees were ruled non-jurisdictional. Of the remaining 17 complaints, three resulted in revocation and three in suspension. Data on the length of the revocations and suspensions was not immediately available. The Board employs its own attorney but contracts with the Department of Consumer Affairs, Division of Investigation Services to perform required investigatory services.

A related topic is the question of fining capability. Presently, the Board does not have any fining capability. Executive Secretary Williams told us that he is interested in augmenting the Board's disciplinary authority to provide for the levy of fines.

Executive Secretary Williams told us that the Board faces two major projects. The Board has not yet started its AB 1111 review of existing regulation but must file its Statement of Review Completion with OAL on October 14, 1981. Williams will soon announce when AB 1111 informational hearings will be held. Because of budget constraints and the small number of Board regulations, he hopes to hold only one hearing. However, if necessary, the Board will conduct 2 public informational hearings, one in the North and one in the South.

The Board is presently following three pieces of legislation. AB 2045 (Rosenthal) is a Board fee bill and has no known opposition. Passage is expected.

AB 1258 (Rosenthal) is a controversial bill that proposes adding a public member to the Board. Presently, the Board is comprised entirely of osteopathic physicians. As previously reported, the Board does not oppose the addition of public members to the Board. However, it is the Board's firm conviction that because the Board was created by an initiative act, any amendment should go the same initiative route. It is for this reason that the Board opposes AB 1258. The Board hopes to convince Rosenthal to amend AB 1258 into a constitutional amendment.

SB 18 (Greene) is a "cleanup" bill that proposes a thorough housecleaning of the Business and Professions Code so that references between DO's and MD's and the Board and BMQA are accurate. Originally, the Board supported SB 18. However, on second analysis it concluded that SB 18 proposes an amendment to the Board's 1922 Initiative Act, a constitutional provision which cannot be altered by legislation. Although not yet formally decided, if either AB 1258 or SB 18 passes, many assume the Board will sue to enjoin their enactment.

Williams indicated that the rest of the Board's energies are primarily devoted to traditional disciplinary activites.

A potential source of turmoil for the Board is the future disruption of its membership. The Board is presently in the process of receiving two new members. At the same time, 3 members' terms are soon up for reappointment and one member has threatened to resign. Added to this confusion is the potential disruptive impact of the AB 1258 public member addition. Williams will not predict how the Board will respond to this problem, but is hoping for a smooth transition.

FUTURE MEETINGS:

The next Board meeting is on July 11, 1981 in San Diego. On July 12-13 the Board will administer its exam. In August the Board will conduct a conference call (Williams explained that because of budget constraints every other month the Board conducts its business by means of a conference call). The Board will meet on September 10 and 11, 1981 in Sacramento.

PUBLIC UTILITIES COMMISSION

Executive Director: Joseph Bodovitz (415) 557-1487

The California Public Utilities Commission is an administrative agency exercising both legislative and judicial powers. Its function is to regulate certain privately owned utilities while ensuring the public receives adequate service at rates which are just and reasonable. The PUC has jurisdiction over intra-state gas, electric, telephone, telegraph, heat and water carriers, as well as common carriers by rail of passengers and freight.

The Commission consists of five members appointed by the Governor, with the consent of the Senate, for terms of six years. Recently, Governor Brown has filled two vacancies on the Commission by appointing former Assemblyperson Victor Calvo (D-Mountain View) and Priscilla Grew, Director of the Governor's Department of Conservation since 1977. Both oppose nuclear energy and played key roles in halting construction of San Diego Gas and Electric's Sun Desert nuclear power plant. Both appointees to the $51,468 a year jobs have been characterized as "anti-business," and a bitter Senate battle is expected over their confirmation.

MAJOR PROJECTS:

Among the major projects of the PUC are the promotion of energy efficiency and conservation, meeting California's future energy and water needs and insuring the availability of adequate funds for the eventual decommissioning of nuclear power plants.

Describing conservation as "the most important task facing utilities today," the PUC set Southern California Edison's (SoCal) 1981 conservation budget at $32,702,000. This figure is over twice the level set in the company's last general rate case two years ago. However, if SoCal fails to achieve a specified level of gas savings (60.6 billion cubic feet) by the end of 1981, the company will be penalized through a rate reduction of $1 million for each 1.3 billion cubic feet (BcF) it falls short. If, on the other hand, SoCal achieves savings in excess of 63.7 BcF, it will be rewarded by $1 million for each 1.3 BcF by which it exceeds that goal. The maximum reward or penalty is limited to $5 million. In making its decision, the PUC noted that the failure to conserve is very costly; although traditionally the ratepayer has borne that cost, henceforth shareholders will also be shouldering some of the costs associated with the failure to conserve.

After nearly a year of hearings and investigation, the PUC adopted the first phase of an extensive program for utility financing of an extensive program for utility financing of energy efficiency improvement for California residences. The Zero Interest Program (ZIP) authorized Pacific Gas and Electric Company (PG&E) to provide loans at zero interest for such improved energy efficiency measures as attic, wall and floor insulation, storm doors and window caulking and weatherstripping. The loans are to be repaid through utility bills beginning on June 30 of the year following

the year in which the loan is approved. Phase I will be initiated in PG&E's San Joaquin Division where 14 percent of the company's 3.3 million electric customers and 10 percent of its 2.7 million natural gas customers reside. $8.8 million in increases in gas rates and $1.2 million in electric rate increases will finance Phase I of ZIP.

Eventually, it is hoped ZIP will be instituted statewide. For the present, however, the PUC's goals are limited to the expansion of the program throughout the rest of PG&E's service territory. Public hearings on this proposal, Phase II, began on April 6, 1981 in San Francisco.

According to PUC President John B. Bryson, ZIP is "the most sweeping program for utility investment in energy conservation in the country." It is expected to "generate new supplies of gas and electricity for California at lower cost than by any alternative means." The contemplated improvements in efficiency, Bryson said, "will result in making available gas at one third the price of new supplies from conventional facilities and electricity at about 29% of the cost of supplies from new power plants . . . The result will be reduced dependence on vulnerable imported fuels, less need for costly new power plants and lower utility bills than would otherwise exist."

Bryson anticipates the financing program will be particularly appealing to the individual homeowner, especially when the state's recently enacted 40% energy conservation tax credit is also taken into account. According to PUC calculations, the combination of the tax credit and the reductions in utility bills each month "will generally exceed the monthly principal repayment obligations for persons installing conservation measures. Thus participants will have no out-of-pocket costs at the outset, and savings through utility bills and tax credits from that day forward," said Bryson. Moreover, with the option of selecting a more generous repayment plan, landlords are provided an additional incentive for participating in the program.

RECENT MEETINGS:

A recent order which illustrates the PUC's policy of encouraging the development of alternative energy sources is the grant of a $1.6 million general rate increase to SDG&E to finance first year costs of solar demonstration programs.

Another order authorized PG&E to purchase a potential wind farm site in Solano County.

In other recent action, the PUC ordered a formal investigation to determine the best way to ensure that money is available to pay for the eventual decommissioning of nuclear power plants in California. Recognizing that nuclear power plants will require decommissioning at the conclusion of their useful life (estimated at 30 years or more) in order to protect the public from the hazards of radioactivity that will remain long afterwards, the PUC order required careful consideration of alternative methods to ensure that future decommissioning will be adequately and equitably funded. Presently, decommissioning costs are depreciated, but utilities are not required to set aside any specific monies. Estimates of the costs of decommissioning one plant exceed $100 million, which current technology would accomplish in one of two ways: either by "entombment," covering the plant and equipment with concrete or other materials, or dismantling the plant and removing all radioactive materials. Recent discussion with staff reveals that no imminent action is expected.

As of January 1, persons disabled by multiple sclerosis began receiving additional winter lifeline allowances for gas heating. Customers dependent upon life support equipment, as well as paraplegics and quadriplegics, have already been receiving such allowances in consideration of their greater heating and cooling needs.

The PUC has withdrawn its own motion to require energy utilities to place a "label" or "tag" in all their advertising to inform the public whether the cost of the ad was financed by ratepayers or shareholders. This prospective action raised additional questions which the PUC has failed to address. Instead, the staff will prepare a pamphlet or brochure explaining the Commission's policy on advertising expenses.

In response to legislation signed in September 1979, which added Section 2831 to the Public Utilities Code, the PUC on January 21, 1981 ordered California telephone companies to provide 90,000 free telecommunications devices to deaf persons. The companies are required to report to the PUC by May 20 on the devices to be provided, the methods for their distribution and administration of the fund which will provide the free service.

