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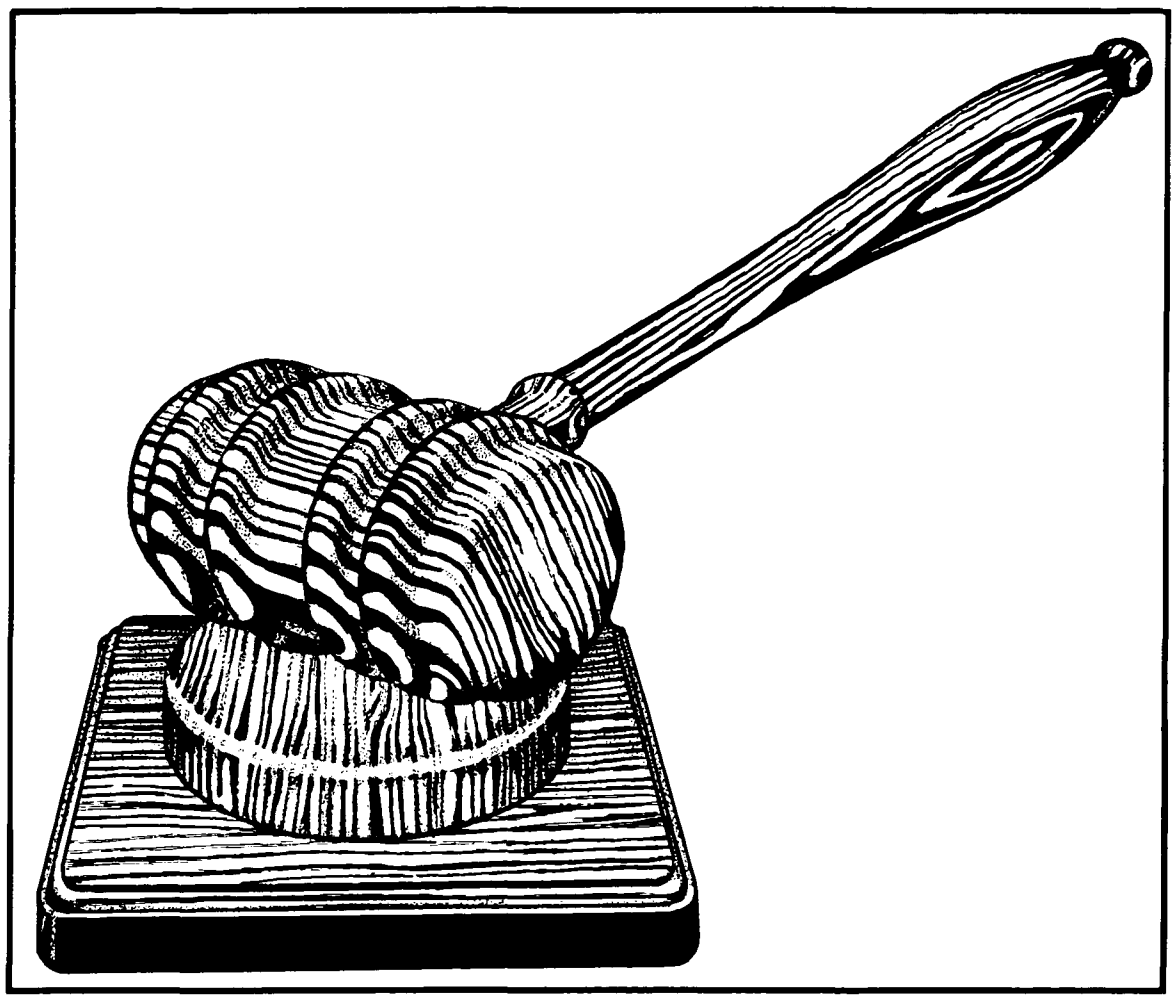

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THE CALIFORNIA Regulatory Law REPORTER

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FEATURE ARTICLE

THE FALLACY OF NEUTRAL REGULATORY REFORM

by Senator Omer L. Rains

Senator Omer L. Rains was first elected to the State Senate in 1974. Representing the 18th Senate District in the Santa Barbara-Ventura area, he served as chairman of the Senate Select Committee on Government Regulation. He also chairs the Senate Judiciary Committee, the Senate Subcommittee on the Administration of Justice, and the Joint Committee for Revision of the Penal Code. In addition, he formerly chaired the Senate Majority Caucus, the Senate Elections and Reapportionment Committee, the Senate Business and Professions Committee and the Select Committee on Political Reform.

The editors of the *California Regulatory Law Reporter* elected to use the feature article of the *Reporter's* inaugural issue to sound a warning about the dangers inherent in the current wave of regulatory reforms. Unfortunately, the oversensationalized and generally groundless criticisms of the Office of Administrative Law contained in that article tended to obscure the importance and validity of the warning. Yet, the admonition that the AB 111 reforms may lead to a "layer of politically sensitive red tape" bears not only to be repeated, but also to be more fully examined.

The concerns that regulatory reforms and structures set up to implement those reforms can be used to pursue political goals rather than the stated, allegedly politically neutral goals of a more expeditious and equitable regulatory process, can be traced to both the persistence of myths from the Progressive Era which tend to obscure the real nature of reform, and to the peculiar characteristics of government regulation in America. These concerns are well-founded but, as I will argue, are closer to reality in the Reagan Administration's reform efforts than to California's Office of Administrative Law.

Reforms are simply not value free actions. This is true despite the seemingly neutral, policy indifferent language of many reforms, including AB 1111 and this year's crop of regulatory reform legislation. It is also true despite the continuing currency of various ideals of the Progressives. The Progressives were, of course, infatuated with and dedicated to the notion of non-partisan, objective "scientific management." The assumption, which helped to fuel reform efforts ranging from the commission form of city government, to independent regulatory agencies, to Taylorism in the private sector, was that effective governance was a product of the application of scientifically-based, totally objective administrative practices. If the procedures of government were so based, then efficient public policy (i.e. free of special interest consideration) was the logical, almost inevitable outcome.

The persistence of the Progressive myth of objective reform can readily be seen both in Fellmeth and Erbin's criticism of the Office of Administrative Law contained in their feature article in the *Reporter,* and in the words of the architects of the Office. Fellmeth and Erbin reproach the OAL for going beyond procedural review to the "usurpation of the substantive policy-making prerogatives of the legislative and executive branches." OAL publications, on the other hand, speak of the "orderly review of . . . regulations against specific standards." The invocation of standards and the implied acceptance of procedural review as being devoid of any substantive policy impact are clear reflections of classic Progressive orthodoxy. Persistence does not, however, guarantee truth.

Reform, whether regulatory, religious, or political, implies both an intention to alter the *status quo* and a conviction that the *status quo* is sufficiently defective or corrupt to warrant being changed. Reforms, consequently, are not and cannot be neutral. Reforms are attempts to impose a particular set of values or priorities upon an existing set of values and priorities. When, for example, Martin Luther posted his ninety-five theses on the door of Wittenburg cathedral, he was, at one and the same time, indicting certain existing practices of the Catholic Church, calling for immediate action to correct those practices, and declaring that certain values were superior to and should replace existing values. Similarly, the legislative intent language in AB 1111 (now contained in section 11340.1 of the Government Code) contains a censure, albeit restrained, of the regulatory *status quo* in California and a charge to effect change, based upon certain implied values.

The reform which the Office of Administrative Law administers is based on explicit assumptions and values about what constitutes good government and, in particular, effective government regulation. It is thus subjective, not objective. That the assumptions and values in question are generally accepted as desirous and meritorious mitigates, but does not alter, this fact. AB 1111, for example, openly declares that the purpose of OAL review is to "reduce the number of administrative regulations." The assumption is obviously that it is desirable and beneficial to pare the State's Administrative Code. This assumption is undeniably popular politically, but real acceptance, as opposed to superficial lip-service, is dependent on which regulations are to be eliminated so that the total may be reduced. Certainly, recent legislative history suggests that the enthusiasm to "get government off our back" evaporates rather quickly when the government to be removed is, for example, government regulation of entry into a profession or government protection against the vagaries of a competitive market.

All this is not to say that tenets of good government and principles of effective administration do not exist. It is necessary, however, to recognize that administrative or procedural reforms of the State's regulatory process are not neutral. By their fundamental nature as reforms, they are inherently biased in favor of certain values. If we fail to recognize this, we fail to recognize the potential policy and political implications of seemingly non-political, non-substantive changes.

In addition to the intended effects of reform, whether acknowledged or not, there inevitably exists the possibility of unintended or unanticipated effects. To paraphrase the great British writer T. H. Huxley, the results of reforms are hardly ever those which their friends hope or their foes fear. The wisdom of Huxley's observation is so manifest to be almost cliche. Apparently, however, it is a lesson which needs to be continually relearned. Reformers in the early 1970's sought to limit the influence of special interest money in campaigns and inadvertently encouraged it through the creation of political action committees. The Progressives sought to enhance the power of the people by circumscribing the ability of political parties to recruit, nominate, and elect candidates to public office. The result though has been, at least arguably, to lesson the influence of the one political group which served to aggregate the disparate interests of society and to increase the influence of individual special interests.

Regulatory reforms are not immune from this danger of unanticipated consequences. We must, therefore, be careful that our efforts, and in particular the various amendments to OAL currently pending in the Legislature, do not result in very different outcomes than the ones we intended.

Specifically, I feel that we should neither let our inherited Progressive predisposition to regard procedural reforms as impartial nor the signal success of the Office of Administrative Law and its director, Gene Livingston, blind us to the potential for abuse that exists in the OAL. Over the past year, the Legislature, responding to legitimate needs and political advantage, has generated a plethora of regulatory reform measures. Most, if not all, of these measures directly affect OAL (I should add that this includes most of the measures developed by the Senate Select Committee on Government Regulation, which I chair). The problem is an apparent tendency to identify a problem and then tell OAL to solve it.

To illustrate, the growth of the regulatory activities of the state has put some state agencies in the business of ordering businesses to achieve standards and goals by using specifically mandated technologies or equipment. In some cases, technologies have been required without adequate evidence of their effectiveness or even their feasibility. Two bills have been introduced to address this problem, SB 795 by Senator Jim Nielsen (R-Woodland), and AB 1864 by Assemblyman Bill Leonard (R-San Bernardino). The Leonard bill, in its original form, expanded the five basic criteria of OAL review to include a criterion of technical feasibility. The effect of this amendment would have been to give the Office responsibility and the power to make very technical decisions necessarily requiring a substantial degree of expertise. Regardless of the objective of the bill, I think it is highly questionable that the problem should be addressed by an expansion of OAL authority into an entirely new area. Although OAL is hardly the "out of control Ayatollah" described by Fellmeth and Erbin neither is it the infallible wunderkind some of its press clippings would have us believe. It is a new agency, yet to complete its initial tasks, yet to weather a major challenge, yet to face that most potentially debilitating of all bureaucratic changes, the departure of its top leadership and the loss of initial elan which often results.

In short, OAL is still a largely untried and unknown entity. We might, therefore, want to emulate the approach of Senator Robert Presley (D-Riverside) Senator Presley discovered that AB 1111 failed to explicitly provide for OAL censure of duplicative regulations, and included a remedial section in his SB 498. He was repeatedly assured by OAL spokepersons that OAL interpreted existing law as giving the Office the authority to review for duplication. Presley's reaction was characteristically direct and, in my opinion, absolutely correct: He congratulated OAL for their actions, but proceeded with the legislation for the simple reason that just because Gene Livingston reviewed for duplication was no guarantee that his successors would do so without an explicit directive to do so in the law. Senator Presley did what we should all do — he realized that this year's OAL may not be next year's, and acted accordingly.

The second — and far more serious — source of concern over diverting regulatory reforms into instruments of policy revision stems from the basic nature of government regulation in California and the nation. Regulations fall into two broad categories, which Murray Weidenbaum and others have frequently, if somewhat incorrectly, labeled economic and social. Economic regulations seek to correct market malfunctions, whether real or imagined, and thus include such activities as the regulation of inter- and intra-state trucking, the licensing of various professions, and in a larger sense, subsidizing certain activities through tax policies or direct aid. Social regulations are those which, in the words of Walter Zelman of Common Cause, "seem to require government intervention not because the market mechanism has failed, but because the market mechanism appears inadequate in terms of protecting legitimate public needs and demands." Social regulations include pollution emission standards, safety and health regulations, and, again in a much broader sense, the federal nuclear weapons plant at Oak Ridge, Tennessee.

I specifically mentioned nuclear weapons plants to underscore the inference of many analysts that social regulations are solely a result of the social activism of the 1960's and 1970's. This inference is both untrue and insidious. It is untrue because social regulation is older than the Constitution; it is insidious because its acceptance can provide a persuasive rationale for dismantling public policy under the guise of regulatory reform.

As early as 1782, Alexander Hamilton judged the necessity of government regulation when he observed that "the avarice of individuals may frequently find its account in pursuing channels of traffic prejudicial to that balance, to which the government may be able to oppose effectual impediments." The fact which Hamilton recognized, but George Bush has apparently forgotten, is simply this: The marketplace, even when functioning well, can produce results detrimental to the polity. In 1782, the marketplace, left to itself, would have created trade imbalances disastrous to the nation; hence Hamilton argued for trade regulations. In 1947, the polity needed services which the market was not providing; hence the Air Force created the Rand Corporation and the Atomic Energy Commission started constructing nuclear weapons at Oak Ridge.

In short, governments in the United States have always accepted their responsibility to protect the polity from the market, as well as their responsibility to protect the market. As columnist George F. Will has noted:

> "Government exists not merely to serve individuals' immediate preferences, but to achieve collective purposes for an on-going nation. Government, unlike the free market, has a duty to look far down the road and consider the interests of citizens yet unborn. The market has a remarkable ability to satisfy the desires of the day. But government has other, graver responsibilities, which include planning for the energy needs, military and economic, of the future."

Despite this, it is increasingly popular to denigrate social regulations. Environmental regulations, for example, are labeled as well intentioned, but essentially the quixotic, and economically harmful excesses of Sierra Club purists. The problem is that once this inference is accepted, even partly, it is relatively easy to focus regulatory reforms on recent social regulations while leaving most economic regulations in privileged and profitable obscurity. In other words, to use regulatory reforms to effect, either consciously or unconsciously, substantive policy changes.

This becomes quite apparent when comparing the approaches to regulatory reform adopted by the Reagan Administration with the Office of Administrative Law. While the Reagan efforts include some across-the-board measures (most notably the clearing house for forms and paperwork established within the Office of Management and Budget), the principal thrust has been a *selective* review of carefully targeted regulations. Vice President Bush initiated this process last March when he asked business leaders to identify the "most burdensome" federal regulations — not, it should be noted, the least necessary or least effective, but the most burdensome.

The results have been almost too predictable. The regulations which candidate

Reagan railed against are now among the hundred-odd specific regulations earmarked for review and revision. The business community's list of their twenty most hated regulations have been selected by the Vice President's Task Force on Regulatory Relief for possible "modification or abolition." Not surprisingly, virtually all of the regulations proscribed by the Reagan Administration are social regulations.

My problem with the Reagan approach is not so much with the particular regulations selected for review, but rather with the way the selections were made and how that process has been presented to the American people. There has been no real attempt to systematically review all federal regulations. Consequently, the political biases of the Administration have determined the focus and direction of Reagan's regulatory "reforms." These reforms tend, therefore, to focus exclusively on certain groups of social regulations while leaving the vast bulk of economic regulations — many of which protect private interests from the market forces so beloved by the Administration — untouched and unexamined.

In addition, the rhetoric accompanying the Administration program emphasizes thorough reviews, and pledges the reduction of regulatory burdens borne by all Americans. This, of course, tends to obscure the narrow and selective nature of the review. The projected image is one of regulatory reform, with all the political and policy neutrality that phrase implies. The reality is an ideologically inspired and politically fueled effort to change substantive policies through the revision of regulations.

Compare this with the legislative mandate and actual performance of the Office of Administrative Law. The law specifically provides for a comprehensive and orderly review of all existing State regulations and all proposed regulations against explicit standards. The only exceptions to this are regulations adopted by the Public Utilities Commission, the Industrial Accident Commission, and building standard regulations. Admittedly, Gene Livingston has conducted an extensive campaign to solicit recommendations from the State's business community. But these recommendations have been solicited and received in the context of the all-embracing review mandated by the Legislature. We can be sure, consequently, that both Cal-OSHA and the Department of Corporations will come under OAL scrutiny. We can have no such confidence, however, that the Bush Task Force will review the Environmental Protection Agency and the Corps of Engineers' regulations with the same equanimity.