At its most recent meeting on June 16, the PUC did not consider any of its major project items. It did conduct substantial routine business. The most significant items concerned "pass through" fuel increases (annualized) over the next four months to reflect higher fuel costs in electricity generation for PG&E. PG&E had requested $176 million. $35 million was approved over the same period for gas pass through increases for PG&E.

The PUC also found the Southern Pacific Transportation Company in violation of PUC general order 114 which designates minimum safety and health standards for cabooses. The PUC levied a maximum fine of $5,100 against the Southern Pacific Transportation Company.

FUTURE MEETINGS:

In future proceedings, the PUC will be scrutinizing the needs of PG&E in meeting the future energy needs of its service territory. While making some initial comments on the plan, however, PUC President Bryson stated the Plan "is significant new evidence of a quiet revolution in the way utilities plan to meet future energy needs." While encouraged by PG&E's plans to turn to "a wider array of energy sources such as geothermal, small scale hydro, wind and congeneration and [to] vastly increase the efficiency of energy use," Bryson expressed concern about the deferral of certain geothermal and cogeneration projects in a previous plan. Nevertheless, noting that PG&E is the nation's largest investor-owned gas and electric company, Bryson anticipated "its path breaking decision to rely on energy efficiency and alternative sources will have widespread influence throughout the country."

It is expected that future meetings will be characterized by increasingly aggressive advocacy before the PUC by a variety of interests. Utility interests are now openly attacking the Commission as "unfair" and "anti-utility" in its rate decisions, contending that rate of return achievement by California utilities is the lowest in the nation, citing the credit decline of Pacific Telephone, San Diego Gas and Electric and other California utilities. The utility advocates argue that the PUC has unfairly discriminated against stockholders, including "widows on small pensions" in favor of rate payers. This cross subsidy argument is hotly contested by PUC staff, which labels the statistics of utility advocates based on rates of return for industries where there is a risk factor justifying a higher return.

The Energy Commission and the Public Utilities Commission are jointly conducting an investigation into electric utility system reliability.

The Energy Commission's 1981 Biennial Report identified 1982 and '83 as the critical period in the decade for ensuring adequate energy reserve margins for power plants. A "reserve margin" (measured in megawatts) is a utility's remaining capacity after it has satisfied customer peak demand.

The major utilities are required to participate in this hearing which will examine the frequency, cause and severity of electrical system outages; California power plant performance as compared to other plants around the nation; the likely availability and output of future plants; possible measures or regulations to enhance electrical system reliability; and measures to promote utility efficiency and inter-utility cooperation.

Reserve margins, as Policy Advisor Jeanine Hull points out, are only one measure of reliability. "We're expecting

4,500 megawatts of new nuclear capacity (to generate electricity) to be available by 1985," Hull said. The 4,500 megawatt figure represents the aggregate "installed capacity" (capacity that a nuclear plant is designed to achieve and which it does achieve when operating at optimal levels). The San Onofre 1 and 2, Palo Verde 1 and 2 and Diabolo Canyon 1 and 2 nuclear facilities are scheduled to be in operation by 1985. "Experience has shown that nuclear power plants are not extremely dependable for their first several years of operation. Just because the energy is available doesn't mean its *reliable*."

"We do have an incredibly reliable utility system, however, and it has traditionally been that way because some electric users (e.g., hospitals, computer industries) require 100% reliability," Hull said.

According to Hull, the question is: Does every user need that level of reliability? And if offered with lower prices for not using electricity during certain periods, would a user choose it? Since last year, utilities have, with the consent of their customers, employed "load management devices" (e.g., timers) that switch off energy for 15 minutes during peak periods. For example, a commercial operation might decide to have its air conditioning shut off daily for 15 minutes at a certain hour. The utility's load management device regularly sends out a frequency and shuts off the air conditioning. The utility pays the *customer* for this privilege. In this way, the utility is allowed to manage consumer demand and save enormous amounts of energy.

"The purpose is to shave off energy demand by shifting energy usage," Hull said. People must be made aware of peak periods because energy is more expensive during peak periods.

FUTURE MEETINGS:

Meetings are scheduled for July 14 and 28 in San Francisco.

STATE BAR OF CALIFORNIA

President: Sam Williams
(415) 561-8200

The State Bar of California is a public corporation created pursuant to the California Constitution, Article VI, section 9. All practicing attorneys in California must be members of the Bar. The bar is run by a Board of Governors consisting of 22 members, 16 of whom are practicing attorneys. The Bar regulates all facets of the legal profession, administering the Bar entrance examination, promulgating the Rules of Professional Responsibility and disciplining unethical or incompetent attorneys.

The State Bar is the only one of 60 California regulatory agencies which has refused requests to make available the time, location and agenda of its public meetings.

MAJOR PROJECTS:

The Board of Governors is presently trying to improve the quality of legal services and the general competency of attorneys. In a recently issued report concerning the independent bar and indigent defendants, the Bar suggests establishing four basic standards of competence. Only the most experienced attorneys would handle grave or complex criminal cases.

The Board of Governors has however tabled decision on making its pilot legal specialization program permanent. The pilot program would enable a lawyer with five years experience in a specific field to hold himself out as a specialist. The attorney must also pass an exam covering his area of specialization and complete continuing education courses in that field. The Bar currently recognizes only four specialties.

RECENT MEETINGS:

Despite the Bar's stated desire to upgrade attorney competence, the Board of Governors voted not to respond to a voluntary questionnaire the Federal Trade Commission sent to all state bars. The FTC has been conducting an ongoing investigation of bar regulation of the legal profession.

The *San Diego Union*, starting on April 26, 1981, ran a four part series on the California Bar's regulation of attorneys. The series implies the legal profession fails to police itself. Citing detailed statistics, the *Union* charged that the Bar actually disciplines very few lawyers and that disciplinary actions taken are seldom harsh. The *Union* reported a number of specific examples of gross incompetence or unethical behavior where little or no action was taken. Failure to pay or late payment of the annual $130 Bar dues however routinely results in automatic suspension.

Because of the Board of Governors' refusal to respond to questions about the *Union* series, the Center for Public Interest Law has been unable to evaluate the seriousness of the Board's attempt to regulate the competency and professional behavior of its members. Although the *San Diego Union* has been able to compile an extensive and detailed account of inadequate disciplining of attorneys, the Board of Governors has not yet responded to the Center's written request to open their meetings for more complete coverage.

The Board of Governors has tentatively raised 1982 dues to $90 for members under 3 years and $160 for longer membership. The Committee on Bar Examinations approved raising the entrance examination fee to $250 for those candidates taking the test for the first time. The same committee also released the results of the February Bar; the passage rate was around 34%. As of March, the Bar has disbarred six members and suspended approximately 22 members. Many of those suspended may be reinstated if they pass the Professional Responsibility exam within one year.

The Bar has also named a new President, Sam Williams. Williams recently declined to accept Governor Brown's nomination to the California Supreme Court.

California Supreme Court Decisions

Gallagher v. State Bar
28 Cal.3d 832 (March 20, 1981).

The State Bar had found that Attorney Gallagher had failed to perform marriage dissolution services for a client and refused to communicate with him; it additionally found he had failed to disclose his own ownership interest in real property sold to a client. The State Bar recommended three years of probation with three months' actual suspension. The attorney appealed, arguing that the record did not support the findings of the State Bar and that the punishment was inappropriate. The Supreme Court upheld the decision of the State Bar. The Court remarked that in disciplinary matters the Court independently examines the record, reweighs the evidence and passes on its sufficiency. However, while the court reconsiders the evidence *de novo*, it gives "great weight" to the findings below when they are based on conflicting testimony, as they are here. The Court held that the attorney had failed to sustain his burden of showing the Board's findings were unsupported by the evidence.

Deas v. Knapp
29 Cal.3d 69 (March 27, 1981).

Plaintiff had brought an action alleging overcharges on trust deed loans. The plaintiff obtained a judgment against the broker for $50,225. The plaintiff applied for payment of the judgment out of the state's Real Estate Fund (Business and Professions Section 10470). The trial court heard the application and found that the plaintiff's causes of action were based on defendant's fraud and awarded the plaintiff $20,000 plus $226 in costs to be paid out of the State Realty Fund. The defendant, the plaintiff and the Realty Commissioner all appealed. The plaintiff argued that the contribution from the Real Estate Fund should not be limited to $20,000 despite a $20,000 statutory maximum on contributions from the State Realty Fund; since the defendant held three separate realty licenses, the maximum should be $60,000. The Court held that plaintiff's recovery was properly limited to $20,000 despite the number of real estate licenses in different capacities held by the defendant. The Realty Commissioner appealed the award of $226 costs against the Fund. The Court upheld the Realty Commissioner's appeal, finding that the statute precludes any payment beyond the $20,000 statutory limitation.

The defendant broker appealed on his part, arguing that there had been no evidence to support the finding that the initial judgment was based on fraud. The Court notes that the Real Estate Fund permits a judgment debtor broker to defend proceedings against the fund and provides that the "judgment shall create a rebuttable presumption of fraud, misrepresentation, deceit or conversion..." However, the Court held that a broker licensee may relitigate the merits of the fraud claim underlying an earlier judgment against him. The Court noted "if either the Commissioner or the debtor introduces evidence from which the fraud may be found nonexistent, the presumption disappears and plaintiff has the burden of proving the cause of action." In a sharp dissent to this latter holding, Mosk and Bird noted that the case had been originally filed in 1970 and has been in the Courts for eleven years. Both dissenters strongly object to a holding requiring relitigation of a critical point after the case has been once heard, without which the plaintiff will not recover from the State Real Estate Fund.

Note that the statute (Business and Professions Section 10450.6 et seq.) creates a fund derived from Real Estate license fees which stands ready to pay claims on unsatisfied judgments against licensees based on fraud or conversion of trust funds in connection with licensed activities. Payment from the fund automatically suspends the judgment debtor's license until the fund is reimbursed with interest. Editorial note: It is unclear what would constitute a proper "introduction of evidence" from either the Commissioner or the debtor to remove the presumption of fraud based on the judgment against a real estate licensee. Query if the mere declaration by a licensee that there was no fraud in the case requires the plaintiff who has already obtained a judgment of liability against the licensee to then relitigate the issue of fraud through new proceedings.

McMorris v. State Bar
29 Cal.3d 96 (April 3, 1981).

Attorney McMorris was suspended from practice in 1977 and 1978 by the State Bar of California for serious misconduct. He was then charged with inadequate handling of clients' affairs in three separate cases. The State Bar recommended that the attorney be suspended from law practice for 180 days on the condition that he pass the Professional Responsibility test and comply with rules. The attorney did not challenge the finding of the State Bar, but instead argued for mitigation based on positive contributions to the development of criminal law during his career. The Court upheld the State Bar's suspension, finding that gross carelessness and negligence, absent willful conduct are grounds for discipline. Further, the Court held that failure to communicate with inattention to the needs of a client may, standing alone, constitute ground for discipline. Further, the Court held that it is appropriate to consider an attorney's prior disciplinary record in formulating sanctions for subsequet transgressions.

People ex rel Deukmejian v. Brown, Governor
29 Cal.3d 150 (April 17, 1981).

In 1977 the Legislature passed a state Employer-Employee Relations Act (Government Code Section 3512 et seq.). The Act was supported by then Attorney General Evelle Younger. In 1979 the Pacific Legal Foundation filed a Court of Appeal mandate against the Governor and state agencies contending that the legislation was unconstitutional. The new Attorney General Deukmejian agreed with the plaintiff petitioner. Technically, however, the Attorney General is statutorily counsel for the Governor and the state agencies who are the defendants in the action brought by the Pacific Legal Foundation. Since Deukmejian disagreed with the position of the Governor and the various state agencies he was obliged to defend, he withdrew from the Pacific Legal Foundation action (*see infra*) and separate counsel was secured. However, the Attorney General then brought a second action, an independent petition for mandate in the Court of Appeal against the Governor and other state agencies asking for relief comparable to that sought by the Pacific Legal Foundation. The Governor moved to enjoin the Attorney General from proceeding in this second petition for writ. The Court held that although the Attorney General properly withdrew from the action brought by the Pacific Legal Foundation given his convictions, he cannot properly bring an action against his former clients in a second writ. The Court noted that the Attorney General cannot represent clients one day, giving them legal advice on pending litigation, withdraw, and then file an action against the same clients arising out of an identical controversy. Note that the Court in so holding interpreted the office of the Attorney General in institutional terms, rather than as individual office holders. Richardson dissented.

Pacific Legal Foundation v. Brown, Governor
29 Cal.3d 168 (April 17, 1981).

In 1977 the California Legislature enacted the State Employer-Employee Relations Act in order to establish a system of representation and bargaining for public employees throughout the state. The statute established the principle of exclusive representation by an employer organization chosen by employees in administratively designated bargaining units, required the Governor and employee representatives to meet and confer in good faith regarding wages, hours and other terms and specifically directed that any agreement reached be set forth in a written memorandum. It created a Public Employment Relations Board whose duties included determining employee bargaining units, determining whether a particular item is within the scope of representation, arranging for and supervising elections and establishing available mediators, arbitrators and fact finders. The Public Employment Relations Board also has power to investigate unfair practices charges regarding violations of the statute. The statute declared that the State Personnel Board findings regarding merit employment principles under Article 7 of the California Constitution would control over any action by or through the new Public Employment Relations Board.

The petition of the Pacific Legal Foundation contended that the statute is unconstitutional on its face on the grounds that it conflicts with the general merit principles of civil service employment embodied in California Constitution Article 7. The statute further contravenes Article 7 by authorizing ultimate setting of civil service salaries by the Governor and Legislature rather than the State Personnel Board as required by law. The granting of initial jurisdiction to investigate unfair practices conflicts with the constitutional powers of the State Personnel Board to review disciplinary actions against civil service employees.

The Court held the statute to be constitutional, denying all aspects of the petition. The Court held that the statute does not conflict with the general merit principle of civil service employment; there is no conflict between the statute's general collective bargaining process and the merit principle of civil service employees guaranteed by Article 7.

The Court further held that the State Personnel Board's constitutional authority to set classifications does not include the power to set a particular salary for those classifications. Therefore the instant statute's impact on setting of individual salaries by negotiation is not contravened by the constitutional power of the State Personnel Board. Likewise, the court noted that the implementation of the State Employer-Employee Relations Act of 1977 may not properly interfere with the merit principle aspect of the State Personnel Board's authority.

The Court held that the powers of the instant statute granting the Public Employment Relations Board investigatory powers do not conflict with the authority of the State Personnel Board to review disciplinary actions. Rather, the Court held that although there may be some overlap in the jurisdiction of the two bodies, there is a great area of independent jurisdiction by the Public Employment Relations Board that does not in any way conflict with the State Personnel Board's authority. The Court appears to reject as moot any conflict between the jurisdiction of the two bodies. Finally, the Court rejected arguments that the statute was an unlawful delegation of legislative authority and infringed upon the Governor's veto power. It found the exercise of the statute does not involve fundamental policy determinations reserved for the Personnel Board, but rather details of wages, hours and working conditions. It does not conflict with the power of the Governor to veto legislation.

Richardson and Clark dissented, noting "the 1977 legislation at issue here . . . is plainly unconstitutional as a gross infringement upon the powers of the State Personnel Board . . ."

Edmonson v. State Bar
29 Cal.3d 339 (May 8, 1981).

In 1977 Attorney Edmonson was "privately reproved" for putting two signatures on a settlement check without the consent of the payees. In the instant action, he was found to have misappropriated $3,048 from two clients and was also found to have obtained the possession of an auto by deceit from the mother of a deceased client. The State Bar recommended probation with one year of actual suspension from practice. The attorney appealed to the Supreme Court. The Court upheld the Bar, suspending the attorney from practice for one year on condition of probation. The Court did drop the finding of deceit on the acquisition of the automobile from his client's mother since it was "not supported by convincing proof unto a reasonable certainty." However, it held that the findings of misappropriation of $3,048 justified the sanction imposed. As an aside, the Court notes that the Bar is required to produce affirmative evidence of violation of law or ethics in justifying its finding.

In re Robert Keith Petty; In re Otis Gus McCray
29 Cal.3d 356 (June 5, 1981).

Attorneys Petty and McCray formed a law partnership in 1972. In that year they began faking auto accidents and filing false damage claims in order to defraud insurers. They personally profited from the false claims. Their violations continued for approximately three years. They were thereafter found guilty of charges involving grand theft and forgery. The California Supreme Court suspended them from practice pending final determination of disciplinary proceedings. The State Bar panel recommended their disbarment. Both attorneys appealed. The Supreme Court upheld the judgment of the Bar to disbar both attorneys. The Court noted that a petitioning attorney has the burden to demonstrate that the recommendations of the State Bar are erroneous. The Court noted that it gives "great weight" to the findings of the State Bar panel which hears and sees the witnesses. The Court rejected the arguments of the attorneys that their youth and inexperience, positive character testimony and restitutionary efforts should mitigate the judgment of the State Bar. The Court noted that upon showing sustained exemplary conduct over an extended period of time, the attorneys may apply for reinstatement at a later date.