A cursory reading of this article might lead to the conclusion that I have abandoned the principles which motivated me through years of reformist struggles: the establishment of the first Consumer Fraud Unit in a California District Attorney's Office, Chairmanship of the Senate Select Committee on Political Reform, Chairmanship of the Senate Select Committee on Government Regulation, and recent judicial reform efforts through the Joint Committee for Revision of the Penal Code and the Committee on the Administration of Justice. A more careful reading, however, clearly indicates that far from being an apostate reformer, I remain a dedicated reformer — but a realistic one. If we blind ourselves to the dangers inherent in reform, if we ignore the possibilities of abusing both the substance and image of reform, then we vindicate H. L. Mencken's jibe that "Politics, as hopeful men practice it in the world, consists mainly of the delusion that a change in form is a change in substance."

COMMENTARY SECTION

OAL, A RED TAPE HYDRA?

The editors take this opportunity to respond to Senator Rain's provocative guest article. We perceive the Senator's main argument to be this: Reforms are not value free actions but vehicles of policy change. AB 1111 is intended to advance such a policy change: The elimination of unjustifiable red tape. OAL is empowered systematically and rationally to review all rules to implement that value judgment. The Senator then compares the AB 1111 approach to the selective and "politically fueled" approach of the Reagan administration. The Senator implies that federal rules hampering big business will be slashed, social costs notwithstanding, while complex rules protecting big business will remain and perhaps multiply.

We do not respond in defense of the Reagan administration, a subject beyond the scope of this publication. Nor do we deny that much "reform" has implicit policy judgment. Nor do we disagree with the policy of AB 1111 as described by the Senator: to reduce unjustifiably complex rules. *But the question of "how" is critical.* Take the wisest of the wise, imbued with the most beneficent of motives, and lock him in a dark room with a single telephone line to business lobbyist Doug Gillies. Then open the door a crack and throw in a stack of 300 rules with only the titles and citations visible inside. Twenty-four hours later open the door a crack and see 250 rejected rules fly out. Would we have much confidence in that process?

Let's look at what we have created, enthusiastically accepting the goal of red tape reduction. Let's look at it with just two "neutral" reform values: (1) the decision maker must know something about what he is doing; (2) final decisions on rules should be subject to balanced presentation of interested views in public, not *ex parte* secret contacts from those with a profit stake in those rules.

OAL consists of young attorneys who receive rules and the public rulemaking files from agencies. The attorneys, by design, know nothing about the subject matter of the agency — nor do they seek to learn it. They do not attend the hearings nor hear any witnesses. They are not empowered to make any substantive decisions about the content of rules; they are prohibited from doing so. Further, they generally do not communicate with the agency prior to receiving the rules or *after* receiving them. Rather, the rules are reviewed and if the attorney feels that they are not really *needed,* under current practice, they may be rejected. Or, if the attorney feels that there are comments from the public in the file which have not been persuasively answered, they may be rejected.

What does this mean? It means that on one level any agency that wants to jam an unnecessary rule past OAL can do so easily. A simple game has developed. One simply fills the record with material, including hours of untranscribed tapes, esoteric commentary, self-serving rationales and appeals to indisputable regulatory shibboleths (i.e. health, safety, consumer fraud). OAL is in no position to review the claims or evidence so long as certain *de rigeur* incantations appear in the record. Approval will be forthcoming. Agencies are quickly learning this game.

On another level, however, it means that agencies who refuse to patronize OAL's ignorance find their rules rejected. In these cases, OAL has become the most onerous layer of red tape in the government. Here is how it works. The OAL reviews the file for every possible technical flaw, including those without import. OAL writes in one example: "Did the agency certify that the notice went to *all* those on its mailing list?" Answer: "Of course the notice went to the entire mailing list." "Too late," says OAL, "you did not put that note in the file." "But no rule or procedure has ever required that it be in the file, and this is not one of the five bases for rule rejection." Rule rejected. "Well," wonders the agency, "if you want the mailing list in the file why didn't you call and it would be sent over." "No," answers OAL, "we do not like to communicate with the agency while considering a rule, that would be improper." Does this sound like a redtape fighter?

The result of a rejection amplifies the red tape of OAL. For the rules go back with a letter from OAL, *after* rejection. These letters are a cause of great confusion, and occasional amusement. The proposed rules and rulemaking file is so distorted by a new attorney who does not understand what he or she is reading that although the rejections are reasoned with internal consistency, they have little relation to the adopted rules or the file. *(See* CRLR Vol. 1, No. 1, p. 8.) One example of OAL substituting its judgment for that of the promulgating agency can be found in OAL's June 12, 1981 rejection of regulations proposed by the Board of Registration for Professional Engineers (Board). The Board adopted regulations which, among other things, established a consumer complaint disclosure system. The rule stated that upon inquiry consumers would be informed of probable violations by licensees, but only after contact with the registrant and a written finding by the chief investigator that a probable violation had occurred. The proposed rule further provided for expungement upon a formal finding of no violation.

The regulations in question are the culmination of a process started by the Director of the Department of Consumer Affairs in August, 1979. At that time the Department adopted a uniform policy regarding complaint disclosure. Nearly two years later in an effort to fulfill its statutory mandate and in compliance with the previously adopted Department guidelines, the Board passed the disputed regulations. The Board's Final Statement of Reasons states the regulations seek to establish "a balance between the public's right to regulatory information, and the Registrant's (right to) protection against unfounded complaints."

OAL's June 12 letter of rejection simply and uninformatively states: "The rule-making file does not explain why the Board believes that disclosure of complaint records is *necessary* to protect the public interest."

Is it really "necessary" to show that there is a public interest in allowing consumers to know of complaints against licensees? Is that a matter amenable to "evidence," or a policy judgment for a Board? Does the OAL understand that current state law allows disclosure of complaints without any screening?

It should be noted that on June 5, 1981 OAL rejected a similar proposed consumer complaint disclosure system promulgated by the Bureau of Collections and Investigative Services. The Bureau resubmitted the regulations on July 24, 1981. On August 24, 1981 OAL again rejected the regulations for failure to demonstrate necessity.

The Bureau of Collections licenses private detectives, et al. The Bureau has the authority to regulate handgun use. The proposed rules to do this were rejected by OAL on 9/4/81 because, although the Bureau had "authority," it did not have "authority" to write such

"specific" rules as proposed.

For other examples of OAL excess, see the OAL discussion in the Internal Government Section *infra* re OAL and in CRLR Vol.1, No.2, p.12. Note that the oft used "inadequate response to public comment" rationale does not exist as a basis for rule rejection in OAL's enabling statute (see Government Code § 11349.1, CRLR Vol. 1, No. 1, p. 2).

After a rule has been rejected it must go back through the entire notice-public comment-hearing-consideration-adoption procedure of the Administrative Procedure Act. Result? Delay. And since the OAL letter does not relate to the rule, the agency will spend the next six to ten months going through it all again, often having to guess what OAL will accept on a second try. Although OAL may sometimes communicate with the agency to explain the rejection, it generally will not communicate with them on the new rules in progress until they have been again adopted and resubmitted.

Ironically, with many public members on agencies now pushing for deregulation, OAL is in a position to undermine it with their own red tape. Last month the Athletic Commission made a typical change in this direction: Promoters had been required to file a seating manifest before each boxing event with the Commission to prevent ticket price frauds and gate tax avoidance. But the seating arrangements rarely changed, so the new rule stated that no manifests need be filed if one was already on file unless there was a seating change; one less bureaucratic requirement for promoters. The rule and its rationale were clear from the record. OAL's response? Rule change rejected as "unnecessary." There are many such examples with this one Commission, far beyond the predictable OAL requirement to say him "or her" whenever referring to boxers.

The Board of Veterinarians licenses "Animal Health Technicians" (AHT's). These technicians are almost all exposed to x-rays, now common equipment for veterinarians. But the Board requires two exams for AHT's, one to become an AHT and one on x-ray operation and procedure. Many AHT's are 18-25 year old girls and radiation exposure of AHT's who know nothing of x-rays but work around the equipment can mean infertility and other dangers. To minimize this risk, and to *deregulate,* the Board combined two separate exams into one. Less red tape and the assurance that AHT's know something of x-rays immediately so they are not gratuitously vulnerable during the period between the two tests. OAL reaction to the rule? Rejection. Why? It is "inconsistent." Inconsistent with what? Inconsistent with the statute. How inconsistent? There is no specific authority in the statute to allow the Board to "combine" exams. OAL's letter of 8/26/81 stands as a model of the abuse it is directed at.

The letters of OAL do not internally reflect their errors. Rather, in self-serving fashion, they distort the record. The Athletic Commission banned wrestling promoters from announcing deceptively that exhibitions (which are fixed as to the winner) were "sanctioned by the Athletic Commission of the State of California." Boxing matches *are* "sanctioned," i.e. participants are examined for health and ability to match them so the contest is fairer and safer than would be the case with mismatches. It would appear the invocation of a review by a public agency which does not occur to deceive the public could be prohibited. OAL's letter said nothing of deception, but described the rule as an attempt to influence the "speech" of a licensee the Commission finds "objectionable." The implication is that this Commission is requiring promoters to use only approved adjectives out of whim. There is little relation between the letter of OAL and this rule.

The only thing more frustrating than red tape is ignorant red tape. The frustration felt by many to whom we have talked is cloaked by a regrettable fear that OAL will respond vengefully by stonewalling future rules needed for the agency to do its job. A letter from one of the few who will speak out follows this commentary.

There is a second neutral requirement that must apply to OAL. When the agencies consider and pass their rules, they must give notice. All parties must be given a chance to comment. Any hearing must be public. Private contacts between interested parties and the public decisionmaker ideally should not take place. But if they do, the trend in the law is that they must be on the public record. *See* Kenneth Culp Davis, Administrative Law Treatise, Vol. 1, 2nd Ed., 1980, §§ 617-618.

Here sits OAL, assuming upon itself the power to make the final decision about rules; to accept some, to reject others. To object to points of some and send the rules back — in essence to rewrite many of them — albeit with the vaguest of instructions. And, ironically, OAL rejects because of "inadequate public comment," or other such procedural flaws. But OAL makes *its* decisions in utter secrecy. There is no guaranteed chance for agency input based on OAL reaction to the file, no chance for public comment, no public hearing — but there *are* private *ex parte* contacts with profit-stake interests. After fair comment and hearing and a decision on a rule by an agency empowered to adopt rules, we have institutionalized corruptive end runs by those who lose in the open forum, to OAL, where self interested parties may present all sorts of argument without refutation. And as Senator Rains comments, the current OAL has brazenly and improperly "invited business comment" on rules by private communication. The danger is more than structural — it is being implemented.

It is our position that OAL should provide a neutral forum in which all interested people have an equal opportunity to debate the legitimacy of contested rules. Additionally, OAL should exercise its review and disapproval authority in a non-partisan manner, consistent with its own limitations (expertise, resources) and well-recognized jurisprudential rules (deference to agency judgment). It is our observation that OAL is not doing this.

Nowhere is OAL's abuse more visible than with OAL's promiscious application of the necessity standard. The danger in the liberal use of this completely nebulous standard is twofold. The first danger is that OAL will become "its own layer of politically sensitive red tape" and use the necessity standard as a means to achieve what it perceives to be popular political positions. This is not an unrealistic fear. AB 2165 (Costa) proposes an amendment to the APA which 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. There goes Senator Rains' "systematic" review of all rules. A campaign contributor goes to a few legislators and without using the full legislative process instructs OAL to target a specific rule. Will OAL give this rule an independent and objective review? Will it not be understandably tempting for OAL to invalidate the regulation by a vague, unspecific application of the necessity standard? Will rules become the piecemeal object of deals between a few legislators who could never marshall a majority vote in the light of day and an agency currying favor for its own bureaucratic ends? If not now, what of the future?

In order to correct this misdirection OAL should defer to agency expertise more often (as the courts have done) by using the necessity standard as a basis for disapproval less frequently and more judiciously. After all, rejection on the basis of necessity as OAL applies it is really nothing more than the substitution of OAL judgment for that of the informed agency. It is both pompous and ultimately counterproductive to believe that a small group of largely cloistered OAL reviewers can make better decisions than experienced agencies hearing the

evidence, notwithstanding certain advantages from being independent. OAL could achieve better results by concentrating on the more definitive, less arguable standards of authority and consistency (often involving more definable inconsistencies with the enabling statute).

Further, OAL will alleviate the real risk of court reversal of its actions. Correct court rulings under the current statute will certainly void the brunt of OAL's rejections, setting back the important cause of keeping agencies from passing rules which lack clarity or are beyond their authority.

If OAL, with clear mandate, were to legitimately pick up the "Czar of the Universe" role it would assume, *then* it must protect its integrity through *public procedures* for review of contested regulations, with opportunity for balanced comment, and with enhanced rulemaking record requirements and review.

Rather than seek reform, OAL's first wave of amendments to its authority suggests self aggrandizement on a scale far beyond any agency they are to limit. Bills have been proposed to: do away with the thirty day time limit for notifying an agency of a disapproval so OAL can disapprove a rule without telling the agency (which may believe it has been approved); exempt OAL's own (in effect) rulemaking from the requirements of notice, hearing et al it imposes on other agencies; require agency officials to swear "in writing" that rulemaking files are complete and accurate, et al; and allow OAL rejection based not on the five standards of the statute, but for *other reasons* (see AB 1013, 1014). In pushing these unfortunate provisions as mere "housekeeping" bills, OAL projects a certain lack of candor as well as a proclivity for authority without the inconvenience of generic due process, or institutional check. *(See* CRLR Vol. 1, No. 2, p. 12.)

In conclusion, and in spite of the Senator's arguments, we contend that reforms which propose fair and neutral procedures for implementation of a given policy are value free and important for that reason. It is not naively foolish (as the Senator indicates) to protest the corruption of such procedures. AB 1111 should be implemented in a reformist manner, with strict adherence to concepts of procedural fairness. To the extent OAL succumbs to political machinations and avoids public scrutiny the reform is lost. We protest such a loss and repeat our warning: OAL must reform or "become its own layer of politically sensitive red tape superimposed over the rest, and adding only the dubious attribute of uniformed arbitrariness."

CONCERN FROM THE DEPARTMENT OF REAL ESTATE:

"Gentlemen:

As a governmental official attempting to do a reasonably effective job of protecting the public in an anti-government, anti-regulator milieu, I was pleased to read about your article in *The California Regulatory Law Reporter* challenging the bureaucratic excesses of the Office of Administrative Law. I am sure that I am not alone among frustrated regulators who have run up against the institutional naysayers at OAL.

If it will be of any help to you to have a couple of well documented examples of non-thinking, irresponsible actions by OAL in rejecting proposed regulations to control time sharing offerings in California, please let me know ...

Since OAL was established effective July 1, 1980, the Department of Real Estate has made three submittals of proposed regulations. One of these submittals was of emergency regulations for time-share offerings to implement Senate Bill 1736 which became effective January 1, 1981. Despite what I consider to be a clear showing of an emergency in the amount of public money at risk, OAL rejected the regulations as an emergency without even a credible attempt to respond to the facts presented by us to show that an emergency existed. These time-share regulations are still not effective as OAL again recently rejected them — on the 30th day after submittal without previously having advised us that there were any problems — by a letter that is a classic example of bureaucratic balderdash. This letter was received one day after verbal assurances from OAL that the proposed time-share regulations were extremely well done.

In the other experience that we have had with OAL since July 1, 1980, they also waited the full 30 days to inform us that they were rejecting three or four of the regulations that we proposed. As a result of that action, we were forced to make two rather than one mailing to those persons on our regulation mailing list.

As I have stated, I am prepared to plead our case against OAL before any objective board, body or person. The most distressing thing to me is that OAL can use its own lack of expertise as its justification for requiring agencies to provide them with long-winded, simplistic explanations of what each regulation does and what it is intended to accomplish.

Sincerely,

/s/ W. Jerome Thomas
Chief Legal Officer
Department of Real Estate"

Editor's Note: On July 17, 1981, OAL approved the timeshare rules referred to by Mr. Thomas. They took effect August 16, 1981.

LATE NOTICE:

At the close of the Legislative Session of this year AB 2165, which allows any Legislative Committee to interrupt the OAL Review plan and single out for special treatment any particular disfavored rule without public hearing and without a vote of the Legislature, was amended onto AB 1014 and passed. It was signed by Governor Brown and will be effective 1 January 1982.

AB 1014 is the deceptively labelled "Housekeeping" bill giving OAL major new powers described above.

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 present 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 supplies expert witnesses at Board meetings.

CURRENT PROJECTS:

The Association is trying to maintain and strengthen the Federal Clean Air Act which is soon to be reauthorized. Other health and environmental groups are working with the Association to counteract business and industrial groups allegedly trying to weaken the present Act.

The Association has an extensive letter writing campaign to lobby for various state bills. The Association is opposed to SB 274 (Foran) which would lower California's emission standards on buses by using the lower federal standards.