California Courts of Appeal Decisions

Bel Mar Estates v. California Coastal Commission
115 Cal. App. 3d 936 (April 10, 1981).

The plaintiff developers applied for a subdivision of 531 acres in the Santa Monica Mountains overlooking the Pacific Coast Highway. Their application was approved by both Los Angeles County and the Regional Coastal Commission. An appeal was taken to the California Coastal Commission by those objecting to the application. After oral arguments and without objection by the parties, the Chairman of the State Coastal Commission announced a continuance for four weeks so that a staff report could be received. Thereafter the developers obtained another continuance. On May 17, in conformity with the recommendation of its staff, the State Commission denied the application of the developers. The developers then sought administrative mandate relief before the Court of Appeal.

The Court of Appeal affirmed the judgment of the Coastal Commission, denying

mandate relief. The developers argued first that the statutory 21 days had elapsed after the commencement of the hearing, thereby depriving the State Commission of jurisdiction in the matter. The Court ruled that the Chairman's announcement of a continuance in order to receive a staff report was heard by the developers who raised no objection. The Court notes that a party cannot sit idly by, permit action to be taken and then later complain about it. The developers' argument on the merits was likewise rejected. The Court held that the Commission was justified in denying the project because of evidence that the development would cause major traffic problems on the already crowded Pacific Coast Highway and there would be extensive damage to the natural environment. The Court also ruled that the Commission was not obliged to impose ameliorating conditions on the project in lieu of its outright denial. The Court noted that the developers stood by the original proposal despite a staff report recommending denial, saying that they are not barred from submitting a new and different development scheme for review by the Commission.

Beach, Director v. Western Medical Enterprises, Inc.
116 Cal. App. 3d 153 (April 24, 1981).

The State Department of Health is required to inspect convalescent hospitals (skilled nursing care institutions) at least twice a year. In an inspection in July of 1977 the Department of Health found hallway call lights for patients not functioning. The inspector concluded that this justified a "Class A" citation and issued one, imposing a civil penalty of $2,500. In subsequent court action the citation and the penalty were both upheld. In December of 1977 the inspector discovered that certain patients had not been provided with equipment to prevent bedsores. Defendant was allowed 15 days to correct the defect, but when he failed to do so was assessed a civil penalty for a "Class B" violation, $250. The Superior Court upheld the Class B citation and penalty as well.

The defendants appealed to the Court of Appeal contending that the citations and penalties were not justified. The Court noted Class A citations result where there is "imminent danger to the patient" or a substantial probability that serious physical harm will result therefrom. Rejecting defendant's argument the Court held that the standard for Class A citations is not so vague as to violate due process standards. Further, the Court held that the evidence sufficiently supported findings of Class A violations. It must be noted that in this case some of the patients affected by the deficient hallway call lights were ambulatory and that the call system to the main nurses station was working. The Court nevertheless held that it was not necessary that serious consequences have resulted from the violation before the Class A citation could be issued. As to the Class B violation, the standard involves a failure to provide equipment and supplies of the quality and in the quantity necessary for patient care. The Court held that this very broad standard met due process requirements although the regulation did not specify types and amount of equipment needed. The Court rejected defendant's argument that a previous inspector failed to detect the same deficiency as irrelevant. The Court noted that the allowance of 15 days for correction was appropriate.

On the larger issue of the constitutionality of the Long Term Care Health Safety and Security Act of 1973, the Court found the Act constitutional. The defendant argued it was unconstitutional because it penalized cited licensees who exercise their statutory and constitutional rights by contesting liability to a greater extent than those who pay a minimum penalty in lieu of contesting a citation. The Department of Health allows licensees to pay a smaller minimum penalty if they abandon efforts to contest a citation, but imposes a higher fine if the citation is contested and the department's position is sustained by the courts.

International Longshoremans Union v. Board of Supervisors, San Bernardino County
116 Cal. App. 3d 265 (April 24, 1981).

In 1973 Kerr/McGee sought approval from San Bernardino County to expand its alkaline mining facility in the county. An Environmental Impact Report was prepared. Acting as the governing board of the local Air Pollution Control District, the county's Board of Supervisors stated conditions regarding the nitrous oxide emissions. The Air Pollution Control District decision stated that if the plant boilers could not meet Rule 68 standards then the District would seek changes of Rule 68 to enable the plant to be expanded. Eventually, when it became clear that the plant boilers could not meet the nitrogen oxide standards then in effect, the district adopted a rule change to permit higher emissions. It then determined categorically that the Kerr/McGee facility was "exempt from application of the California Environmental Quality Act." Exemption from the Act can only be justified "for the protection of the environment and of national resources." A "notice of determination" was filed describing the project and stating that San Bernardino County had approved the project and had determined that it would not have a significant effect on the environment. The plaintiff objected to the determination of the County and appealed to the Court of Appeal.

The Court of Appeal rejected the defendant's argument that the plaintiff had failed to comply with the statute of limitations, finding a 180 day period statute of limitations which the plaintiff had met by some 79 days. In a finding on the merits at the request of both sides, the Court found that the Board's action in relaxing the nitrous oxide emissions standards and then exempting that relaxation from environmental impact report requirements "as an action taken for the protection of the environment" cannot be defended. The Court noted that the Board's action can hardly be characterized as one taken to "assure the maintenance, restoration, enhancement or protection of the environment." The Court held that the Air Pollution Control District action in exempting the emission relaxation for the Kerr/McGee facility was unlawful.

Lax v. Board of Medical Quality Assurance
116 Cal. App. 3d 669 (May 1, 1981).

Dr. Lax was found guilty of possession and distribution of cocaine in federal court in 1977. His license was revoked by the Board of Medical Quality Assurance on the basis of this conviction. Lax sought mandate from the Superior Court to overturn the license revocation. The Superior Court upheld the revocation and the doctor appealed.

The Court of Appeal upheld the trial court and the Board of Medical Quality Assurance. The doctor contended that he was denied the discovery of a confidential informant that was part of his federal criminal conviction. The Court held that the Attorney General did not supply the name of the federal informant, but that the Attorney General did not have that information and was unable to obtain it from federal authorities who would have refused his disclosure. Likewise the doctor was not denied due process because of the failure to produce the informant at the administrative hearing revoking the doctor's license. The Board had no duty to produce this witness. The Court held that an administrative hearing to revoke a professional license is a civil proceeding, not a criminal one. The informant's testimony was not necessary to penalty litigation, possible entrapment in a criminal case or as bearing on

the doctor's unprofessional conduct. The Court held that the doctor's criminal prosecution and conviction in federal court was conclusive evidence of unprofessional conduct.

Julius Goldman's Egg City v. Air Pollution Control District
116 Cal. App. 3d 741 (May 1, 1981).

Plaintiff is a large egg ranch which as a byproduct produces some 400 tons of manure each day. A portion of this manure is dried in a heat oven. Plaintiff applied for a permit from the defendant Air Pollution Control District for its manure drier and for an underground fuel tank. However, the plaintiff then discovered Section 42310e of the Health and Safety Code which exempts "any equipment used in agricultural operations in the growing of crops or the raising of fowl" from permit requirement. The District petitioned the plaintiff for abatement of the manure drier and the fuel tank. Its Hearing Board issued an order that both obtain permits before further operation. Plaintiff petitioned for administrative mandate relief and the Superior Court granted the requested relief, concluding that both items were exempt. The District appealed.

The Court of Appeal held that the manure drier required a permit but that the underground tank did not, reversing in part and affirming in part the Superior Court judgment. In summary, the Court of Appeal concluded that a drier producing $1,120 of cattle feed and fertilizer per day is not just a fowl-raising operation, but actually a substantial separate commercial enterprise not entitled to statutory exemption. However, the fuel storage tank is exempt because it holds fuel for plaintiff's farm vehicles, including feed trucks used in fowl-raising operations.

Southern California Edison v. State Water Resources Control Board
116 Cal. App. 3d 751 (May 1, 1981).

The nuclear generating station at San Onofre uses ocean water obtained from a pipe 3,200 feet offshore to cool its condenser. The facility then returns the same water to an outlet pipe 2,600 feet offshore. The company places sanitary waste from some 5,000 employees on the site into that outlet after it is processed through private septic tanks owned by the utility. California's local Regional Quality Control Board sets standards for both the outflow of cooling water and the outflow of sanitary waste. These standards were approved by the State Board. The Company brought state court action contesting those standards. The trial court set both aside for violations of federal and state law and as ultra vires. The matter was remanded to the Board because of inadequacy of findings justifying the standards imposed. The Board appealed. The Court of Appeals noted that although the federal Act creates a system under the United States government to enforce certain minimum standards on water dischargers, states may authorize additional implementing legislation so long as it is at least as strict or stricter than the federal Act. California provides such a stricter system through its Porter-Cologne Act. The Court of Appeal held that the State Board's requirement that the utility discharge its circulating ocean waters with less pollutants than they had when they entered their systems is lawful as such a higher standard. This holding rejected the utility's argument that the State Board lacked jurisdiction to require the net removal of pollutants from water being used by the Company. Hence, the Board has the authority to impose "gross limitations on pollutant discharge" where necessary to safeguard the quality of the receiving water. However, the Court noted that while the Company can be required to eliminate waste from water subject to its transportation, it must be shown that mere transportation will adversely affect the quality of the receiving water without the standards imposed. Since the Board lacked factual evidence to support such a conclusion, and since such conclusions must be supported in order to impose a gross limitation to protect specific benefits, the Board's findings were inadequate and the case must be remanded to the Board to make appropriate findings. In addition, the Court of Appeal held that on the issue of sewage treatment facilities, the Board could properly require sewage treatment facility handling equivalent to the federal standards for municipal sewage facilities. However, once again it must first hold hearings, develop a proper record to justify such standards and state its reasons for them, explaining why standards stricter than effluent standards found in Ocean Plans are necessary.

Perkins v. Los Angeles Superior Court
117 Cal. App. 3d 1 (May 8, 1981).

Plaintiff attorney brought an action against three defendants publishing the General Telephone Company of California phone book. The defendants had allegedly published the attorney's office number as that of an office supply store chain, causing him a great deal of harassment. After the attorney complained about the error the company allegedly terminated his home telephone service in Malibu. The attorney filed for exemplary damages and alleged that the defendants' actions had been "wrongful and intentional" and that they were guilty of "oppression, fraud and malice." The defendants moved to strike those quoted words on the grounds that they were conclusionary and the trial court granted the motion. The plaintiff sought mandate relief.

The Court of Appeal granted the plaintiff's writ of mandate setting aside the order to strike the above quoted words. The Court noted that although an order to strike may be reviewable on appeal, mandate will lie when a party is deprived of the right to plead his cause. Furthermore, the Court notes that the plaintiff is entitled to preference under Code of Civil Procedure Section 36 because he is over 70 years of age. The Court noted that the words quoted may be considered ultimate facts or conclusions of fact but such pleading is commonly allowed in California. The Court held that the description is relevant to punitive damages (describing a deliberate state of mind from which a conscious disregard of plaintiff's rights might be inferred). Furthermore, allegations of oppression, fraud and malice simply plead in statutory language a claim for damages under Civil Code Section 3294. It is not objectionable to plead in the language of a statute when sufficient facts are alleged to support the allegation otherwise.

California Coastal Farms v. Doctoroff, Administrative Law Officer
117 Cal. App. 3d 156 (May 15, 1981).

The Agricultural Labor Relations Board filed a complaint charging an agricultural grower with unfair labor practices under the Agricultural Labor Relations Act. In an early proceeding, the grower moved to disqualify the proposed Administrative Law Officer Doctoroff, charging bias and incompetence. Doctoroff refused to step aside. The grower sought by Writ of Prohibition to obtain a Superior Court ruling. The Superior Court denied his petition due to lack of jurisdiction. The grower appealed, contending a denial of due process.

The Court of Appeal affirmed the denial of writ relief. The Court held that the Superior Court had no jurisdiction because the handling of the unfair practices dispute had not been completed by the ALRB. Essentially relying upon exhaustion of administrative remedy principles, the Court held that the ALRB held exclusive primary jurisdiction over all phases of the administration of the Act as to unfair labor

practices. The Court declined to engage in "over the shoulder" judicial supervision of Board decisions in process. The Court noted that relief is available through the administrative process and ultimately by judicial review as a matter of appeal.

Santillano v. State Personnel Board
117 Cal. App. 3d 620 (May 22, 1981).

Plaintiff was appointed a psychiatric technician at Napa State Hospital on August 15, 1977. She was subject to a standard six month probationary period which would have ended on February 14, 1978. For approximately six weeks she was off work due to a tragedy in her family and was not paid for that time. She was given notice and terminated before the six month period of probation had elapsed if the six month period was extended by the the six weeks she was on leave without pay. The plaintiff contended that the six month probation was not tolled during the leave of absence and hence her notice and termination occurred after the six months period of probation and is therefore improper. The State Personnel Board affirmed her dismissal and she took administrative mandate to the Superior Court which affirmed the State Personnel Board's judgment of dismissal. She appealed to the Court of Appeal.

The Court of Appeal reversed the Superior Court and the State Personnel Board and found that the plaintiff had become a permanent employee six months after her original hiring notwithstanding the six week leave of absence. Note that the six week leave of absence during the probationary period is automatically extended if a probationer has not worked 105 days at the end of that period. This occurred in the case of Santillano. However, once 105 days of work do occur and the six calendar months have also passed she becomes a permanent employee. Plaintiff had worked for 105 days and had been technically employed for more than six months before she was notified of her termination. Since the Court found that the six month calendar period is not tolled during a leave of absence, Santillano qualified as a permanent employee and could not be terminated on a probationary basis.

Rice v. Alcoholic Beverage Control Appeals Board
118 Cal. App. 3d 30 (June 5, 1981).

It is a misdemeanor to sell an alcoholic beverage "to any obviously intoxicated person." An undercover investigator in a retail liquor store observed an employee selling an alcoholic beverage to a customer who had been staggering, whose speech was thick and slurred and whose eyes were bloodshot. The investigator concluded the customer was too intoxicated to care for himself and arrested him. Later chemical tests revealed that the blood alcohol level was less than .03%, a minimal level. The Department of Alcoholic Beverage Control initiated proceedings before an administrative law judge to suspend the store's liquor license. The administrative law judge found that the store licensee had violated the law in serving the customer alcohol while he was intoxicated. However, the evidence from testimony of the customer was that the intoxication derived from marijuana use rather than alcohol. The Alcoholic Beverage Control Department adopted the findings of the administrative law judge. However, the Alcoholic Beverage Control Appeal Board reversed after concluding that the combination of drugs and alcohol did not meet the requirements of Section 25602 of the Business and Professions Code prohibiting the sale of alcohol to an obviously intoxicated person. The Director of the Alcoholic Beverage Control Department appealed.

The Court of Appeal annulled the Appeal Board's decision and upheld the Department's decision revoking the license of the liquor store. The Court held that the criteria of "obviously intoxicated" includes more than simple intoxication by liquor, and can mean intoxication from whatever source including drugs or a combination of substances.

Department of Alcohol Beverage Control v. Alcohol Beverage Control Appeals Board
118 Cal. App. 3d 720 (June 19, 1981).

The Department of ABC revoked the license of ALQ Corporation to serve on site alcoholic beverages following a third instance of "nude" entertainment. The administrative law judge hearing the case had recommended suspension of the license. During the hearing before the administrative law judge, the licensee had sought very broad discovery of the ABC, including copies of all relevant inter-departmental communications within the Department of ABC having review authority over the case. The Department of ABC refused to comply.

The licensee appealed to the ABC Appeals Board, which reversed the revocation and held that due process required the Department of ABC to supply the requested documents. The Department of ABC appealed. The Court of Appeal affirmed the Department's revocation of license.

The Court of Appeal wrote a blistering opinion informing the ABC Appeals Board that its attempt to require the Department to turn over documents exceeded its authority. Only a superior court may require discovery under the Administrative Procedure Act. The Court also held that due process required notice, the right to be heard, adequate findings and substantial evidence in support of the findings. The right of the ABC Appeals Board to review the ABC is limited to guaranteeing these procedural safeguards. It is not to exercise "supervisory or policy making authority" over the Department. The opinion is a strong affirmation of the Department's right to determine policy free from outside interference beyond "determining if the record in its entirety supports the Department's decision."

Attorney General Opinions

Optician and Optometrist; Leases (80-417) (March 27, 1981)

Business and Professions Code Section 655 has been amended effective January 1, 1983. The statute prohibits an optician from leasing two adjoining office spaces and then assigning the lease on one of them to an optometrist. The statute was enacted in order to prevent the abuse of referring patients from the optometrist to the adjoining optician in return for implicit or explicit rent discounts. The amendment will apply to all business lease and sub-lease arrangements existing between opticians and optometrists on January 1, 1983.