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, farm labor, health and housing. CRLA engages in both legislative and regulatory advocacy on behalf of its clients. If the pending Legal Services Authorization Bill is passed, the resulting law will bar CRLA from acting as a legislative advocate on behalf of its clients.

CURRENT PROJECTS:

CRLA is currently working with the Department of Housing and Community Development on the Design of Small Cities Block Grant Programs. CRLA's stated goals are to target the program to meet the needs of low-income people and to involve people in allocating the grant money. Also, in the fall of 1981, CRLA plans to be represented at hearings for the proposed "In Home Supportive Services" regulations of the Department of Housing and Community Development.

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.

As part of its continuing effort to represent ratepayers at hearings before the Public Utilities Commission, CalPIRG filed briefs in late August to prevent rate hikes and to improve energy efficiency in the areas served by San Diego Gas and Electric Company. Of particular concern to CalPIRG's attorney, Dave Durkin, is the SDG&E effort to charge ratepayers millions of dollars for utility property that is not energy productive. In effect SDG&E allegedly is trying to assess ratepayers a portion (a rate of return) on $63.9 million in currently non-productive land holdings.

CalPIRG is also opposing SDG&E's request to the PUC for a 19% rate of return to stockholders which, according to Durkin, is at least 4% too high. CalPIRG also opposes SDG&E's effort to gain a large rate increase by adjusting lifeline rates. Essentially, large industrial users of energy would be paying a lower rate, while small residential consumers would pay a higher rate than currently extant as proposed by SDG&E.

The CalPIRG Nursing Home Study is scheduled for release on January 1, 1982. It will be divided into three parts: (1) compilation of citation records of the Health Services Licensing Board of Health and Safety violations; (2) analysis of financial data from the California Health Facilities Commission to find evidence of comparative quality of care; and (3) survey of clergy regarding the quality of care in facilities.

This survey is designed to assist consumers in making a choice of facilities to be patronized.

Another current project is a legal rights handbook for car purchasers. This effort is designed to inform buyers of their existing contract remedies, warranty rights, and finance rights.

After 4 years of lobbying efforts on behalf of a "bottle bill," CalPIRG is going to participate in a statewide petition effort to put a bottle initiative before the voters by next spring. The most recent bottle bill failed to emerge from committee after heavy lobbying by the container industry.

CALIFORNIANS AGAINST WASTE
(916) 443-5422

Californians Against Waste (CAW) organized to support and lobby for SB 4, a "bottle bill" which would require a deposit on all beverage containers. Seven states have passed the bill. CAW focuses its efforts on the Legislature.

CURRENT PROJECTS:

Although the California legislature will vote on SB 4 in January 1982, CAW is shifting to an initiative campaign for the November 1982 ballot. Petitions will be available in October.

In the regulatory field, CAW works with the Solid Waste Management Board. CAW addresses issues before the board on the bottle bill and on related issues. The Solid Waste Management Board has endorsed SB 4.

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.

Of primary concern to the CCAA is the continued existence of local agencies in light of federal and state cutbacks. Since bailout funding is not foreseeable, some local agencies have been lost while others have merged in order to continue services to the public.

Fulfilling the spirit of the Public Member Act is another major goal of the CCAA. Many public positions are still vacant on state boards and commissions. This goal is part of a continuing effort to find new avenues of access to government agencies. CCAA would like to gain public access beyond just boards and bureaus, actually placing public members in state departments.

CCAA is exploring ways of improving and expanding consumer education in order to improve knowledge of the marketplace for more informed consumption. Eventually, CCAA would like to see consumer education expanded to include junior high schools and senior high schools as well as colleges. It is hoped that consumer education will become more interdisciplinary.

Currently CCAA has been asked to comment on regulations of approximately 38 boards and bureaus as part of the AB 1111 process.

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.

CENTER FOR PUBLIC INTEREST LAW
(714) 293-4806

The Center for Public Interest Law was formed after approval by the faculty of the University of San Diego School of Law in 1980. It is funded by the University and by private grants from foundations.

The Center is run by three full-time staff members, including an attorney in Sacramento, and approximately 40 graduate and law students. The faculty selected Robert C. Fellmeth, a member of the faculty, as Director of the Center.

It is the goal of the Center to make the regulatory functions of State government more efficient and more visible by serving as a public monitor of state regulatory agencies. The center has covered approximately 60 agencies, including most boards, commissions and departments with entry control, rate regulation or related regulatory powers over business and trades.

Students in the Center attend courses in regulated industries, administrative law, environmental law and consumer law and attend meetings and monitor activities of their respective agencies. Each student also contributes updates of his/her agencies to the *California Regulatory Law Reporter* quarterly.

It is the intention of the Center to fully participate in the opportunities for public input offered by AB 1111 review and the Office of Administrative Law. Students have critiqued agency regulations in writing and in person. It is expected that a substantially greater student involvement in the AB 1111 process will take place in the coming year.

Thus far, the Center has testified or commented in detail on the comprehensive rules review before seven regulatory agencies including: Board of Solid Waste Management, Board of Dental Examiners, Acupuncture Advisory Committee, Psychology Examining Committee, Board of Registration for Professional Engineers, Cemetery Board and Board of Fabric Care. The Center expects to become increasingly active during 1982.

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's initiative to amend Article XIII, Section 29 of the California State Constitution has until December 11, 1981 to collect 550,000 signatures. Its drive to collect these signatures began on July 14, 1981 and as of September an estimated 100,000 signatures have been collected.

Essentially, this amendment would take the power to tax away from the legislature. No new tax, fee or levy could be imposed, or any existing tax increased without the consent of two-thirds of the affected taxpayers. Fines, court judgments, court costs or fees collected to cover "reasonable government service" would be exempt. Under this amendment, the state government would have no problem increasing fees for services if comparable service could be obtained from the private sector. If the state is the sole provider of these services, any increase above the cost of the service would have to go to the voters for approval. Essentially, all revenue producing schemes by the state would have to be approved.

Finally, there is a six year sunset clause on any voter approved tax measure. That is, any new tax would end automatically after six years. 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 agrees to them.

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. It is made up of local neighborhood chapters which elect officers and send representatives to either the Southern or Northern regional board and a statewide board. The emphasis is on local issues around which the neighborhood chapters build.

In Northern California a local CAL chapter is demanding accountability from Standard Oil of California in Richmond for the disposal and release of toxic wastes and recent chemical explosions.

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).

Currently, CAL opposes SB 867 (Garcia) which would eliminate the progressive rates charged under lifeline rates allegedly in favor of rates that would favor large industrial users at the expense of small residential consumers. CAL contends that the bill would encourage consumption at the expense of conservation by charging a lower rate for more energy use. CAL opposed a similar bill, SB 279 (Alquist) two years ago that was eventually withdrawn.

AB 1669, introduced by CAL through Art Torres, 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 Depart-

ment of Insurance. This two year bill is currently before the Assembly Finance, Insurance and Commerce Committee and won't be voted on until next year.

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 legislative advocacy and supports many bills which affect the regulatory agencies.

CURRENT PROJECTS:

One bill which CC is lobbying against is SB 429, which would prohibit a beer wholesaler from offering a quantity discount to any retailer. The Department of Alcoholic Beverage Control held hearings and decided that its regulation 105 (which is comparable to SB 429) was anti-competitive. They removed the regulation and decided to allow quantity discounts. SB 429 was sponsored to reinstate the discount prohibition. The bill has presently passed in the Assembly and awaiting the Senate's decision.

CC is also lobbying for limited Sunset bills affecting the licensing boards in the Department of Consumer Affairs (*see* CRLR Vol. 1, No. 2 (Summer, 1981) at 2).

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.

CFC has actively supported "The Lemon Bill" (AB 1787), which would have provided additional protection to consumers purchasing a defective automobile. The bill has been made into a two year bill.

CFC also supports AB 256 (McCarthy) which would prohibit discrimination against renters with children.

SB 180 (Marks) would increase small claims actions to $1,500 and open night courts for the convenience of those who work in the day. Despite amendments, CFC continues to support this measure.

CFC is currently participating in a year long test on item pricing in Los Angeles under the direction of the L.A. City Council. AB 65, recently passed and signed by Governor Brown, would preempt local ordinances that allow stores to forego item pricing. The L.A. test is scheduled to conclude before the state law goes into effect.

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 opposed 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 fulltime 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.

CURRENT PROJECTS:

The Society is working with the Energy Commission on a "New Energy Plan" which calls for conservation and the use of solar energy, minimizing the need for nuclear energy. The Society is implementing the plan by working with PG&E in the Bay Area. PG&E is conducting an energy audit for the membership of the Society's local chapters.

The Society also supported the Fish and Game regulations which would permit the captive breeding of the California condor. The regulations were recently approved.

The Society is the lead plaintiff in a lawsuit against the Los Angeles Department of Water and Power, alleging the depletion of Mono Lake, the breeding ground of 90% of the California gulls. This year, 95% of the gulls failed to breed because of the continued decrease in the lake's level. The U.S. Congress is considering a bill to make Mono Lake a National Monument. The Society is soliciting support from the Water Resources Control Board and the State of California for the bill and the preservation of the gull habitat.

NATURAL RESOURCES DEFENSE 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.

A key recommendation of NRDC's scenario was saving energy through upgrading energy efficient building standards. NRDC was active in the Energy Commission's recent proceeding to revise its residential building standards, which resulted in adoption of new standards by the Commission in June 1981. An NRDC member is currently participating on an advisory committee to the Building Standards Commission, charged with approval of the Energy Commission's new standards.

In addition to its work on the residential standards, the NRDC has urged the Energy Commission to adopt similar standards for commercial buildings. The Energy Commission has established an advisory committee, which includes an

NRDC staff member, to begin the process of developing non-residential efficiency standards. NRDC will also participate in the Commission's formal hearings on the new standards to ensure that they are technically feasible and provide for the maximum cost-effective level of energy efficiency.

The NRDC scenario also advocated development of new alternative energy supplies such as wind power and cogeneration. Toward this end, NRDC has participated in several proceedings before the PUC to encourage the establishment of favorable rates for utility purchases of power from alternative energy producers. The NRDC plans to participate in further evidentiary hearings on the rates to be held by the PUC this fall or in the beginning of 1982.

A second issue in which NRDC has been very active in California is that of coastal preservation through involvement 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 weaken the act significantly. NRDC is cooperating with other environmental groups to ensure 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. 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. California Coastal Commission

PLF has filed suit against the California Coastal Commission in an effort to compel it to comply with AB 1111. The Legislature enacted AB 1111 in 1979 to reduce administrative regulations and improve their quality by requiring a review by the Office of Administrative Law (OAL) of all rules prior to adoption. The law applies to all state agencies, but the Coastal Commission allegedly has not submitted its regulations to OAL for review.

Specifically, PLF is challenging the Commission's *Interpretive Guideline for Wetlands and Other Wet Environmentally Sensitive Habitat Areas* issued in March, 1981. Since local governments and applicants for coastal development must conform to provisions set forth in the guideline, PLF contends the wetlands guideline is a "regulation" and must be reviewed by OAL.

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.

The $75 million Energy and Resources Fund legislation which PCL supported in the past was approved by the State Legislature. However, a problem concerning state revenue projections may require a new look at the financing of this fund.

PCL continues to support the two Garamendi toxic waste bills currently before the legislature. SB 810 would establish a toxic waste council to oversee safe transportation and disposal of toxic wastes in California.

SB 802 would establish a statute of limitations for civil actions to three years after the waste is discovered illegally in the environment. This bill would also require certain documentation to be present in order to transport toxic wastes.

PCL has opposed two assembly bills which allegedly would have hampered environmental organizations efforts to litigate. A $5,000,000 bond requirement for plaintiffs bringing environmental lawsuits was written into AB 1914. AB 1915 would have required a $250,000 bond to be posted to cover attorney's fees in lawsuits concerning the environment. These two bills have been modified so that application of the above provisions has become so narrow as to not be of further concern. Another provision that would have "pierced the corporate veil" of environmental organizations so that their officers would be liable as individuals in litigation has been dropped. Because of these changes, PCL has become neutral on this legislation.

Another Assembly bill, AB 893, has stimulated opposition from the PCL. This bill called the "new cities bill" would allow the state to bypass local regulations for five new cities in California. PCL contends that any agricultural land now protected by local zoning could be developed, effective local planning would be lost and the residents of these cities would be taxed without elected representation. A state Commission would regulate the area concerned. To PCL this bill, if it becomes law, would create more expense and leapfrog development, not more housing. Its chances of passage are good.

The PCL has moved to 1228 N Street, Suite 30, Sacramento, California 95814.

PUBLIC ADVOCATES
(415) 431-7430

Public Advocates was founded in 1971 in order to represent low income and minority people on issues concerning education, consumer rights, employment rights and inner city revitalization. Although it sometimes handles class action litigation it operated increasingly through the executive branch. For example, Public Advocates organized an inner city food petition in order to improve grocery services in disadvantaged neighborhoods. They wrote an administrative petition that was delivered to Governor Brown and believe it has resulted in state funding for inner city grocery stores.

Public Advocates recently filed four administrative petitions with the federal government on domestic infant formulas. The results of a one year study of domestic infant formulas have been submitted to the Food and Drug Administration and the California Department of Consumer Affairs, and is currently under consideration.

Public Advocates also represents minority consumers seeking loans from financial institutions. They worked to stop the Crocker-Midland Bank merger in order to prevent Midland, a foreign bank with no interest in local communities, from funnelling money "out of the country." The Federal Reserve Board,

however, refused to hear the petition.

The health industry also holds the active interest of Public Advocates. Of particular concern are conditions and services in nursing homes; government procedures for disbursement of Medi-Cal funding; and the rates paid to hospitals.

Public Advocates opposed variable rate mortgages last year.

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.

The next "impact" Newsletter will exclusively cover Public Interest legislation for the next year. Focus will be on approximately ten bills, some new, some left over from the Legislative Session just ended. David Roberti will be writing the cover article for this Newsletter which is expected to be released in October.

The Fourth Annual Public Interest Law Conference is scheduled for January 1982. This is a meeting of lawyers and students to discuss the status of legal services in the face of budget cuts.

Also in January the Public Interest Clearinghouse will sponsor a "Public Interest Law Faculty Conference" that will focus on curriculum at law schools. It will be a meeting of approximately thirty Northern California Law School faculty. The agenda will include a discussion of what Public Interest Law training should consist of for Public Interest lawyers in the 1980's. This discussion includes proposals for curriculum changes in existing public interest programs, clinical supervision and a model curriculum.

The Clearinghouse hopes to provide a model for public interest law programs nationwide, and they intend to publish a revised directory of public interest groups in the Los Angeles, San Diego and San Francisco Bay areas.

SIERRA CLUB
(916) 444-6906

The Sierra Club volunteers are active before many boards, including the Energy Commission, Air Resources Board, Board of Forestry and the Coastal Commission. The Club publishes "Energy Clearinghouse," a newsletter dealing with energy issues and legislation.

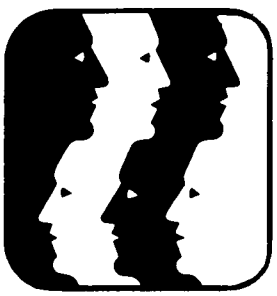
MAJOR PROJECTS:

The Club recently worked with the Energy Commission to revise energy efficient building standards which the Energy Commission passed June 30, 1981. Now the Building Standards Commission must pass the building standards by October so the new regulations will be in the Regulations affecting building construction. A recent development is the Sierra Club's petitioning of the California PUC along with the utility-rate relief advocacy organization "Toward Utility Rate Normalization." This petition was to withdraw the PUC's approval of the massive Point Conception liquified natural gas terminal. These two groups believe the energy situation has changed significantly since the project was approved in 1978. They want to stall the project before it clears its last regulatory hurdle (a PUC ruling that the site is physically suited for the facility).

Sierra Club has worked with the Air Resources Board and the Coastal Commission suggesting ways to increase public input and to clarify the regulations which are reviewed at the public hearings required by AB 1111. The Club also supports present regulations of the two Boards that maintain the quality of the environment.

The Club lends its advice on appointments to the State Coastal Commission. It has been defending the existing policy guidelines of the Coastal Commission which are currently under seige. The particular policies of greatest Club concern are the protection of sensitive habitat areas, wetlands preservation and access to the coastline.

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
1414 K Street, Suite 600
Sacramento, CA 95814
(916) 323-6221

The Office of Administrative Law (OAL) was established on July 1, 1980 during major and unprecented amendments to the Administrative Procedure Act (*see* AB 1111, McCarthy, Ch. 567, Stats 1979). The Office is charged with the orderly and systematic review of all existing and proposed regulations against five statutory standards — necessity, authority, consistency, clarity and reference. OAL has the authority to disapprove any regulation that, in its determination, does not meet all of the five standards. OAL also has the authority to review all emergency regulations and disapprove those that are not necessary for the immediate preservation of the public peace, health and safety or general welfare. The goal of OAL's review is to "reduce the number of regulations and to improve the quality of those regulations which are adopted ..." (Gov. Code section 11340).