Registered Nurses; Drugs (80-1205) (April 17, 1981)

Under the Nurses Practice Act, Business and Professions Code Section 2700 et seq., a registered nurse may not prescribe, furnish or administer drugs or medications under a "standardized procedure." Note that this opinion requires physician oversight of all drug or medication administration.

Rulemaking Proceedings (80-716) (May 22, 1981)

Under the Administrative Procedure Act, a rulemaking proceeding by a state agency may not set a deadline for written comments to be considered by the agency prior to the rulemaking hearing itself.

Register of Contractors (81-107) (May 29, 1981)

Where a penalty is imposed on a licensed contractor who has been suspended by the Registrar of Contractors, it may be increased above the initially set amount if the Legislature raises the amount of the bond and the licensee does not reapply for his license before the legislative change.

Motor Vehicle Emission Control System (80-718) (June 19, 1981)

The motor vehicle emission control warranty regulations of the California Air Resources Board (adopted in 1978) do not violate federal or state antitrust law and are properly authorized.

GENERAL LEGISLATION

The majority of legislation pertaining to the Office of Administrative Law and the Administrative Procedure Act can be found in the Internal Government Review Section discussion of the OAL. To preserve the integrity of certain legislative packages, some bills pertaining to the OAL and APA are listed below. This section lists bills of general regulatory impact and updates the status of bills described in previous issues during the session. Other bills pertaining to a particular agency's concerns are discussed in the agency reports, *supra*.

***Government Red Tape Reduction Program (GRRP)**

On March 18, 1981 the Senate Democratic leadership unveiled GRRP, a program designed to eliminate "unnecessary, complicated and costly government regulation [that] is choking the state's economy . . ." The GRRP package includes five bills and one resolution; it is largely the product of the Senate Select Committee on Government Regulation and the Senate Select Committee on Small Business Enterprises, chaired by Senator Omar Rains and Senate President Pro Tempore Roberti respectively.

(1) SB 257 (Rains), the Permit Reform Act of 1981, was introduced in Vol. 1, No. 1 (Spring, 1981) of this Reporter. SB 257 would require all state agencies issuing permits to set specific time limits on how long they can take to process permit applications. SB 257, as amended, is in Senate Finance Committee.

(2) SB 512 (Rains) is described as a "Superfluous Entity Cleanup Bill" in the GRRP package. SB 512 would either abolish or abolish and transfer the duties of the following boards and commissions: Board of Library Examiners; State Council of Educational Planning and Coordination; State Commission on Voting Machines and Vote Tabulating Devices; the Committee to fix the rate of interest paid on registered warrants; California Design Awards Committee; Advisory Committee or Drug Manufacturing; Scenic Highway Advisory Committee; Colorado River Toll Bridge Compact and Colorado River Toll Bridge Authority; California Commission on Interstate Cooperation; and the Senate and Assembly Committees on Interstate Cooperation. SB 512 was approved by the Senate on May 14, 1981 by a 26-1 vote and has been referred to the Assembly Committee on Governmental Organization.

(3) SB 498 (Presley, Keene, Nielsen and Rains) proposes several substantive changes in APA and OAL procedures. SB 498 would amend Government Code Section 11346.1 in the following manner. The Legislature's enactment of an urgency statute alone would be insufficient justification for an agency bypassing normal notice and hearing requirements to adopt or repeal a regulation on an emergency basis. (It should be noted that OAL presently rejects emergency regulations when "only" justified by an urgency statute without independent supporting facts.)

Section 2 of SB 498 amends Government Code Section 11346.5(3). SB 498 would require that the informative digest contain a brief description of any discrepancies between the proposed regulation and related federal regulations and statutes. Citations would be included.

SB 498 also amends Government Code Section 11346.8 to provide that after the close of the public hearing, no agency can add to the rule-making file unless it provides for public comment on the additional material.

Last, SB 498 proposes adding a sixth criterion by which OAL must measure all non-emergency regulations. "Nonduplication" would be the new criterion. It would require the promulgating agency to identify other overlapping or duplicative regulations and justify the overlap or duplication. SB 498 is presently in Senate Finance Committee.

(4) SB 575 (Carpenter and co-author Assemblyperson Katz) would award a small business up to $10,000 in reasonable litigation expenses if it wins a civil action involving a state agency's regulatory function. "Reasonable litigation expenses" include court costs, administrative proceeding costs, attorney and witness fees and all other expenses reasonably incurred. The award would be made at the discretion of the court and be payable from the losing agency's operating budget. The bill defines a "small business" and lists those instances in which a small business is deemed to have prevailed against the offending regulatory agency.

GRRP describes SB 575 as an "Equal Access to Justice Bill." SB 575 is in Senate Finance Committee.

(5) SB 686 (Keene) would establish monetary penalties for state agencies which are delinquent in paying contracts awarded to small businesses. SB 686 requires state agencies to pay small businesses within 30 days of the contract due date or be assessed a penalty of 20% of the amount due. The bill also prescribes procedures and establishes time limitations for agencies challenging the validity of submitted claims. SB 686 is in Senate Finance Committee.

(6) SCR 32 (Rains) requires the Legislative Counsel to include the following in the digest of any bill which imposes new or additional duties on a state agency or creates a new program: a statement indicating the authority, if any, of the agency to adopt regulations; if the bill is an urgency statute, whether the agency has the authority to adopt emergency regulations in order to implement the bill's provisions.

The resolution also requires the chairperson of each standing committee of each house to direct its staff to prepare a regulatory impact analysis for each bill referred to his/her committee. The regulatory impact analysis would discuss:

"(1) The level of regulatory activity which can be anticipated under the bill, such as minimal modification of existing regulations, or adoption of a substantial number of new regulations.

(2) The kind of regulatory activity anticipated under the bill, such as design standards, performance standards, licensing or information disclosure.

(3) The anticipated compliance costs, burdens, or savings which could be incurred under the bill, such as increased production or operating costs or reduced production.

(4) The anticipated benefits of regulatory activity under the bill.

(5) Any alternative approaches which have been considered."

SCR 32 was just recently introduced in the Senate.

***Economic Impact Report**

The Senate Select Committee on Government Regulation, chaired by Senator Rains, also introduced a 1981 Legislative Package. This package contains five bills and two resolutions. However, three of the bills, SB 257, SB 498, SB 512 and one resolution, SCR 32, are contained in the GRRP package (*see supra*). The remaining measures are:

(1) SB 479 (Neilsen), which would add Section 11346.9 to the Government Code and require all state agencies to analyze the "significant primary economic impact," if any, of their proposed regulations.

SB 479 also provides that any interested person may bring a declaratory relief action and have the regulation declared invalid if good faith compliance with the economic analysis requirements is lacking.

Finally, SB 479 requires the Legislative Analyst to review the effectiveness of the EIS requirement and report to the Legislature by December 31, 1984. The bill is in Senate Finance Committee. (*See also* AB 41.)

(2) SB 795 (Nielsen and Campbell) requires state agencies to find that any required technology or equipment has been demonstrably proven 95% effective before the adoption of a regulation. The agency must find that the required technology or

equipment has operated successfully under plant conditions for at least one year, achieving 95% effectiveness.

The bill also prohibits an agency from requiring the installation of newer equipment for a period of five years after the issuance of the original permit, unless necessary for immediate preservation of the public peace, health, safety or general welfare. SB 795 is in Senate Finance Committee.

(3) SCR 18 (Nielsen) requires the Joint Rules Committee to select a cluster of agencies active in a general policy area, e.g., energy, and establish a joint oversight committee to conduct a comprehensive review. The review would be conducted during the interim recess of each odd numbered year.

***Legislative Conflicts of Interest** (SB 884 (Presley, et al.); SB 692 (Beverly); AB 1040 (Levine))

(1) SB 884 proposes numerous changes in legislative ethics. The bill would prohibit any legislator from accepting any employment fee or other article of monetary value as consideration for appearing or taking any other action on behalf of another person before any state, regional or local board or agency. (This prohibition does not apply to appearances before a court of law or the Workers' Compensation Appeals Board.) The legislator is still permitted to make inquiries on behalf of constituents and appearances for ministerial actions.

The bill expands the number and kind of monetary interests which present a "substantial conflict with the proper discharge of the [legislator's] duties."

The bill also strengthens the powers of the Joint Legislative Committee and permits the Committee to include in its findings any action recommended against the respondent legislator. These reports and others would be public records.

SB 884 also lengthens the time during which a complaint against a legislator may be filed with the committee from 6 to 18 months. SB 884 has been referred to Senate Finance Committee.