(For a more detailed analysis of OAL's mandate *see* CRLR Vol. 1, No. 1 (Spring, 1981) at p. 2-8. *See also* the Commentary Section immediately following Senator Rain's guest article, in this *Reporter*.)

LITIGATION:

In the Summer, 1981 *Reporter* (CRLR Vol. 1, No. 2 (Summer, 1981) at p. 11) we reported that the Division of Allied Health and the Board of Medical Quality Assurance had decided to sue OAL over its disapproval of a proposed amendment to Title 22 Cal. Admin. Code section 1399.443. The amendment proposed to change the content of the licensing examination administered by the Acupuncture Advisory Committee and would require all examinees to demonstrate a basic knowledge of clinical science and medicine. The theory is that an acupuncturist should be able to recognize a malady he/she cannot treat and thus refer the patient to a qualified health practitioner.

OAL rejected the proposed regulation on February 6, 1981, stating the Board did not have the authority to adopt the regulation and had failed to demonstrate the need for it. On June 12, 1981 the Division of Allied Health voted to file suit against OAL.

However, on September 12, after listening to the advice of both the Attorney General and the Department of Consumer Affairs counsel, the Division decided not to sue but to file the disputed regulation with OAL. Consequently, at its October meeting the Acupuncture Advisory Committee will reopen the rulemaking file.

It is the intent of the Committee to solidify the rulemaking file and procedure. Furthermore, the regulation will be tailored so that it more closely relates to acupuncture. Acupuncture examinees will be required to demonstrate a cursory knowledge of clinical medicine and science as they relate to the practice of acupuncture.

It is expected that the Division of Allied Health, relying on the expertise of the Acupuncture Advisory Committee, will readopt and retransmit the disputed regulation (slightly modified) to OAL in January of 1982.

APPEALS:

On August 7, 1981 OAL disapproved a regulation (Title 20, Section 1553 (m) (2) (j)) proposed by the California Energy Commission. The regulation in question would have prohibited the sale of urea formaldehyde foam insulation unless the installer presented the purchaser with a notice describing potential hazards which may result from exposure to formaldehyde and obtained written acknowledgment that the purchaser had read and understood the OAL. OAL rejected the proposed regulation on the basis that Public Resources Code section 25920, upon which the Commission relied for its legal authority,[1] limits the Commission's authority to the adoption of material standards and does not provide the Commission the authority to require the notice and other requirements contained in the proposed regulation. On August 27, 1981 the Commission appealed OAL's disapproval to the Governor, arguing that the safety notice requirement relates to the "quality" of insulation materials and the Commission is authorized to implement any rule which "logically relates to the quality, including safety, of insulation material."

On September 1, 1981 OAL responded to the Commission's appeal, arguing that the notice required by the proposed regulation is "not a material standard" but, rather, "a condition insulation manufacturers or installers must satisfy, in addition to complying with the material standards." As such, the notice requirement (and regulation) is outside the Commission's authority.

On September 8, 1981 the Governor's Office overturned OAL's rejection of the disputed regulation and reinstated Section 1553 (m) (2) (j). In reference to Public Resources Code Section 25920 the Governor's letter states:

> "Since one of the aspects of the 'performance expected' of urea formaldehyde foam is that it poses a carcinogenic and mutagenic risk and may cause additional harm to the health of the user, the proposed regulation appears not only to be *authorized,* but indeed *required,* by Section 25920." (Italics original.)

The Governor further relies on Public Resources Code Section 25218 (e) which provides, in pertinent part, that "[t]he Commission may ... adopt any rule or regulation ... it deems necessary to carry out the provisions of this division." Lastly, the Governor refers to Public Resources Code Section 28218.5 which states, "[t]he provisions specifying any power or duty of the Commission shall be liberally construed, in order to carry out the objectives of this division."

The Governor's decision concludes by stating that after careful analysis of the relevant code sections it is apparent that OAL had too narrowly construed the Commission's authority. Last, the Governor's decision states:

> "It is noteworthy that, until [OAL] concluded that the [Commission] lacked the authority to adopt the regulation, no industry

opposition to the regulation was ever advanced based on the asserted lack of authority. If the industry being regulated and the agency charged by the Legislature with adopting the regulations are jointly of the view that the regulatory agency has the requisite authority, a finding by another agency that authority is lacking will be carefully acrutinized. Under such scrutiny, the rejection of the proposed regulation by [OAL] cannot stand."

LEGISLATIVE UPDATE:

The progress of those bills having the most drastic impact on OAL's operations is described below. (*See* CRLR Vol. 1, No. 1 (Spring, 1981) at p. 12 for a detailed description of the contents of these legislative measures.)

* SB 498 (*see* CRLR Vol. 1, No. 2 (Summer, 1981) at p. 80) provides that the enactment of an urgency statute by the Legislature does not, by itself, justify the adoption of an emergency regulation by an agency.

The bill also prohibits the addition, after the closing of the hearing, of any material to the record of the rulemaking proceeding, unless adequate provision is made for public comment thereon.

The bill also adds to the definition of the standard of necessity a requirement that a regulation does not serve the same purpose as another regulation and, if it does overlap or duplicate, to justify such overlap or duplication.

SB 498 has passed both houses and been returned to the Senate for concurrence in Assembly amendments.

* AB 1013 would prohibit any agency from utilizing or enforcing any informal guidelines or policies unless such guidelines have been formally adopted as regulations.

Approved by the Assembly, AB 1013 passed the Senate Governmental Organization and Finance Committees and is awaiting action by the full Senate.

* AB 1014 has been amended, but our Summer, 1981 *Reporter* description is still accurate. AB 1014 has passed both houses and is awaiting the Governor's signature.

* AB 1745 would, among other things, require that the Final Statement of Reasons include a statement of why a regulation requires certain technology, the alternatives considered and why they were rejected. Additionally, AB 1745 would include in the definition of the "necessity" standard a statement that no alternative among the alternatives considered is as effective and less burdensome than the approach embodied in the adopted regulation.

AB 1745 is awaiting the Governor's signature.

* AB 1785 would require the Governor, when overruling an OAL rejection of a regulation to transmit to the Legislature the reasons for the overruling. Approved by the Assembly, AB 1785 has yet to be approved by the Senate Governmental Organization Committee.

* AB 1828 has been amended. It now provides that all agencies must submit a plan to OAL providing for the complete review of all the agency's regulations at least every five years. The plan must be submitted to OAL by June 30, 1983.

AB 1808 has been approved by the Assembly but has not yet passed the Senate Finance Committee.

* AB 1864 has been amended and now provides that an agency's initial Statement of Reasons specify the reasons for any mandated use of technology and include a written finding that the required technology has been demonstrated to be effective.

AB 1864 has passed both houses but the Assembly, on September 10, refused to concur in the Senate Amendments. A conference committee has been appointed.

* AB 1930 is unchanged and is awaiting approval on the Senate floor.

* AB 1931 requires an agency that has denied, in whole or part, a petition for reconsideration filed pursuant to section 11347.1, to immediately notify OAL of its denial. OAL, in turn, can initiate a priority review of the contested regulation and repeal the regulation if, in OAL's opinion, it does not meet the statutory standards.

AB 1931 has made little progress and is still in Assembly Ways and Means Committee.

* AB 2165 is a compromise legislative veto bill. AB 2165 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.

AB 2165 has been approved by both houses but on September 10 was placed on the Assembly's unfinished business file.

Footnotes:

1. Public Resources Code section 25920 states: "The Commission shall ... establish insulation material standards governing the quality of all insulation material sold or installed within the state, including those properties that affect the safety and thermal performance of insulation material during application and in the use intended. Such standards shall specify the initial performance expected during the design life of the insulation material."

THE OFFICE OF THE AUDITOR GENERAL

660 J Street, Suite 300
Sacramento, CA 95814
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 ..." (Gov. 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.

Gov. 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, or 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 has three divisions: The Financial Audit Division, which performs the traditional CPA fiscal audit; the Investigative Audit Division, which investigates allegations of fraud, waste and abuse in state government received under the Reporting of Improper Government Activities Act (Gov. Code section 10540 et seq.); and the Performance Audit Division which reviews programs funded by the state to determine if they are efficient and cost-effective.

RECENTLY RELEASED AUDITS:

Some of the more important audits, reports and letter reports released by the OAG in recent months are:

1) Letter report 014.4, July 20, 1981. This letter report is a review of the California Department of Aging's 60-day response to an April, 1981 OAG report (P-014.2) entitled "Improvements Warranted in the California Department of Aging's Administration of Programs for the Elderly."

2) Report No. P-065, August, 1981 entitled, "Overview of the Organization, Roles, and Responsibilities of the State Department of Education." The report describes the Department's internal organization, staffing and unit budgets. The report also summarizes the legal relationship between the Department and the other governmental entities (the State Board of Education, the County Board of Education and the local school district governing boards) which together establish policy, regulate and administer the state's public school system and spent approximately $11.9 billion on the state's kindergarten through grade twelve public school system in fiscal year 1980-1981.

3) Report No. P-044, September, 1981 entitled "The CSC (Computer Sciences Corporation)" has authorized at least $12.6 million in recoverable Medi-Cal overpayments that an improved quality assurance program may have detected.

In 1978 the Department of Health Services, the single state agency responsible for administering the Medi-Cal program, awarded the CSC a $129 million contract for processing Medi-Cal claims. It is the responsibility of the CSC to process and verify the claims of those providing services to Medi-Cal beneficiaries.

The OAG's report concludes that the CSC has not adequately monitored the accuracy of Medi-Cal claim payments and, as a result, allowed between $12.6 million and $25.3 million in overpayments during a 15 month claim processing period.

The OAG's budget for fiscal year 1981-82 is $7.5 million, up from $4.3 million for last fiscal year. A large portion of this increase is allocated for the OAG's audit of the state's combined funds. (*See* CRLR Vol. 1, No. 2 (Summer, 1981) at p. 13.) The audit will include approximately $34 billion of federal and state money.

AB 739 (introduced in the Summer, 1981 *Reporter)* has passed both houses of the Legislature and is awaiting the Governor's approval. Among other things and as amended, AB 739 now states that only contracts which require an expenditure of more than $10,000 of state funds must contain a provision making the contracting parties subject to audit and examination by the Auditor General. AB 739 is no longer an urgency measure.

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

11th and L Building, Suite 550
Sacramento, CA 95814
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* Gov. 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." (Gov. 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 Gov. 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..."

MAJOR PROJECTS:

The major project facing the Commission is a recently commenced investigation of the state's entire public education system. This study of the Department of Education is largely an outgrowth of the Commission's frustrating experience with the Los Angeles Unified School District (*see* CRLR Vol. 1, No. 2 (Summer, 1981), p. 14). In May, 1981 the Commission released a highly critical report of the District which concluded by stating that the District was "plagued by gross mismanagement and waste." At that time the Commission decided to expand its investigation to include other large school districts and the Department of Education.

At its September 10, 1981 hearing the Commission received a progress report on its investigation of the San Juan Unified School District. The report commended the District on its efforts to close and consolidate underutilized school facilities. The District has closed eleven underenrolled schools in recent years. The progress report generally concludes that the District now employs or is in the process of implementing sound and efficient management techniques.

However, at least two commissioners, Post and Shapell, were skeptical. Both requested precise figures on the number of dollars saved by the District and the State Department as the result of the closures; teaching and administrative positions eliminated; and the amount of income generated by the lease or sale of the closed facilities.

The Commission is being assisted in its study of the state's education system by the Office of the Auditor General. In August, 1981 the Auditor General released a report (P-065) entitled "Overview of the Organization, Roles and Responsibilities of the State Department of Education." The report describes the powers, duties and responsibilities of the four major entities responsible for the administration of California's public school system — the State Board of Education, the State Department of Education, the County Board of Education and the local school district governing boards. The report also details the organizational structure of the State Department of Education.

At the September 10, 1981 Commission meeting representatives of the Auditor General delivered the study to the Commission. Chairman Shapell thanked the Auditor General for the informative "gentleman's report," and stated that the report would provide a good starting point for the Commission's investigation. However, Shapell was highly critical of the Department and accused it of "wasting so much money" particularly in the area of deferred maintenance.

Shapell appointed Commissioner Trugman as chairperson of the subcommittee responsible for the educational investigation. Trugman, who described the state's multi-layered educational system as "three infielders with one glove" or "three outfielders all chasing the same ball, colliding and none of them catching the ball," indicated public hearings will start in October. Public hearings on the San Juan Unified School District will either be held in September or October.

The Governor's reorganization plan that proposes the creation of the Department of Toxic Substances Control was

not submitted to the Legislature this year. In all likelihood the reorganization plan will be submitted to the Legislature early next year. It is expected that before submission to the Legislature, the Governor will re-submit the plan to the Commissioner for its recommendations. However, the Commission is unaware of when this might occur.

The Commission's investigation of the California Horse Racing Board continues but there have been no significant developments in recent months.

In conversation with the Commission's Executive Director, Les Halcomb, it was learned that the Commission will not investigate the Agricultural Labor Relations Board as requested by Assemblyman Kelley. It was also learned that the comprehensive USC historical study of the Commission will be complete by late September or early October.

RECENT MEETINGS:

On June 23, 1981 the Commission held a public hearing in Los Angeles about the Century Freeway. On August 3, 1981 the Commission sent a letter to the Governor, Speaker of the Assembly and President Pro Tempore of the Senate expressing the Commission's "deep concern" over "the unconscionable delays, and the chaotic economic and social effects" surrounding the Century Freeway Project.

The $2.8 billion project, approved in 1958, has not yet had the first square yard of concrete poured. The state has spent over $250 million purchasing a 17.3 mile, 600 foot wide right-of-way that is now sitting abandoned and idle. The letter states that because of rapidly increasing costs, the project "as presently envisioned [is] not attainable." The letter states that the size of the project must be reduced from that agreed to in the Consent Decree, if sufficient federal and state money is to be forthcoming. The letter concludes by recommending that a new federal proposal for a smaller project serve "as a basis for negotiations to get this long-delayed project completed ... and end a 20 year nightmare along the proposed freeway route."

In addition to the above described activities, the Commission also discussed the following matters at its September 10, 1981 meeting.

Mr. Tom Houston, Chairman of the Fair Political Practices Commission, appeared in front of the Commission to answer questions regarding a July 2, 1981 FPPC report entitled "Report of Financial Interests Disclosed by Agency Secretaries, Department Heads and Members of Regulatory Boards and Commissions, January 1, 1980-December 31, 1980." Many commissioners appeared upset over what they regarded as the selectivity of the report. Houston admitted that the report was not comprehensive and only covered the major regularity agencies, including the Commission. After 45 minutes of questions Houston mollified most of the Commission's concerns. It should be noted that the FPPC issued an identical report for the calendar year 1979 on June 5, 1980.

The majority of the September 10, 1981 hearing was devoted to a discussion of AB 653 (Torres). AB 653 proposes substantial changes in the state's Medi-Cal system. Basically, AB 653 proposes the creation of a nine member California Medical Assistance Commission (CMAC).

The CMAC, to be housed within the Health and Welfare Agency, would be empowered "to develop, direct and monitor alternatives to the existing Medi-Cal program and contract for their implementation." The CMAC would develop and administer pilot projects covering 15% of the Medi-Cal population. The CMAC would contract with health care providers to provide health care for a given number of Medi-Cal beneficiaries at a given price. If the costs exceed the contract price during the life of the contract, the provider will bear the loss. It is hoped that this form of "at-risk" bidding will be more effective in containing Medi-Cal costs than the present "fee-for-service" system.

Opponents to AB 653, including the Brown administration, contend that the industry dominated CMAC will just give away approximately $700 million to the established medical industry. The Commissioner voiced the same concerns, but later softened its opposition when informed that two of the doctors on the CMAC will be public health doctors and not private physicians.

DIVISION OF CONSUMER SERVICES DEPARTMENT OF CONSUMER AFFAIRS

1020 N Street, Room 504
Sacramento, CA 95814
Chief: Ron Gordon
(916) 322-5252

The Division of Consumer Services has the major responsibility for carrying out the provisions of 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. The Division has four units: the Legislation Unit, which represents the consumer before the Legislature; the Litigation Unit, which is authorized to initiate and intervene in lawsuits that affect consumers; the Consumer Education Unit, which publishes educational information and also performs some consumer complaint mediation, and; the Research and Special Projects Unit, which does precisely as its title implies. *(Please see* CRLR Vol. 1, No. 2 (Summer, 1981) at p. 16 for a complete introduction to the Division.)