(2) SB 692 imposes severe restrictions on legislative representation; it prohibits any legislator from appearing before a state agency as an attorney representing anyone other than him or herself. It also prohibits any formal or informal representation on behalf of any person before any state agency. Informal representation includes any contact and specifically includes requests for information. (As with SB 884, the prohibition does not extend to courts or the Workers' Compensation Appeals Board.) SB 692 failed passage in Senate Rules Committee but has been granted reconsideration.

(3) AB 1040 prohibits any member of any quasijudicial board or commission from accepting a contribution of $100 or more, or a gift of $250 or more from any applicant for a license before the member's board for a period of 12 months after the decision on the application or until the end of the member's term, whichever is longer. The same prohibition applies to any contribution or gift offered by a person who actively opposes an application before the member's board.

The bill also enumerates specific disclosure requirements pertaining to board members, applicants and opponents to applications. AB 1040 has been referred to the Assembly Committee on Elections and Reapportionment.

***Attorney's Fees** (AB 1359 (Berman); AB 661 (Nolan)).

(1) AB 1359 amends Section 800 of the Government Code to permit a successful complainant to collect up to $2,500 in attorney's fees against a public entity when, in a civil action to appeal or review an administrative finding or proceeding, the finding or proceeding is shown to be arbitrary or capricious. AB 1359 passed the Assembly Judiciary Committee on an 11-0 vote and has been referred to Ways and Means.

(2) AB 661 amends Section 1021.5 of the Civil Code, which presently provides for the award of attorney's fees to a successful party in an action which has resulted in the enforcement of an important right affecting the public interest. AB 661 requires that motions for attorney's fees be made upon adequate time records; permits discovery; and establishes limits to an award for attorney's fees under Section 1021.5. Finally, AB 661 would not permit the award of attorney's fees for litigation spent determining the right to or amount of a 1021.5 award unless the conduct of the party opposing the 1021.5 motion was "such as to make the denial of an additional award unjust." AB 661 has been referred to the Assembly Judiciary Committee.

***Doctors and Clinical Laboratories** (SB 959 (Garamendi); AB 1659 (Rosenthal); AB 1660 (Vasconcellos and Rosenthal))

SB 959 and AB 1660 are identical bills while AB 1659 is a smaller, less comprehensive measure. The legislative language of all three is identical and states:

> "It is the intention of the Legislature . . . to eliminate the obvious and flagrant conflict of interest of a prescriber of laboratory testing when his or her patient is referred to a clinical laboratory in which the prescriber has any membership, proprietary interest, or coownership in any form, or has a profit sharing arrangement or any reciprocal profit arrangement. The Legislature finds that it is in the best financial interests and general welfare of the patient public-at-large to eliminate excessive laboratory charges resulting from profitable but unneeded laboratory testing, and that the elimination of the prescriber's profit motive will substantially reduce the overutilization of laboratory testing, ..."

Both SB 959 and AB 1660 propose that after June 1, 1986 it will be unlawful for any person licensed under the Medical Practice Act "who refers patients, clients or customers to a clinical laboratory [to] have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form directly or indirectly with any clinical laboratory . . . ." Violations of this prohibition would be punishable by imprisonment for up to one year and/or a fine not to exceed $10,000.

Both bills also prohibit licensees of the various healing arts from referring patients to any clinical laboratory in which the licensee has any of the above listed interests. There are limited exceptions and the proposed punishment is the same.

Both bills prohibit any healing art licensee, other than a clinical laboratory actually performing tests, to charge, bill or otherwise solicit payment from any patient for any clinical laboratory. Again, there are specific exceptions to this prohibition and violations are punishable in the same manner. SB 959 was approved by Senate Health and Welfare Committee and has been referred to Senate Finance Committee. Neither AB 1659 nor AB 1660 has made any progress and passage appears doubtful.

***Automobile Lemon Law** (AB 1787 (Tanner, et. al.))

Existing law requires a manufacturer who is unable to service or repair goods to conform to applicable express warranties after a reasonable number of attempts to either replace the non-conforming goods or reimburse the purchaser. AB 1787 states that a reasonable number of attempts to fix a non-conforming new motor vehicle have occurred when: the same nonconformity has been subject to repair four times; or the vehicle has been out of service for reasons of repair for a cumulative total of more than 20 days since delivery.

The bill states that 20 days is any portion of 20 calendar work days and the 20 day period commences on the day that a written cost estimate is first prepared.

AB 1787 is making slow progress, but has passed out of policy committee to its third reading.

***Economic Development in Depressed Areas** (AB 416 (Nolan); AB 1458 (Waters); SB 27 (Campbell))

All three bills address the same problem, revitalization of blighted urban areas, but approach it from different directions.

(1) AB 416 authorizes any unit of local government to designate any area within its jurisdiction as a depressed area. If the Department of Housing and Community Development approves the designation or does not act within 120 days of its receipt from the local government unit, the area becomes an "enterprise zone."

Once an area becomes an enterprise zone, all public lands within the zone must be sold at public auction. Thereafter all businesses locating in the enterprise zone are not eligible for any subsidy, grant or other form of government assistance. Additionally, all state and local laws controlling prices, wages, building codes and zoning are ineffective in enterprise zones. AB 416 has made no progress.

(2) AB 1458 authorizes the Business and Transportation Agency to designate employment development zones. Businesses located within these zones would be entitled to an unspecified tax credit. AB 1458 has made no progress.

(3) SB 27 authorizes cities with populations of 4,000 or more to request the Department of Economic and Business Development to designate one or more areas in the city as urban job zones. The Department would be required to designate an urban job zone if:

"(a) The unemployment rate within the zone exceeds 2 times the national average and the poverty rate exceeds 30 percent;

(b) The unemployment rate within the zone exceeds 3 times the national average; or

(c) The poverty rate within the zone exceeds 50 percent."

The bill includes the necessary definitions and states that an urban job zone designation shall last five years. The bill provides numerous tax incentives to businesses operating within the zone. SB 27 has made no progress.

***Public Records and Open Meetings** (SB 879 (Keene))

The California Public Records Act, Government Code Section 6250, permits the public to inspect certain public records. SB 879 would allow the legislative bodies of local governmental agencies to impose stricter requirements on the agencies regarding public access to public records.

The bill also provides that if any federal, state, or local agency or officer or employee thereof discloses an otherwise exempt public record, such disclosure waives the exemption unless it is made pursuant to the Information Practices Act or legal proceedings.

SB 879 amends the Open Meetings Act to permit agencies to use conference calls if appropriate provisions are made for public participation.

The bill also provides that once notices and agendas of hearings are made available to the public, additional items cannot be added to the agenda. SB 879 further requires an agency which must hold an emergency hearing to give the media one hour's notice and post the minutes and roll call votes for 10 days afterwards. SB 879 was approved by a 9-2 vote of the Senate Governmental Organization Committee and has been referred to Senate Finance Committee.

*There are a number of narrowly drawn bills that pertain to the Public Records Act and Open Meetings Act. Some are briefly described below:

(1) AB 729 (Floyd) extends the Public Records Act to "nonprofit organizations of local governmental agencies which are supported solely by public funds."

(2) AB 909 (Goggin) and SB 998 (Campbell) both refer to records kept by law enforcement agencies and fire departments.

(3) SB 376 (Dills) pertains to public employer-employee relations. It exempts related documents from public disclosure under the Public Records Act; related conferences, mediations and disputes are exempt from disclosure under the Open Meetings Act. In both cases, the parties may agree otherwise.

(4) SB 101 (Marks) would permit test subjects, i.e., students, to request and receive certain test documents from test administrators. Although the bill specifically applies to tests "formally required by institutions of postsecondary education for purposes of admission to those institutions..." the bill exempts College Board Achievement Tests.

(5) AB 1003 (Wright) would permit the legislative body of a local agency to meet in closed session to determine if an applicant for issuance or renewal of a license who has a criminal record is sufficiently rehabilitated for licensing.

***Consumer Access to Information** (AB 1079 (Floyd); SB 368 (Greene); ACR 37 (Duffy))

AB 1079 is an attempt to repeal recent reform measures adopted by the Department of Consumer Affairs (and its Boards and Bureaus) in the area of disclosing complaints about its licensees to the general public. Under existing law, the Boards and Bureaus within DCA have discretion to disclose complaints. Some of the boards and bureaus have adopted policies which permit the release of complaint information before final ajudication. Most boards have chosen not to release such information.

AB 1079 would prohibit the disclosure of complaints information filed against DCA licensees to the general public prior to final ajudication. The Director of the DCA would be limited to: notifying the licensee of the complaint; requesting relief for the consumer; referring valid complaints to the appropriate law enforcement agencies; and notifying the consumer of the action taken on the complaint and other available means of redress.