The Division's most significant recent developments involve its Research and Special Projects Unit and the Litigation Unit. The Research and Special Projects Unit is expanding its Co-op Development Program to include Buying Clubs. Basically, buying clubs operate on the simple premise that bulk purchasing generates savings for the club consumers. The Division intends to promote the buying club concept, while at the same time providing them and existing co-ops material and technical assistance.

The Senior Citizens Discount Program continues to be successful. The Division is presently preparing its 1982 Sunset response for the Legislature.

The Division's Litigation Unit has recently become involved in an Administrative proceeding before the State Board of Equalization. The dispute arose out of the Board's determination that co-op membership fees and/or in lieu of labor time should be treated as gross receipts and thus subject to sales tax.

Many co-ops charge its members a fee, without which an individual cannot shop at the co-op. Many co-ops permit its members to donate an equal amount of labor in lieu of membership fees. It was the Board's contention that such fees and labor are taxable. This ruling left many co-ops with a sizable back tax liability.

It is the co-ops' position that the membership fee does not create a retailer-purchaser relationship. Payment of the required membership fee only creates a club-member relationship. The fees are nothing more than club dues and, as such, are not taxable. Payment of the fees gives the consumer the right to purchase at the co-op and is not in itself a taxable transaction. Many fee-payers (co-op members) may never exercise that right; they may never purchase anything at the co-op's register. Additionally, fee payment gives the member the right to vote in co-op elections and sit on the co-op's board of directors. (These latter privileges strengthen the club-member theorem.)

A petition for determination has been filed with the Board of Equalization. The Division filed an amicus on behalf of the petitioners. The Board's decision is expected later this fall.

INTERNAL GOVERNMENT REVIEW OF AGENCIES

THE ASSEMBLY OFFICE OF RESEARCH

1100 J Street, Fifth Floor
Sacramento, CA 95814
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. Brown, 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 has not yet completed any of the major research projects assigned to it this legislative session. However, AOR spokespeople did inform this reporter that interim reports will be released to the public later this fall. Additionally, the AOR, in cooperation with the Special Committee on Policy Research Management, intends to conduct some public hearings on some of the research projects. Specific dates and places for the public hearings have not yet been set.

The Governmental Operations Review project (GOR; *see* CRLR Vol. 1, No. 2 (Summer, 1981) at p. 18) continues to make progress. Project manager Art Bolton stated that a "substantial" public document will be released in January or February, 1982. Bolton anticipates some public hearings to be held upon release of the final report.

As previously reported, GOR focuses on the hiring, firing, purchasing and budgetary powers of the State Personal Board, the Department of Finance and the Department of General Services. The report also studies the problem of legislative and administrative branch program evaluation and oversight. Bolton summarized the GOR project with the broad question, "What can be done to make state government work better?"

The GOR report will contain specific legislative recommendations designed to streamline the administration of government and eliminate counterproductive, delay-inducing fragmentations of authority. Lastly, Bolton stated that GOR still enjoys the strong bi-partisan support of the entire Committee.

On July 9, 1981 pursuant to its 3rd reading bill analysis duty, the AOR produced a report on the Medfly. The report was done pursuant to a hastily approved Senate bill that would have required the aerial application of malathion. The report, although it does not contain a specific recommendation, clearly supports aerial spraying.

On August 10, 1981 AOR released a report entitled "Handling Federal Block Grants: Issues and Recommendations." The report was prepared in response to California's imminent loss of nearly one billion dollars in annual federal revenues. The reports recommend that in the short-term California not accept block grant administration authority but require the federal government to continue to administer the money. This delay will provide California time to assess the entire complex situation (complicated by the state's economic troubles) and avoid rash and precipitous decisions.

The report recommends that the best way to address the long range problems is for the AOR to undertake "a research project designed to produce recommendations for streamlining state/local relationships." The project will study the areas of: health, mental health/developmental disabilities, social services, criminal justice, housing/economic development, land use regulation and planning, and local revenue and expenditure constraints. The report summarizes the project as follows:

Local governments are obligated by state law to provide specific types and levels of service, yet Propositions 13 and 4 have limited their capacity to raise the revenue necessary to fund these services, while the state General Fund surplus is no longer available to assist in financing mandated services and the federal government's retrenchment in the area of human services demonstrates its unwillingness to take up the fiscal slack. Taking into account these fiscal changes, what is the most appropriate distribution of service responsibility and what revenue patterns would best suit this desired pattern of service responsibility? Can existing statutes be revised to simplify intergovernmental relationships, and continue to protect and serve current target populations?

This new project will present proposed legislative solutions by January or February, 1982.

SENATE OFFICE OF RESEARCH

1100 J Street, Fifth Floor
Sacramento, CA 95814
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.

Most of SOR's work is confidential and only distributed to legislators and legislative personnel. Although the public is not denied access to all of SOR's work product, it is hard to know what to ask for. We were informed that much of the work produced by SOR personnel is published in professional journals or delivered as speeches at various conferences and symposia (in addition to being delivered to the Senate). However, SOR does not keep a central bibliography of its employees' publications or speeches. As such, it is difficult to locate and utilize SOR's work product.

SOR did give the *Reporter* these reports: A paper presented at the California Riparian Systems Conference, Davis, California, September 17-19, 1981, by William M. Kier, Environmental Policy Specialist, Senate Office of Research, entitled "Diverse Interests in Riparian Systems and the Potential for Coalition"; a background paper on SB 508 (Mills) which establishes certain requirements for the construction of public buildings and housing along existing public transit lines (3/24/81); a memorandum on the Governor's budget proposal for funding of kindergarten-12th grade public schools (2/6/81); and a report on the proposed California Health Plan, which is a not-for-profit public interest corporation which will contract with health care providers to provide specified benefits to an enrolled population for a fixed amount (2/17/81); Gordon Rude, SOR).

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.

MAJOR PROJECTS:

The Board's largest assignment continues to be the AB 1111 review of existing regulations. The Board's various committees and the AB 1111 Task Force have met on several occasions. There is every expectation that the Task Force will complete its work and the Board will hold its regulatory hearing by February or March of 1982.

The Filipino lawsuit continues to haunt the Board. The Board has been very slow in implementing the settlement terms of the lawsuit, and the plaintiffs are growing restive. A three-member task force comprised of representatives of the plaintiffs, the Board and the Department of Consumer Affairs has been formed to review the entire matter and recommend specific actions to the Board.

In an effort to determine what standards and criteria the Board employed in grading its applicants, the task force reviewed the files of 100 non-Filipinos. It then applied these criteria to the Filipino applicants. An informed source told the *Reporter* that a significant number of Filipinos who were denied licenses would have been granted licenses if the non-Filipino standards had been applied. The task force intends to deliver this information and six case files (examples of the above-described disparate standards) to the Board on October 2 and 3 in Los Angeles.

The Board still has a lot of work to do before it fully complies with the terms of the settlement. The settlement requires the Board to review the files of denied Filipino applicants that it has on hand (approximately 100) and to search out and locate those Filipinos who would have applied to practice accountancy in California but did not because they were unfairly discouraged by the Board's (discriminatory) practices. It is estimated that this group could number as many as 300 individuals.

(For a complete discussion of the Governor's recent approval of the Board's appeal of OAL's decision disapproving Regulation 53, *see* CRLR Vol. 1, No. 2 (Summer, 1981) at p. 11.)

FUTURE MEETINGS:

The next Board meeting will be in San Francisco on December 4-5, 1981.

BOARD OF ARCHITECTURAL EXAMINERS

Executive Secretary:
Michael Cassidy
(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 BAE has primarily worked on appointing an executive secretary, creating a new California licensing exam and increasing the effectiveness of its enforcement division. The last edition of this *Reporter* (CRLR Vol. 1, No. 2 (Summer, 1981)) stated that BAE had appointed Silverenia Kanoyton as the first woman ever to serve as a BAE executive secretary. Rather than having its first woman, BAE again has a man for an executive secretary. Ms. Kanoyton accepted the job but never arrived to take the position. Instead, BAE must be content with the status quo, having Michael Cassidy as its new executive secretary. Mr. Cassidy appears very enthusiastic about his new position and is already involved with the Board's activities.

The issue of whether California should give its own exam rather than the national exam given by the National Council of Architectural Registration Boards (NCARB) has been tentatively settled after much negotiation. Just as the BAE had practically completed its new exam and was ready to possibly give it in June of 1982, the BAE and NCARB reached a compromise. The big issue was whether NCARB would grant reciprocity to California licensees if California gave a test different from the NCARB's test.

The issue of reciprocity is now a moot point. At a meeting in Washington D.C., members of BAE, NCARB, the American Institute of Architects (AIA) and others reached the following understanding. First, all parties agreed to preserve a national examination system. Thus, California will not give its own exam. Since the BAE had virtually completed its test, the BAE will provide its proposed present examination specifications and material and any future information to NCARB for integration into the creation of the new NCARB test. Hence, BAE will give the present NCARB exams to possible California licensees in December 1981 and 1982. In return for BAE's continuation of the NCARB test, NCARB has agreed to work on a new exam which considers BAE's suggestions. This new NCARB exam is tentatively to be implemented by December 1982.

Regarding the enforcement procedure, BAE is continuing to improve its enforcement after the Department of Consumer Affairs audited the Board.

RECENT MEETINGS:

The Board's most recent meetings were on August 20 and 28, 1981. The August 20 meeting at San Francisco was the peak of the controversy about the California exam issue according to John Shahabian, the acting executive secretary during the previous transition period.

The BAE mostly dealt with the exam issue during the AB 1111 hearing. The controversial proposed regulations in Article III including sections 116, 116.5, 121 and 122 which were discussed at the August 20 hearing dealt with the examination procedure and content. Many citizens and NCARB testified. NCARB read a long anti-California exam statement which basically said that a separate California test would be wasteful because it would duplicate NCARB's research. NCARB pointed its finger at Hal Levin, a BAE board member, as the major reason the BAE was considering giving a separate exam. NCARB said Levin's discontent with the NCARB test caused BAE to create a new exam.

The BAE had considered not giving the December 1981 NCARB test and just waiting until March to give its new exam. Many students and other interested persons voiced their concern at not having

the opportunity to take the December exam. The BAE made no decision about the Regulations and decided to wait until the conference in Washington D.C. had occurred.

Another event of interest was the report of the Department of Consumer Affairs audit. Frank O'Connell represented the Department and told the BAE that approximately 75% of the complaints the BAE was responding to were not within its jurisdiction. These non-jurisdictional complaints concerned advertising by non-licensed architects. BAE has no jurisdiction over unlicensed architects so it has no authority to reprimand them. The BAE is presently working on resystematizing its enforcement method.

The August 28 meeting merely codified the results of the Washington D.C. meeting.

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 bill was amended so the BAE has a total of thirteen members consisting of five public members, one building designer member and seven architect members. The AIA supports the bill which gives the BAE a majority of architect members. All the members would be appointed by the governor except the speaker of the Assembly would appoint three of the architect members and the Senate Rules Committee would appoint another three of the architect members. After a discussion, the BAE reaffirmed its opposition to the Ellis bill with one vote opposing the motion and one vote of abstention. SB 165 became a two year bill when the bill did not emerge out of the Ways and Means Committee. It will probably be heard in January 1982.

SB 613 (Johnson): This bill is of importance because the BAE has tacked on a defficiency bill because the BAE needs money to give the December 1981 exam. Executive Secretary Michael Cassidy was dubious as to what would happen if the bill did not pass giving BAE the needed money.

FUTURE MEETING:

The Board's next meeting will be late October in Los Angeles. Date and location presently unknown.

ATHLETIC COMMISSION

Executive Officer: Vacant
Acting Executive Officer: Steven English
(916) 445-7897

The Athletic Commission regulates amateur and professional boxing, contact karate and professional wrestling. The Commission consists of five members serving four year terms each. All members are "public" as opposed to industry representatives. The Commission is Constitutionally authorized and has sweeping powers to license and discipline the sports in its jurisdiction. The Commission licenses promoters, booking agents, matchmakers, referees, judges, managers, announcers, ticket-takers, ushers, timekeepers, seconds, boxers and wrestlers. Most emphasis is placed on boxing, where regulation extends beyond licensing and includes equipment and weight requirements, physical examination requirements and the separate approval of each contest to preclude mismatches. Commission inspectors attend all professional boxing contests.

MAJOR PROJECTS:

The major projects of the five 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 requied 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 adopted in late 1980 and was 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 January 1 of 1982.

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 requiements 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. Several of the deregulation proposals were rejected bv OAL, apparently as a result of ignorance *(see* Commentary discussion *supra)*.

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 included 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 were conducted by staff with no additional public response.

In order to implement the secondary package above, and to make other changes, the Commission drafted AB 2322 (Kapiloff). This bill has passed the Legislature, and now awaits the Governor's signature. 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 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.

2. The Commission has decided to once again review its relationships with international and national boxing organizations, chiefly the WBA and WBC. These two international boxing associations rival each other and have separate lists of "champions" and "contenders." Most state Commissions tend to belong to one or the other of these two organizations, although both are private in nature. California has traditionally been allied with the WBC, directed by Jose Sulaiman of Mexico. After an examination of its policies in 1980, the Commission voted to maintain its independence from any international organization, but to assist any who request help on a nondiscriminatory basis. This decision followed, among other things, the squelching by the WBC delegates in 1978 and subsequent years, of plans to raise funds for a boxing pension-disability plan for boxers. Although WBC and WBA conventions are replete with emotional demonstrations of concern for boxer safety and welfare, several of the California commissioners have been unimpressed with the underlying sincerity of international delegates who seem to represent local promoters more than the exalted principles espoused.

3. The Commission is increasingly concerned with unlicensed kickboxing (*see below*).

RECENT MEETINGS:

The Athletic Commission met on August 28, 1981 and on September 18, 1981, both times in Los Angeles. The August meeting consisted largely of a gripe session directed at Executive Officer Javier Ponce. Former Executive Officer James Baiz complained that he was discriminated against and mistrusted by Mr. Ponce. The three members of the Los Angeles office, including Chief Deputy Inspector Joe Olmos, complained bitterly about Mr. Ponce. The Los Angeles Office has obtained a copy of a letter written by Mr. Ponce criticizing Mr. Olmos in personal terms. The testimony was in public session because the "Open Meetings" statute puzzlingly allows for closed sessions to discuss only personnel matters of civil service employees, and the Commission's Executive Officer is not part of civil service but "serves at the pleasure" of the Commission. The Commissioners responded to the testimony by adding their own complaints about Mr. Ponce.

The August meeting was attended by the two new Commissioners appointed by Governor Brown, one to fill a long standing vacancy and the other to replace Rudy DeLeon. The new Commissioners, Henry Fowzer and Haig Kelegian, both of Los Angeles, were among those hostile to Mr. Ponce. Sensing a lack of Commission support and facing an inevitable vote of dismissal within the next several meetings, Mr. Ponce wrote a letter of resignation, effective September 18, 1981.

The Commission is now faced with the task of replacing the Executive Officer and is advertising the position. Meanwhile, several other personnel matters complicate the picture. John MacDonald, one of three inspectors in Los Angeles, is retiring before the end of the year. The job description is so limited that only one candidate qualified when the slot was made available on a temporary basis. The Commission is trying to get the Personnel Board to change the description so it can choose between a substantial number of candidates. Finally, the third of the Los Angeles inspectors, George Johnson, is petitioning the Personnel Board to require the Commission to return him to San Francisco. Johnson had been assigned to San Francisco in the late 1970's when he was dismissed after he admitted he had altered a weight card. In a decision which still baffles those familiar with the case, the Personnel Board later ordered Johnson reinstated with back pay and benefits. The Commission voted, for its own reasons tied to internal clashes at the time, not to appeal the decision of the Personnel Board. If Johnson is allowed to go to San Francisco, it is unclear how Los Angeles would be staffed.

At the September 18, 1981 meeting, the Commission voted to review its associations with the WBC and WBA, particularly since two of the Commissioners were not on the Commission when the existing policy was decided. By-laws and articles on the various organizations are being reviewed.

The problem of unlicensed kickboxing came up again in the September meeting. Apparently, many promoters are holding matches and calling them "non-contact" karate to avoid gate taxes and Commission regulation, except there is a great deal of contact and increasing injuries.

The Commission has ordered a warning press release and has instructed staff to order the immediate arrest of promoters who sponsor events where there is substantial contact without the physical examination, and other safeguards of the Commission.

The Commission also discussed its continuing problem with OAL. The Commission is openly amused at what it perceives to be a combination of arrogance and ignorance by the review body. OAL has taken to the Commission's contempt of it by engaging in hypercritical reviews and inevitable rejections of its proposed rules. The largest victim so far has been the wrestling reform rules *(see* Commentary discussion *infra*). What brings smiles to most of the Commissioners is the inevitable conflict when Governor Brown is asked to uphold the OAL rejection of these rules. The rules are proposed by the NAACP and the Commission intends to let that organization and the OAL battle out the issue. These rules have been renoticed since many of the some dozen bases for OAL rejection involved disputes over the precise timing of the notice, who was mailed copies of it, etc. Although the rules were discussed in several consecutive meetings as an agenda item with a great deal of testimony, the Commission intends to have the issue of OAL authority isolated for the Governor and the courts, and will renotice the matter with a degree of procedural overkill.