DCA has opposed 1079, arguing that it would: restrict access to information that under existing court interpretation is properly a public record (DCA notes that criminal defendants face public accusation); impair the ability of consumers to get needed information, disrupting the natural operation of the free market; lead to increased costs by forcing resort to a formal, cumbersome and ajudicatory complaint resolution process: and ultimately result in more frequent consumer injury. AB 1079 is presently in Assembly Ways and Means.

SB 368 would require a physician or surgeon to allow a patient to inspect and copy his/her medical records upon presentation of a written authorization signed by the patient. Failure to do so would constitute unprofessional conduct. SB 368 has been referred to the Senate Judiciary Committee (*see also* AB 610 (Berman)).

ACR 37 requests the Public Utilities Commission to adequately fund its Consumer Affairs Branch (created in 1976) in order "that it may expeditiously inform and advise utility customers of changes in energy costs and the means for lessening the impact of rising gas and electric rates and mediate inequitable charges."

***Consumer Credit and Financing**

The issue of consumer credit is very complex and technical. The following descriptions are necessarily brief and more detailed information should be requested from the legislators who authored the bills.

(1) AB 120 (Waters) is intended to protect consumers from abuses in retail installment credit sales by clarifying Section 1801.6 of the Unruh Act. The Unruh Act applies to any retail installment contract between a buyer and seller; however, there is no provision in the Act which states that a financial institution which loans money to a customer for the purpose of

purchasing goods or services from another is subject to Unruh Act requirements. Courts, in an effort to characterize certain transactions, have articulated a "substance over form" doctrine. In *King* v. *Central Bank*, 18 Cal.3d 840, the Court said that when a lender and seller are closely connected and jointly engaged, the Unruh Act will apply to the transaction regardless of the fact that the transaction is labelled a "loan" and not an "installment sales contract."

AB 7210 would codify judicial interpretation by defining "retail installment sale" to mean any sale of goods or services by a retail seller to a retail buyer for a deferred payment price payable in installments, or any such sale wherein credit is extended or arranged by the seller. It would define "retail installment contract" to mean any contract for a retail installment sale between a buyer and seller or creditor.

The intent of AB 720 is to label transactions accurately. True loans would be regulated by the appropriate loan laws while true credit sales would be regulated by the Unruh Act. AB 720 has made little progress and is still in Assembly Judiciary Committee.

(2) AB 1974 (Young) would have repealed the Unruh and Rees-Levering Acts and enacted in their place the Consumer Credit Sales Act. However, the bill, sponsored by the California Bankers Association, was sent to interim study where it met heavy opposition by numerous consumer groups. It was widely believed that the bill would weaken several current consumer protections. One of the most controversial provisions of AB 1974 was the section providing for civil liability and penalties. The bill stated that a seller could not be found in violation of the law unless it was proven that the seller knew the law and intentionally violated it. (*See also* AB 1973 (Young).)

(3) SB 107 (Foran) as originally introduced would have permitted lenders to evade the provisions of the Rees-Levering Act by classifying the transaction as a loan and not an installment sales contract. However, these provisions of the bill have been amended out and SB 107 now authorizes alternative automobile sales finance charge limitations for Rees-Levering contracts. Increased finance charges would be permitted for cars under $1,350. SB 107, as amended, was approved by the Senate on May 29, 1981 by a 30-0 vote.

(4) SB 140 (Maddy) would create a class of lenders exempt from the usury limitations on interest rates, to be known as Consumer Finance Lenders. The bill would establish new maximum rates as an alternative to existing permitted rates. The bill would also authorize an acquisition fee for loans under $2,500. SB 140 was approved by the Senate on a 25-1 vote and has been referred to the Assembly Committee on Finance, Insurance and Commerce.

(5) AB 377 (Stirling): Existing law does not require a consumer credit reporting agency to report that a consumer is indemnified against either or both court costs or judgment when information on a civil suit is included in the consumer's credit report. This bill would require that such information be included in any credit report, entitle the consumer to demand such information be included in any credit report and require the credit reporting agency to notify any recipient of an incomplete report that the consumer is, indeed indemnified.

(6) AB 310 (Young, signed by Governor Brown on April 30, 1981, Chapter 26, Statutes of 1981) amends the method by which payments are allocated against a revolving charge account balance when the holder of the retail installment account increases the finance charge rate.

***Mortgages**

(1) AB 2158 (Costa) would overturn the *Wellenkamp* v. *Bank of America*, 21 Cal.3d 943 (1978) case and provide that "due on sale" clauses in mortgage loan contracts are enforceable.

(2) AB 2167, 2168 (Costa) would enact a comprehensive scheme for the alternative "shared appreciation" mortgage. The "shared appreciation" mortgage is a loan given at a fixed interest rate lower than the prevailing rate in return for the lender receiving a share of the appreciated value of the property upon a specified event. (Sale or transfer of the property, full payment of the loan or maturity date of the loan, etc.) AB 2167 was approved by the Assembly Committee on Finance, Insurance and Commerce by a 19-0 vote. AB 2168 has made no progress.

(3) AB 650, 1495, 1497 (Bane) address the issue of equalizing the competitive positions of state and federally chartered lending institutions. All three bills authorize either the Secretary of the Business, Transportation and Housing Agency or the Superintendent of Banks to permit state chartered banks to issue mortgages with other than a fixed rate of interest whenever federally chartered banks are permitted to do so by federal law or regulation.

AB 650 is the "variable rate mortgage" bill that has made the most progress. On May 22, 1981 the Assembly approved AB 650 by a 64-8 vote. AB 650 requires the Superintendent of Banks and the Savings and Loan Commissioner to adopt regulations permitting their licensees to issue variable interest rate loans within 30 days of that right being extended to federally chartered institutions. AB 650 contains a Sunset clause which states that any regulation adopted pursuant to AB 650 expires at the adjournment of the first full biennial legislative session following the session during which the regulation was adopted.

Critics of AB 650 insist that the bill should contain some limitations on interest rate increases (as do federal regulations) to reduce the likelihood of "negative amortization." Negative amortization occurs when, because of rising interest rates, a borrower's monthly payment is less than a month's accrued interest. The unpaid interest is added to the loan principal and bears interest. In this situation a borrower can end up owing more than he or she originally borrowed. Bane has stated that he will add the suggested amendments so that AB 650 conforms to federal law and regulation.

*****Other bills relating to housing and housing finance issues are: AB 1212 (McCarthy); AB 1219 (Rosenthal); ACR 25 (McCarthy and Brown); SB 994 (Vuich).

Legislative Update

***Sunset.** AB 54 (Filante) is the only Sunset bill generating any real interest. However, AB 54 has not been very successful. AB 54 originally Sunsetted all agencies in state government over a 4 year period. It was amended down to a pilot project, proposing only the Sunsetting of a single agency, the Department of Health Services. After this version of AB 54 was defeated it was amended again, this time to provide for the study of all agencies in state government. As amended, AB 54 is no longer a Sunset bill and Filante now refers to it as a "Sunlight" bill.

***Legislative Veto.** It is unlikely that any legislative veto proposal will be approved by the Legislature this year. None of the proposals are making progress. ACA 11 failed passage in the Assembly Governmental Organization Committee but was granted reconsideration. It appears that legislative veto proponents are willing to trade their bills for the compromise bill, AB 2165. (*See* OAL section.)

***SB 216** passed the Senate by a 24-0 vote and has been referred to the Assembly Committee on Governmental Organization.

***SB 257**, as amended, is presently in Senate Finance Committee.

***Economic Impact Statements.** AB 41 has been substantially amended and now provides a sliding scale for determining

when an EIS is required. The scale provides that a regulation proposed during 1983 on statutory authority 10 years old or older and costing more than $1 million will require an EIS. With each successive year, the age of the statute and cost of the regulation triggering an EIS are lower. AB 41 is now in Assembly Ways and Means Committee.

***Home Improvement Contracts**. AB 424 was approved by policy committee and has been referred to Ways and Means. ACA 7 has made no progress.

***Mortgages**. AB 393 has made no progress.

***Products Liability**. AB 425 has made no progress. (*See also* AB 1718 (Nolan); SB 299 (Holmdahl); SB 1143 (Presley).) It should be noted that SB 1143, which was substantially identical to AB 425, was completely gutted in Senate Judiciary Committee. None of the substantive provisions remain.

***Recycling**. SB 4 will not pass this year and its proponents are concentrating on the 1982 initiative.

***PUC**. AB 40 has made no progress.

***AB 187**, relating to consumer documents, passed the Assembly by a 74-0 vote and has been referred to the Senate Judiciary Committee.