The Chairman of the Commission has submitted a letter to the Governor announcing his resignation. Chairman Robert Fellmeth is editor of the instant publication, and although Commission work is substantially volunteer (members are paid $50 per meeting), prefers to devote all of his time to the Center for Public Interest Law. Mr. Fellmeth will stay several more months or until the Governor finds a replacement to prevent quorum problems on the five member Commission.

FUTURE MEETINGS:

November 20, 1981 in Los Angeles. The Commission intends to discuss the tertiary rule package at a licensing meeting in a Los Angeles downtown boxing gym or arena. The hope is to solicit commentary from boxers and others at the "grass roots" level.

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, also 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 which do not live up to its standards.

The Bureau is assisted by an Advisory Board of nine members, five from the general public and four from the industry. There is one vacancy at present.

MAJOR PROJECTS:

The Bureau will begin its informational meetings on AB 1111 during the month of September. The first is scheduled for September 22 at 1:30 PM at the Bureau's Sacramento office at 3116 Bradshaw. A second will be held in Los Angeles on September 29th, also at 1:30 PM at the Bureau of Medical Quality Assurance Building, 8939 South Sepulveda, in the conference room.

The Bureau is *still* following several pieces of legislation. SB 380 (Holmdahl), the Bureau-sponsored fee bill, was recently passed by the State Legislature, without much opposition, and has gone to the Governor. As amended, the bill provides for a $100 fee instead of the $125 fee the Bureau had originally hoped for.

No action has been taken since our last report concerning SB 1232 (Presley), the volunteer shop-certification bill. Doug Laue commented that a bill similar to SB 1232 was vetoed by the Governor of New York, though the Governor approved of the plan in theory, because the bill did not provide for self-funding.

The controversial "Smog Bill" SB 33 (Presley), which will be administered through the Bureau, if passed, has passed the Senate, and the Assembly should be taking it up in January, 1982. If the bill passes, the effective date would be January 1983.

Laue was unable to give any specific information of the status of AB 1979 (Floyd), which would effectively repeal section 3303.1, establishing a consumer information system to provide consumers with information about repair facilities registered with the Bureau. However, Dan Bunsher of the Bureau's Legal Department informed us that the bill passed out of the Senate on September 8, and has gone to the Assembly (Enrollment Committee).

RECENT MEETINGS:

The last meeting of the Advisory Board was on July 31, 1981 in Anaheim. At that meeting, Bureau Chief Wiens was to instruct the members on the AB 1111 review process.

FUTURE MEETINGS:

The first meeting of the Advisory Board following the two AB 1111 informational meetings will be on October 6, 1981 at the Bureau's Sacramento office.

BOARD OF BARBER EXAMINERS

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

The Board of Barber Examiners sets professional standards for teaching, examining and licensing barbers; inspects barber shops; and generally assures that the public receives competent services in a sanitary environment. The five-member Board currently has two vacancies.

MAJOR PROJECTS:

Two major ongoing projects are AB 1111 review and revision of the professional licensing exam. The Board is now finalizing its Statement of Review Completion for submission to OAL.

An exam review committee is studying the "job task" of barbering in order to devise an appropriate new exam.

FUTURE MEETINGS:

October 18, San Diego.

BOARD OF BEHAVIORAL SCIENCE EXAMINERS

Executive Secretary: Samuel Levin
(916) 445-4933

The Board of Behavioral Science Examiners is responsible for licensing marriage, family and child counselors (MFCC), licensed clinical social workers (LCSW) and educational psychologists. The Board defines the scope of services which may be provided by each category or licensee, establishes education and experience requirements, designs and 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. Two new public members, introduced at the September 1981 meeting are Richard Gaylord and Harold Sturza.

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 Board has been wrestling with the task of revising the consumer education brochure. Two years of work has yet to produce a revision satisfactory to all Board members.

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. 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. 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.

RECENT MEETINGS:

Board members are responsible for designing six examinations per year — both written and oral examinations — for the three groups of licensees. The Board is acutely aware of current suits challenging the licensing examination of the Psychology Examination Committee. The BBSE is attempting to take preventative measures to insure that their examinations meet the standard of job-relatedness. A budget proposal has been submitted to DCA for a test validation specialist to be employed by the BBSE but to operate under the aegis of DCA's Central Testing Unit. It is envisioned that the test specialist will work closely with Board members in the process of soliciting and selecting test questions.

The Board has also submitted a budget request for a word processor which will provide absolute test security and statistical information on the examinations.

The BBSE is operating with a budget surplus of approximately $400,000. To reduce the surplus, the Board originally proposed both decreasing fees and switching to a cyclical fee renewal. Due to increases in the proposed 1982-83 budget, the Board decided in July not to reduce fees but to begin licensing on a cyclical basis.

The Board decided at the September meeting to formulate a policy with regard to a time limit for retaking the MFCC oral examination. Present regulations cover only the written examination.

AB 1111:

The BBSE has held two AB 1111 information hearings. The first was held on July 10 in San Francisco, and covered the MFCC regulations. The second, on September 11 in Los Angeles, considered the educational psychology regulations. The meetings were structured as issue-gathering hearings only. The Board prepared issue papers on the regulations and heard comment from the public.

The Board's issue papers stated that the BBSE would take the opportunity of the AB 1111 hearings to again discuss disclosure regulations. The Board did not in fact raise this issue. However, it is highly questionable that considering a new disclosure regulation would have been appropriate or even authorized. AB 1111 specifically mandates reviewing *existing* regulations with the goal of weeding out unnecessary, unclear or unauthorized regulations. Considering controversial new regulations at an AB 1111 hearing is clearly contrary to the spirit and intent of the law.

The Board will hold an information hearing on the LCSW regulations on November 20.

LEGISLATION:

AB 1762: would change the name of the MFCC License to "Marriage, Family and Child Therapist." The bill is meeting stiff opposition from the California Medical Association (CMA), California Psychiatric Association (CPA), The California State Psychological Association (CSPA) and Blue Shield of California. The BBSE has not taken a position on the bill.

FUTURE MEETINGS:

The next meeting of the BBSE will be November 21, 1981. Location to be announced.

CEMETERY BOARD

Executive Secretary: John Gill
(916) 920-6078

The Cemetery Board licenses cemeteries, crematories, cemetery brokers, and salespersons. Religious cemeteries, public cemeteries, and private cemeteries established before 1939 which are less than ten acres in size are all exempt from Board regulation. Because of these broad exemptions, the Board has only 185 licensees, primarily brokers and salespeople. A license as a broker or salesperson is issued if the candidate passes an examination testing knowledge of the English language and elementary arithmetic, and demonstrates a fair understanding of the cemetery business.

MAJOR PROJECTS:

The Board is currently reviewing its regulations as required by AB 1111. The Board responded to the comments received at its first review hearing regarding 16 CAC 2370, special care funds, (*see* CRLR, Vol. 1, No. 2 (Summer, 1981) p. 25) by categorizing and analyzing its consumer complaints. Since the majority of the complaints involve maintenance of cemetery grounds, and the Board has not received complaints about the handling of trust accounts, it has decided to ignore all criticisms of this regulation. The final informational hearing concerning Article 1 general and Article 2 fee regulations will coincide with the next Board meeting.

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

RECENT MEETINGS:

Because the Board does not conduct its meetings in the order listed on the agenda, but rather on a "who wants to leave first" basis, and does not clearly indicate which item is under consideration, it is often difficult to determine what action the Board is actually taking.

At its last meeting on July 27, 1981 the Board primarily conducted routine business, approving crematory and brokers' license applications. The Board approved an application for a brokers' license made by the attorneys for a cemetery's prior owners, who purchased the property at a foreclosure sale. This is despite the fact that $350,000.00 is missing from the cemetery's endowment care fund. The Board neglected to take advantage of this opportunity to require full funding of all trusts as a condition of granting the license, and instead chose to rely upon assurances that the problem would be resolved. However, the Board did direct the Executive Secretary to send a letter inquiring about the missing trust funds.

Also under consideration was an application by a real estate development and property management firm for a certificate of authority to operate a cemetery. The cemetery occupies part of a parcel of land the company hopes to purchase, with plans to develop the undedicated portion as an industrial park. Because their application was incomplete, the Board will consider it further at its next meeting. However, the Board did express some concern about those who operate a cemetery secondary to another business.

The Board approved its budget, which had previously been adopted by the Department of Consumer Affairs.

The Board is considering legislation to clarify special funding requirements, and studying the desirability of legislation to include cryonic suspension within its

jurisdiction. An Attorney General Opinion, 63 Ops. Cal. Atty. Gen. 879 (12-11-80) concluded that the holding of human bodies in cryonic suspension did not constitute the operation of a cemetery. Cryonic suspension is thus unregulated.

SB 339, introduced by Senator Foran at the Board's request, would prohibit the interment, scattering, or commingling of the remains of one person with those of another without the express written permission of those entitled to control the disposition of the remains.

The Board continues its attempt to obtain a purchaser for Hills of Peace, an abandoned cemetery located atop a hill, which experiences flooding problems resulting in caskets sliding down the hills whenever it rains.

FUTURE MEETINGS:

The Cemetery Board presently consists of three public members and one industry member. Because there are currently two vacancies on the six-member Board, each member must attend the quarterly meeting to provide a quorum. However, one of the Board members is currently working on the East Coast and another in the Midwest. Therefore, the next meeting will not be set until the Executive Secretary is able to determine a time when all members will be in California.

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 not 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.

The Bureau is currently implementing legislation regarding repossession. AB 1453 takes effect January 1, 1982, and will greatly expand the authority of the Board to regulate this industry. The new law provides for the assessment of administrative fines for violations of regulations, and clamps down on unlicensed repossession. Finally the law sets forth clear guidelines for when and where a car may be repossessed, and procedures for return of personal property. Specific administrative remedies are provided for violations of these guidelines. The Bureau is now formulating regulations that will assist in implementing the new law.

The Bureau is also proposing new regulations for firearms training programs for private security guards. The regulations call for more specific and detailed requirements, including the expansion of mandatory training hours to sixteen. These rules have been rejected by OAL (*see* Commentary discussion *infra*). The Bureau has yet to respond to the recent disapproval of OAL.

With regard to collection agencies, the Bureau is presently redrafting regulations which would bring attorneys who do substantial collection work under the Bureau's regulatory authority. 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 Bureau had previously proposed similar regulations and had taken public testimony in May. As a result of these May hearings, the Bureau had decided to make some minor alterations in the regulations. The OAL advised the Bureau that the proposed changes would substantially alter the regulations and require new public hearings pursuant to the Administrative Procedure Act. The Bureau will hold a hearing in October with regard to the redraft.

RECENT MEETINGS:

The Collection Agency Advisory Committee held its quarterly meeting in San Diego on September 18. The main topic of discussion concerned the applicability of collection agency regulations to collection agency sales offices. Currently such sales offices are required to be licensed and are regulated like a collection agency. However, these sales offices do not directly engage in collection work. The Committee discussed the possibility of legislation which would create a special license for sales offices. Such a license could be obtained without complying with the more stringent collection agency licensing procedures.

FUTURE MEETINGS:

The Bureau will hold public hearings regarding the regulation of attorneys who do collection work on October 19 in Oakland. The Bureau's AB 1111 hearings are scheduled to commence sometime in November.

BOARD OF REGISTERED CONSTRUCTION INSPECTORS

The Board of Registered Construction Inspectors was Sunsetted on June 30, 1981, and, as such, no longer exists. There are two bills, SB 206 (Alquist) and AB 2114 (Young), which, if enacted, will recreate the Registered Construction Inspectors Law and Board on January 1, 1983. However, neither bill has been very successful. SB 206 has been placed on the inactive file at the request of Senator Alquist and AB 2114 is stalled in Ways and Means. If neither bill passes, it is expected that the Department of Consumer Affairs will request legislative authority to refund Board-collected fees on a pro rata basis.

Of course, if the Board is recreated, the *Reporter* will, once again, report its activities.

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 functioning as an Executive Committee. The Committees further information and do not require a quorum.

MAJOR PROJECTS:

The Board's recently implemented citation system is in full operation. There are 97 cases pending under the citation statute. Under the system, any contractor cited has 15 working days to appeal all or part of the citation's conditions. Complaints are to be investigated and in most cases contractors will be given the opportunity to resolve complaints prior to citation. There has been a $250 average fee and most citations include orders to correct. The Board is encouraged by the flexibility of the citation system — the previous limited alternative of suspension or revocation of a license (i.e., of the right to work) was a draconian and hence rarely used sanction.

The "Fresno Proposal," which was approved at the last meeting, will establish a comprehensive monitoring program to stop construction activity of unlicensed contractors. It has received some favorable press. After a slight delay due to a fund shortage, the program should be fully functioning in September. Meanwhile, seven of the Board's Consumer Services Representatives located in district offices throughout the state were assigned full time as the Board's nonlicensee specialists. They are contacting local prosecutors and other agencies with enforcement capabilities to gain their cooperation and publishers and advertisers to inform them of contractor licensing laws regarding advertising. Additionally, they are monitoring newspaper and phone directory advertisements and the issurance of building permits to identify nonlicense activity.

The budget is a major continuing project for the Board. As of September, 1981 the CSLB has overspent its budget by a projected $200,000. There is much concern over the Attorney General's billing for legal services, which is considered extremely high. The staff is working to get the budget in a more realistic framework and will report to the Board at the next meeting.

A "Complaint Disclosure System" has been a continuing project of the staff and Board for much of 1981. As of September, 1981 data on disclosable complaints opened from July 1, 1979 to present is now available from CSLB regional offices. However, the future of the Complaint Disclosure Program is in question. AB 1979, which would limit disclosure to the public of complaints against licensees, may be passed in 1981 or 1982 (*see* Legislation section).

RECENT MEETINGS:

The July meeting of the CSLB featured the 4 public service announcements recently completed by Chico State University dealing with unlicensed contractor activity. The Board hopes that these will be aired all over the state to alert the public to possible problems in dealing with "unlicensed contractors."

Home improvement contracts were discussed because of the unique problems inherent to this type of work. A list of recommendations will soon be submitted to the Board which will define problem areas (e.g., bonding requirements, common complaints, complaint disclosure). The Board will consider developing a new classification only after extensive research. Also in the home improvement area, the Board is setting up "workmanship" standards.

After investigating solar energy contracting, the Board has decided not to add a special classification solely for this type of work. The study found that most solar contractors were already contractors under an existing classification and it would be unfair to require a new license. Additionally, the Board felt that the solar energy market is not as stable as it appears; the Board will redefine one of its existing classes to include solar energy work.

The Board also discussed the existing fee structure of the CSLB funding which is a problem. Registrar John Maloney explained that they may have to raise fees to keep the Board from a huge deficit. The staff is in the process of trying to draw a correlation between the fees charged and the costs of running individual programs. This will be discussed further at future meetings in late fall.

Maloney also discussed the procedure for waiver of examination. Effective August, 1981 the registrar can waive exams within his/her own discretion and grant a license without exam passage. The Board is considering possible criteria. As of August, the Board gave Maloney authority to waive examinations, proceeding on his good judgment. However, the Board requested that he "submit a report" at each meeting of all waivers granted. This was characterized by one Board member as "a vote of confidence with reservation."

Finally, the Board discussed the possibility of once again holding hearings to amend Board rule 794.2 — Notice to Owner Requirements. As it stands now, the forms for Notice to Owner are allegedly very complicated and ambiguous. There have been numerous complaints on this subject in the past. This matter was referred to Committee and will be reported on at the October-November meetings.

LEGISLATION:

AB 1397 — This will give CSLB "departmental" status, removing it from the present limited jurisdiction of the Department of Consumer Affairs. There was a hearing on August 7, and the Board was going to send a representative. The Board voted to remain neutral until an impartial study is done to provide needed information.

AB 1590 — Waiver of Exam by Registrar. This bill will give the registrar a greater discretion in waiving contractor's examination. It was introduced at the same time that the similar Board rule was pending, but the Board rule is now functioning.

AB 1079 — Complaint Disclosure — the Board opposed this bill because it is not as stringent and comprehensive as the current Board procedure. This bill gives authority to the registrar in complaint disclosure procedures in very limited circumstances.

AB 465 — Grants the registrar authority to give citations and levy civil penalties on nonlicensed contractors.

FUTURE MEETINGS:

The next meeting of the CSLB will be in Santa Rosa on October 28th — 30th. The AB 1111 public hearing will be on October 28.

BOARD OF COSMETOLOGY

Executive Secretary: Harold Jones (916) 445-7061

The Board of Cosmetology, like the Barber Board, regulates the "beauty" industry by teaching, examining and licensing. It has seven members, four public and three from the industry.

The Board's AB 1111 review continues. OAL recently approved an accelerated Schedule of Completion; the regulation review will now end in January, rather than March, 1982. A $1.1 million budget surplus remains a major concern. Cosmetology is a "special funded" Board. When a special funded board has a surplus exceeding two years' operating expenses, the Legislature can place the

excess in the General Fund. To avoid losing the surplus, the Board must reduce it. According to Harold Jones, the Executive Secretary, Cosmetology is devising various projects whose funding would lower the surplus.

MAJOR PROJECTS:

As noted, the Board's AB 1111 completion schedule has received OAL approval. At its September meeting, the Board adopted a Statement of Completion for Articles 1, 2, 3 and 8 of its regulations. An extremely successful AB 1111 public hearing on Articles 2 and 4 took place in San Diego on September 20. Over 100 persons attended, some giving heated testimony for and against continuation of the junior operator (apprentice cosmetologist) classification. Another public hearing has been noticed for Sunday, November 15, in Monterey.

The Board adopted a fee reduction schedule which may also reduce the budget surplus as well. There will be a one-time reduction of license renewal fees for both individuals and cosmetology schools in September, 1982 coupled with a further reduction of subsequent renewal fees. The proposal now goes to the Governor.

RECENT MEETINGS:

The Board met in San Diego on September 10 and 21. In addition to the public hearing, regulatory review and budget surplus business, various committees, including Legislative, Administrative, Exam and Consumer Services reported.

Prompted by complaints from industry and the public, the Board conducted an undercover operation against a "bogus beauty school" in Los Angeles. Two men have been arrested and charged with grand theft. The pair were evidently operating an expensive, inadequate cosmetician course. According to Mr. Jones, they also provided false Affidavits of Experience to enable untrained persons to take the state licensing exam. Applicants must by law complete 600 hours of approved course work to take the exam; some holders of phony affidavits had no training whatsoever. The two suspects have been arraigned and the Board plans disciplinary action as well.

The Legislative Committee updated current pertinent legislation. AB 1674, the Board's "clean-up" bill, has gone to the Governor for signature as has SB 612, which gives the Board authority to monitor cosmetology schools. The Board supports both bills. It opposes two Sunset measures, AB 54 and SB 26, in their present form.

Board member Marlene Brocker concluded the meeting by urging licensees and the general public to report abuses and consumer frauds through a toll-free number, 1-800-952-5673.

FUTURE MEETINGS:

November 15, 16, 17, Del Monte Hyatt House, Monterey.

BOARD OF DENTAL EXAMINERS

Executive Secretary: Rodney N. Stine
(916) 445-6407

The Board of Dental Examiners issues state licenses to practice dentistry to those applicants who successfully pass the examination administered by the Board. The Board is charged with enforcing the provisions of the Dental Practice Act (Business and Professions Code, Section 1600 et seq.) through various disciplinary measures. The Board consists of three public members and eight practicing dentists.

Dental auxiliaries are also regulated by the Board. The Board is assisted in this regulatory effort by its Committee on Dental Auxiliaries. Although the Committee enjoys a sizeable degree of independence from the Board, it has no regulatory authority of its own, and acts in a purely advisory capaicty vis-a-vis the Board. The Committee has nine members.

MAJOR PROJECTS:

The Board has recently hired a new Executive Secretary. Mr. Rodney N. Stine, former Executive Officer of the Structural Post Control Board, started his tenure on October 1, 1981. Acting Executive Secretary Frank O'Connell returns to his International Audit Manager position within the Department of Consumer Affairs.

The Board's AB 1111 review of existing regulations (Title 16 CAC, section 1000 et seq.) continues. The regulations that have generated the most interest to date are those that involve dental auxiliaries. The Board has received a great deal of testimony opposing the Board's liberalization of dental auxiliary requirements. Board spokespeople have characterized this testimony as "protective of existing industry economic interests." To date, the Board has largely resisted this opposition and is continuing the trend towards less regulation of dental auxiliaries.

This testimony is just another episode in the long battle between the dominant factors of the dentistry profession and representatives and allies of the dental auxiliaries profession. The battle revolves around the questions: "Which functions will licensed dental auxiliaries be permitted to perform?" and "How much supervision is required of dental auxiliaries by dentists as they perform these permitted functions?"

Dentists are largely in favor of restricting the number of functions that auxiliaries may legally perform, while at the same time requiring auxiliaries to be directly or generally supervised by dentists as they perform the enumerated functions. Auxiliaries, on the other hand, support less restrictive job task lists and less supervision. Auxiliaries argue that the public will receive more dental care at a lower cost if they prevail. Some dental tasks, such as a dental hygienist cleaning teeth, should be performed with only a minimum of State regulation (registration) and without supervision by a dentist.

The Board's proposed Diversion Program is making some progress but remains in the planning stage. *(See* CRLR Vol. 1, No. 2 (Summer, 1981), p. 28). Basically, a diversion program would give a dentist who is a substance abuser this option: either enter the rehabilitation program and continue practicing or face disciplinary action and possible suspension or revocation of his or her license.

The Board is investigating the costs involved in such a program. The basic trade-offs for the Board is the cost of prosecuting a disciplinary action versus the cost of administering a diversion program. (Some estimates for the latter are as high as $200,000 to $300,000 a year.) It is expected that in any diversion program the participants will pay the direct costs. Nevertheless, there are many indirect costs involved, some of which are hard to project. The Board is in the process of estimating those costs. The diversion program has recently started to generate some support from the California Dental Association.

The Board has hired its own investigators and Acting Executive Secretary O'Connell indicated that no implementing regulations were necessary or forthcoming.

The Attorney General has not responded to the Board's request for an opinion on the legality of establishing a referral service for dentists.

SB 122 (Keene), an urgency statute to take effect immediately, was signed by the Governor and filed with the Secretary of State on April 8, 1981. SB 122 extends the "grandfather window" until January 1, 1982. SB 122 further specifies that the Board may only reject a grandfather application for an anesthesia permit if "an on-site inspection and evaluation of facilities, equipment, personnel, the licentiate, and the procedures utilized by such licentiate indicates that a permit should not be issued."

FUTURE MEETINGS:

The Board is scheduled to meet November 13 in Los Angeles and December 11 at an undetermined location. (The L.A. meetings were originally scheduled for the Marriott Hotel, but have been moved. The Marriott hotel chain is largely owned by the Mormon church which opposes the ERA. Because California's current administration supports the ERA, it has been suggested by administration spokespersons that state agencies not convene at Marriott hotels.)

BUREAU OF ELECTRONIC AND APPLICANCE 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.

MAJOR PROJECTS:

During May, 1981 the Bureau received 133 complaints and resolved 139. Over one hundred verbal complaints were received and resolved by telephone. For 61 complaints, the Bureau found no violation, but resolved the complaint by mediation, adjustment or referral. There were 16 informal adjustments made. Total communications, including all incoming and outgoing letters and telephone calls, were 13,174. Of these, 7,960 were annual renewals. As of May 31, the Bureau had 8,693 registrants. There were 91 new registrants during the month. The Bureau conducted 128 inspections, issued 7 notices of violation and 45 notices of non-compliance. One criminal action was filed and one registration revoked. Total monetary relief was $7,368.00.

During June, 1981 the Bureau received 146 complaints and resolved 115. Ninety-three verbal complaints were received and resolved by telephone. For 51 complaints, the Bureau found no violation, but resolved the complaint by mediation, adjustment, or referral. Total communications, including all incoming and outgoing letters and telephone calls, were 10,542. Of these, 158 were applications for registration. As of June 30, the Bureau had 8,805 registrants. The Bureau conducted 113 inspections, issued 1 notice of violation and 109 notices of non-compliance. Two registrations were revoked. The Bureau made 16 informal adjustments, and total monetary relief was $4,131.

During July, 1981 the Bureau received 158 complaints, resolved 146 and made 13 informal adjustments. One hundred and thirty-six verbal complaints were received and resolved by telephone. For 48 complaints the Bureau found no violation, but resolved the complaint by mediation, adjustment or referral. Total communications, including all incoming and outgoing letters and telephone calls, were 7,838. One hundred and seventy-five applications for registration were received. As of July 31, the Bureau had 8,535 total registrants. The Bureau conducted 111 inspections, issued 4 notices of violation and 107 notices of non-compliance. Total monetary relief was $3,857.35.

During August, 1981 the Bureau received 153 complaints, resolved 139 and made 8 informal adjustments. One hundred and fourteen verbal complaints were received and resolved by telephone. For 57 complaints the Bureau found no violation, but resolved the complaint by mediation, adjustment or referral. Total communications, including all incoming and outgoing letters and telephone calls, were 6,545. Over one hundred applications for registration were received. As of August 31, the Bureau had 8,667 total registrants. The Bureau conducted 158 inspections, issued 4 notices of violation and 84 notices of non-compliance. Total monetary relief was $5,398.39.

The Bureau held its final AB 1111 regulation information hearing on September 18, 1981 when it reviewed its Article 2 and Article 3 regulations concerning registration of service dealers and invoices, estimates and records. The Bureau is forwarding all comments and recommendations to OAL.

The Board is continuing its attempt to resolve the problem of low in-warranty repair rates. It sent letters to electronic and appliance repair industry associations requesting identification of the problems they have experienced with manufacturers. To date the Board has received little response. The manufacturers base the low in-warranty rates on their belief that the dealers will benefit from subsequent out-of-warranty repairs. However, the Bureau is concerned that out-of-warranty customers may be charged more by the dealers in order to compensate for the low in-warranty rates.

The Bureau's fee bill, SB 317, was amended in the Assembly on August 20, 1981 and has been signed by Governor Brown. The amount of increase in the maximum registration and renewal fees was reduced from the increases contained in the original bill. In addition, these fee provisions would be repealed on July 1, 1984 unless extended by future legislation.

RECENT MEETINGS:

The Bureau's Advisory Board is comprised of 2 representatives of the electronics industry, 2 representatives of the appliance 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 last quarterly meeting on September 18, the Board again considered the Atari Video game repair complaints the Bureau has received. The Bureau has been unsuccessful in its attempts to contact Atari, but will continue to do so in an effort to resolve this problem informally. If Atari refuses to register, the Bureau plans to take action against them.

The Bureau has also contacted Tandy Corporation to advise it of the responsibility to register with the Bureau those Radio Shack locations advertising repair service.

The Board is attempting to resolve the problems service dealers have experienced with Sanyo, which has been unable to furnish parts to California service dealers within a reasonable length of time.

In addition, the Board referred to its Legislative committee for consideration the desirability of introducing legislation to include installation of automobile radios and stereos, repair of all home electronic products and installation and repair of direct satellite television antennas within the Bureau jurisdiction.

FUTURE MEETINGS:

The next Board meeting is December 18, 1981 in Monterey.

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 six of its seven positions filled. The vacant seat is for a public member. Ms. Siplin hopes this seat 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 Board's greatest concern is AB 1633, 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 a bill very similar to this passed in both the Assembly and the Senate, but was vetoed by Governor Brown. The Bureau is adamantly opposed to this bill, contending that it would devastate the consumer protection ability of the bureau.

AB 1633 has again passed in the Assembly and the Senate and is on the Governor's desk awaiting his signature. The Bureau is again in the process of submitting the necessary papers to request a veto by the Governor. The bill gives the Senate power to fill vacancies on the Bureau, and for this reason a veto is expected.

The Bureau has held its first public hearing for the review of its regulations, as demanded by AB 1111. There are three more meetings scheduled in October and November. The Bureau is preparing issue papers for distribution at the meetings. Regulations will be discussed one at a time, with opportunity for public input.

FUTURE MEETINGS:

October 23, 1981, 10:00 AM, Hilton Hotel-Downtown, 930 Wilshire Blvd., Los Angeles 90017. November 6, 1981, 10:00 AM, Hyatt at Union Square, San Francisco.

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 and three from the industry. However, two public members recently resigned and have not been replaced, giving the trade a 3-2 majority.

MAJOR PROJECTS:

The Board of Fabric Care's effort to ban the use of two dangerous chemicals, carbon tetrachloride and perchlorethylene, used in on-site cleaning of draperies, (*see* CRLR Vol. 1, No. 2 (Summer, 1981) at 31) appears at fruition with the passage of AB 103. The Board is allocating $200,000 to implement an overall program which includes purchasing testing equipment used to detect the dangerous chemicals, examination, inspections and consumer information.

The 200,000 dollar expense will cancel a proposed 10% to 15% fee reduction for plant, shop and operating licenses. The fee reduction, which would have lowered the current plant license from $200 to $170, was aimed at reducing a million dollar surplus which has accumulated in the Board's special fund. License fees collected by the Board are placed in this special fund and are used only for the Board's operating budget. If the amount of money in the special fund exceeds two years of approved budgets, the surplus money reverts to the general fund. The added expense incurred by implementing AB 103 will reduce the growing surplus in the special fund and negate any fee reduction.

The Board held its AB 1111 informational hearings in July and September of 1981. The Board's AB 1111 "task force" running the proceedings will recommend the elimination of many regulations which did not meet the standards of "necessity" or "clarity." Among the more controversial proposals of the Board's task force was that the Board eliminate some criteria to take the Board's tests for various licenses. For example, prospective licensees under the present rules must have 4 months of experience or 120 hours of training before they can file an application to obtain a certificate in the "Hat Renovating" category. The task force felt that many of these and similar requirements for other licenses were both arbitrary and unnecessary, especially since licensees must still pass the state tests. The task force also recommended eliminating a regulation to set purity levels for solvents used by dry cleaners. The task force felt the responsibility for ensuring clean clothes rested with the individual dry cleaners. Market forces which discourage consumers from returning to drycleaners who don't fully clean garments interact with the drycleaners' economic interest in preserving their capital investments, adequately guaranteeing purity levels. The task force felt that burdensome regulations would result in costly expenditures of state funds and ultimately prove ineffective. This position was supported by the Center for Public Interest Law.

RECENT MEETINGS:

The Board is presently revising and standardizing the written and manual tests applicants must pass to obtain a dry cleaning license. The Board is also looking into the curriculum and equipment used in the Board approved dry cleaning schools. There have been rumblings that some of the schools are not up to par. The International Fabric Institute has given the Board permission to use their "Fair Claim Guide" as a basis for the Board's updated "California Fair Claim Guide."

In a recent scandal, a large dry cleaning plant doing over a quarter million dollars a year in business was closed down because the plant owner was arrested for selling heroin and cocaine. The Board's president, Bob Depper, assisted in opening the plant for a few days to return consumer's clothes which remained in the plant. It turned out that a local judge owned the land on which the plant was located.

The Board of Fabric Care has received over 300 complaints over the last few months, mostly over lost or ruined garments. The Board of Fabric Care helps settle these disputes between cleaners and consumers as a routine part of its operation.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Executive Secretary: Kathleen Callanan
(916) 445-2413

The Board of Funeral Directors and Embalmers licenses funeral directors, funeral establishments, embalmers, and approves change of business name or location. It registers apprentice embalmers, annually approves funeral establishments for apprenticeship training, annually accredits embalming schools (34 are currently accredited), and administers the licensing examinations. The Board inspects the physical and sanitary conditions of a funeral establishment, enforces price disclosure laws and audits preneed funeral trust accounts maintained by its licensees. An audit by the Board of a licensed funeral firm's preneed trust funds is statutorily mandated prior to transfer or cancellation of the license. Currently, there are approximately $54 million in preneed trust accounts in California. To date, the Board has recovered nearly $2.5 million in out-of-trust preneed funds. In addition, the Board investigates and resolves consumer complaints.

MAJOR PROJECTS:

The Board held its second AB 1111 informational hearing on July 11, 1981 at which time it reviewed its Article 2 and Article 3 regulations concerning funeral directors and embalming. Based upon lack of necessity, the Board is recommending repeal of several of these regulations which set forth highly detailed requirements for the day-to-day operation of the funeral establishment.

The Board will continue its review at its next meeting.

During recent preneed audits, the Board discovered deficits of $157,866. $58,866 of this has been subsequently deposited into trust accounts. The Board is continuing its attempt to recover the remainder.

This year, six accusations have been filed by the Attorney general, representing $38,000 in audit findings. Five accusations, representing $61,000 in audit findings, have been sent to the Attorney General for formal action. Five hearings have been completed, and the Board is awaiting the decision of the Administrative Law Judge.

As amended in the Senate on August 17, 1981 AB 201 (Papan) amends section 7738 of the Business and Professions Code to prohibit a licensed funeral director, who is also a licensed cemetery authority, from depositing any money or securities received for preneed funeral arrangements into a less restrictive special endowment care fund. Violations may be punishable, as the Board had recommended, either as a misdemeanor or a felony.

RECENT MEETINGS:

At its last meeting on July 11, 1981 the Board re-interpreted the Funeral Directors and Embalmers Law in approving the application of a funeral director to establish a new cremation business at a separate address, using a portion of the mortuary's existing embalming room as a refrigerated storage facility for the bodies handled by the cremation business. Previously it was generally believed that a licensed mortuary facility could not use part of its building for a storage area for another, separate cremation business. As a result of this action, it is now possible for a licensed funeral director to open arrangement offices in several locations, using the existing mortuary facility as a common storage area, providing adequate refrigeration facilities are made available. Although a separate license must be obtained for each mortuary office, and all offices are required to be operated under the same ownership, all could be under the direction of one manager. Funeral arrangements can thus be made and actual funeral services conducted at locations more convenient to the family.

The Board also considered a request for an embalmers' license by an apprentice who has completed all the educational requirements for a license, but has only served as an apprentice in California for ten months. Section 7643 of the Business and Professions Code requires a two-year apprenticeship. During that time the apprentice must have assisted in the embalming of or otherwise preparing for disposition a minimum of one hundred human dead bodies. However, the applicant had served as an apprentice in Arizona for three and one-half years, and during that time met all California apprenticeship requirements (i.e. embalming one hundred human dead bodies). He does not feel any public interest would be served by requiring him to serve another fourteen month apprenticeship. The Board tended to agree, and at its next meeting will consider the desirability of bringing action to declare that portion of the statute unconstitutional.

The Board discontinued the accreditation of Cal-West College of Mortuary Science-Rancho Arroyo. Scheduled classes are repeatedly cancelled and there are currently no students enrolled in the college. Students will be given credit toward their license for the classes completed while the school was accredited.

FUTURE MEETINGS:

The next Board meeting has been set for October 30, 1981 in San Francisco.

BOARD OF REGISTRATON FOR GEOLOGISTS AND GEOPHYSICISTS

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

This eight member Board licenses geologists and certifies geophysicists and engineering geologists. Most of these designations are done by examination and a few are done by Board recognition of comparable training and experience in other states.

The Board is composed of five public members and two professional members and there is no vacancy. The staff consists of two full-time employees, the Executive Secretary, Mr. John Wolfe and his secretary, and two part-time employees. The President of the Board is Dr. James Slosson.

The Board is funded by the fees it generates. The projected budget for fiscal 1981-82 is $134,557. The Board meets monthly, usually on the third Thursday of the month. The meetings are held at various cities around the state.

The Board is headquartered at 1120 N Street, Room 1124, Sacramento, CA 95814.

MAJOR PROJECTS:

The Board has proposed legislation that will allow it to raise its fees, AB 940. Public hearings were held during the summer to allow the public to express its views on this matter. The record was kept open for further written comment until August 1st. The Board will take action as to the proposed revised fee structure at its September 17th meeting.

The Board has proposed legislation to include a definition of "negligence" in the enabling statute, AB 2175. Many members of the Board feel that such an amendment will help the Board protect the public against sub-standard geological studies.

The executive secretary has been meeting with local officials around the state in an attempt to identify geological problems and hazards. The result of such meetings show that local rules for geological safeguards vary widely. Some areas of the state have very few requirements for geological studies, often in the face of repeated geological disruption.

As mandated by AB 1111, a review of the Board's existing rules and regulations against the criteria of necessity, authority, clarity, consistency and reference is underway. This review of the Board's regulations began on March 26, 1981 and

will be completed by February 28, 1982. A public comment period has been established starting on September 17, 1981 and ending on November 20, 1981. The public is invited to participate in the review process and to submit comments either orally or in writing. Two public meetings for this purpose will be held as follows: September 17, 10:00 AM at the State Building, 350 McAllister Street, Room 1154, San Francisco and October 15, 10:00 AM at the Marriott Hotel, 5855 West Century Boulevard, TWA Room, Los Angeles.

RECENT MEETINGS:

During the summer the Board held public meetings inviting comment on the proposed revised fee structure. Among the groups that participated in the meetings were the Association of Engineering Geologists (San Francisco Section) and the American Association of Petroleum Geologists (Pacific Section). Both groups supported an increase in fees, but were undecided as to how much of an increase would be needed. The Chairman of the San Francisco Section of the Association of Engineering Geologists expressed concern about the renewal fees for engineering geologists. He pointed out that engineering geologists are both registered and certified by the Board and would therefore be paying "double fees."

This argument was met by Dr. Slosson who stated that much of the Board's activities concerned engineering geology and therefore it would not be unfair to require disproportionate fees.

The Board is attempting to have AB 1543, which specifies the composition of the Hazardous Waste Site Council, amended to require that a registered geologist be a member.

The Board is developing a policy statement concerning geochemistry. Formerly, geochemistry was considered the practice of geology when geologic interpretation of the conditions of the material accompanies the chemical analysis. When the chemical analysis was performed and reported without a geologic interpretation of the material it was not considered to be the practice of geology.

The brochure describing the activities of the Board to the public is in its final stages. The layout of the brochure has been completed, and the brochure should be available soon.

The status of both AB 540 and AB 2175 is uncertain. Hearings on both bills have been delayed due to the recent budget hearings. Many of the Board members are particularly concerned about AB 2175 which would add a definition of "negligence" to the enabling act. They point out that such a definition is needed to create a viable enforcement program.

FUTURE MEETINGS:

The Board meets regularly the third Thursday of the month. The next three meetings of the Board have been scheduled. September 17, in San Francisco; October 15, in Los Angeles; November 19, in San Francisco.

BUREAU OF HOME FURNISHINGS

Chief: Gordon Damant
(916) 920-6951

The Bureau of Home Furnishing 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. In its June meeting, the Advisory Board of the Bureau held an informational hearing on the position papers for Articles eleven through fifteen of the Bureau's regulations. Although much written input was received, there was little public discussion of the regulations. The Bureau submitted its "position papers" to the OAL in August of 1981.

RECENT MEETINGS:

Special Evidence fund: The Board discussed a one-year pilot program in which the Bureau will receive approximately $50,000 in a special fund to be used to purchase furniture for spot check surprise testing. Although the Bureau is empowered to go into a California manufacturer's facility to check rule compliance, it has no such authority over out-of-state manufacturers. To test out-of-state manufactured upholstered furniture, the Bureau has had to seize the goods from importers, causing the loss of the value of the goods seized to fall on the importer. The fund would allow pieces of furniture manufactured out-of-state to be purchased and tested without loss to the industry in California.

LEGISLATION:

In February 1981, Senator Green introduced SB 205. The intent of the bill is to "insulate the purchaser (of furniture) from any financial harm or other harm caused by circumstance 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.

Several problems are perceived by the Board and were discussed at the September meeting: (1) Although the Bureau would be given the power to enforce this law, many potential violators do not come under its jurisdiction (e.g., retailers of home appliances and carpeting). The Bureau only has jurisdiction over upholstered furniture. (2) The law is vague as to what would constitute satisfactory delivery. (3) Responsibility is being placed on the shoulders of the retailer when often it may be the fault of the manufacturer.

The recommendation of the Board is that enforcement of this bill be given to local district attorney offices.

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.

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 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: a new oral exam procedure; revising of the Board's sunset report; distribution of the consumer brochure; and implementation of AB 1111.

Executive Secretary Joe Heath has devised a plan whereby the Board would nominate about 20 oral exam "Commissioners" (licensed landscape architects), train them and then hire them to conduct oral examinations of landscape architectural candidates. This procedure would be similar to the one currently used by the Board of Architectural Examiners. Heath said the orientation of the exam would be changed from the mere failing of students for poor performance on the exam to counseling them on which courses to take to improve their score. The Board has never had a candidate who has had to retake the exam more than three times.

Heath envisions panels of two or three people (including at least one Board member) giving oral exams to one candidate at a time. The plan is still embryonic and Heath expects it to be operative at exam time next year. For now, however, the better part of 175 oral exam candidates will be examined by the Board's regular procedure at the end of the year. That is, two Board members will examine one to three candidates at a time.

The sunset report, written by Joe Heath and an undergraduate political science student hired out of Brigham Young University, was completed in August. The Board is currently reviewing the report.

During compilation of the report, Heath periodically asked for input from professional landscape architects but received practically none. Now the California Council of Landscape Architects (CCLA) has asked the Board to meet with 12 of their professionals to jointly review the sunset report. Heath and Board Members Mike McCoy and Paul Saito will meet with CCLA on October 8, 1981.

The report outlines the purposes of the Board, the continued need for the Board, its organization and administration. Numbering 81 pages, the report evaluates Board performance and recommends among other things:

1) Appointment of an additional professional member (the Board is currently composed of four public members and two professional members).

2) Amendment of section 5641 of the Business and Professions Code, the Landscape Architecture Practice Act, to eliminate several broad exemptions.

3) Granting of restitutionary powers to the Board in judgments handed down against individual landscape architects. The Board wishes to be able to make the plaintiff whole in case of default or delinquency by the offending landscape architect.

The Oregon Board of Landscape Architects was sunsetted for six months last year before a new bill reinstated it as a licensing board. Colorado's Board is currently sunsetted. California licenses fully 50% of the nation's landscape architects.

Board President Nancy Hardesty was pleased to announce at the meeting in Palo Alto on September 19, 1981 that the Florida state Board of Landscape Architects sent her a letter saying they copied the California Board's consumer brochure.

Heath ordered 50,000 more brochures with the budget surplus (about $4,000 of unused funds earmarked for part-time help and travel).

At the Santa Barbara meeting July 11, Board Public Member Ernie Spears said that the California Consumer Affairs Association (CCAA) was not doing a good job of distributing the brochures throughout the state. Hardesty agreed. The Board contract with CCAA targeted 14 counties for distribution. The Board never received a distribution report from seven of these counties because by June the state had slashed their budgets. Heath believes the brochures were nevertheless distributed in those seven counties.

AB 1111:

At the Santa Barbara meeting regulation 2660, entitled "Branch Offices," was found to duplicate section 5642 of the Business and Professions Code. The Board will likely repeal that section. Also recommended: Consolidation of regulations 2640, 2670 and 2671 dealing with advertising by landscape architects.

The following code sections were reviewed at the meeting in Palo Alto:

Article 3. Examinations

Sections

2620 Eligibility for Examination
2621 Time and Place of Holding Examinations
2622 Examination to be Under Direction of the Board
2623 Inspection of Examination Papers, Notification, No Appeals
2624 Form of Examination
2625 Written Examination
2626 Oral Examination
2627 Waiver of Written Examination

Article 4. Certificates

Section

2630 Issuance of Duplicate Certificates

Article 6. Fees

Section

2649 Fees

Article 7. Denial, Suspension and Revocation of Certificates

Sections

2655 Substantial Relationship Criteria
2656 Criteria for Rehabilitation

Many modifications to the regulations were suggested with active participation by the audience of five, two of whom were professors of landscape architecture. Also participating were a professional landscape architect, a landscape architectural student/Board Education Committee member awaiting her UNE results and this writer. Suggested revisions dealt with the clarity and necessity of the regulations.

Hardesty tabled discussion of regulation 2626 after various comments about the oral exam. Board Public Member Mike McCoy described the exam as "meaningless" and "often capricious."

The Board's AB 1111 review of regulations is now complete. The Board submitted a record of the review to the Office of Administrative Law in the form of tapes. The comment period on all the regulations will be held open until the end of the year.

RECENT MEETINGS:

Reached only after climbing miles of

winding road, Foothill Park, Palo Alto, was the idyllic site of the September 19, 1981 meeting. Foothill Park is normally for the exclusive use of Palo Alto residents and their guests, but was open to members of the public September 19 for purposes of attending the Board's meeting.

Board member Ernie Spears was absent. Department of Consumer Affairs attorney Don Chang was present and mainly assisted the Board in its regulatory review. He chided the Board for the remote location of the site.

Gerald Smith, head of the Department of Landscape Architecture at Cal Poly San Luis Obispo, came before the Board asking them to consider a moratorium on recognition of certificated programs of landscape architecture. (There are now two such programs in California, one at UCLA and the other at UC Irvine.) Smith was concerned about the lack of communication between the accredited institutions and the certificated schools. He requested the moratorium so the Board could "study and evaluate the impact of (those) certificate programs on higher education in California." He said he feared a proliferation of such programs turning out graduates for which there would be no jobs a few years down the road.

Board member Mike McCoy explained that the Board, in deciding how to accredit the certificate programs, used some of the standards used by the American Society of Landscape Architects (ASLA) and the Western Association of School and Colleges. The ASLA accredits full-time degree programs of landscape architecture only after the degree institution has graduated three consecutive classes. The ASLA indicated to the Board that it would not approve such non-traditional programs as certificate programs. The Board accredited the UCLA program after two years of operation (that is, with its first graduating class). Periodic monitoring determines whether the accreditation will be renewed.

McCoy said that the profession of landscape architecture is predominantly white male from upper and upper middle classes. "There's virtually no representation of any minority. The certificate programs mean access to those people," he said.

"When I joined the Board, the Governor asked one thing: 'Do your best to sunset it.' But we have the ability to open the profession to a broader group of people. There's also a need for professional education for non-professional candidates," he said.

President Hardesty suggested that Smith spearhead a formal education committee of the California Council of Landscape Architects to meet with the Board to perhaps devise a questionnaire for faculty and students of the certificate programs and serve as a conduit for faculty and student complaints. Smith approved of this idea.

The Board reviewed the Accreditation Standards for certificate programs in Landscape Architecture developed by the Board's Education Committee. The five member Education Committee is composed of Board member Mike McCoy, Gerald Smith, another professor of landscape architecture, two professional landscape architects and one student.

McCoy said the guidelines were patterned more after those of the Western Association of Schools and Colleges than those of the ASLA. This is because, in McCoy's words, the ASLA has a lot of requirements that don't seem necessary. "They rely heavily on the advisory committee approach. Ours is a patchwork of guidelines. We didn't have a million dollars to do preliminary studies," he said.

According to McCoy, the guidelines are written to make the schools self-monitoring. "We're trying to stay out of the business of being college administrators," he said.

A condition of accreditation of the certificate programs is an active program for affirmative action. The guidelines require the school to submit a plan to "make special efforts" to recruit minorities and file it with the Board for approval.

Attorney Chang pointed out that until the guidelines are promulgated as regulations, the Board has no power to withdraw certification for non-compliance with the guidelines. A topic of much discussion at both the July 11 meeting in San Diego, and the Palo Alto meeting, was the inequitable treatment of California within the Council of Landscape Architectural Registration Boards (CLARB). (CLARB is composed of one professional landscape architect from the 42 states that have Boards of Landscape Architecture. 37 of those states buy the CLARB exam and about half of those 37 have CLARB grade the exams.)

The discussion disclosed the following facts:

1) The California Board of Landscape Architects is the only state board that subsidizes the professional exam to any degree. California subsidizes about 60% of the cost of the exam.

2) New Jersey buys four exams from CLARB, and California buys 500, yet both states pay the same rate.

3) The Board's budget is divided thus: (1) Administration; (2) Examination; and (3) Enforcement Costs. The costs of examination are divided by the number of exam candidates. Last year about one-half of the California Board's exam budget paid CLARB for exams. That sum works out to an average of $179 per exam candidate and constitutes about half of CLARB's budget.

4) California buys 48% of the total amount of exams sold by CLARB, yet has a single vote in the organization.

5) At CLARB's annual meeting last year, the California Board proposed a resolution to freeze CLARB's exam fees for five years. This resolution did not pass. The Board also proposed that CLARB give its members five years notice before raising exam fees. CLARB compromised and agreed to give three years notice, which CLARB promptly did at that same meeting.

The Board also proposed a resolution that would have required the annual meeting to be in an inexpensive location (last year's meeting was in North Carolina). CLARB promised to make every effort to keep the cost of the meeting location down but didn't want to approve a resolution to that effect.

The resolution was defeated 33 to 1. Last year a California resolution for graduated price structuring (price per exam to decrease as more exams are purchased) was also soundly defeated. Board member McCoy analyzed the general sentiments of the delegates to the annual meeting: "If I were doing a content analysis of the rhetoric at the meeting, I would say it is their perception that a 'consumer' board is designed to protect the income and job security of practicioners," he said.

McCoy gave an example of such rhetoric: "We beat the Sunset Commission ... as a matter of fact, we got rid of them.' This, instead of: 'We've proven that we're necessary for the health, safety and welfare of the public,' " he said.

6) Two years ago Board Member Carla Frisk was the only public member at the CLARB annual meeting. CLARB didn't want to allow public representation and moved for a by-laws change to prevent such an occurrence. When the California Board threatened to sue CLARB if the by-laws change were effected, CLARB yielded.

California is one of the few state Boards with public members and probably the *only* board with a majority of public members. California was also the first state to license landscape architects.

7) California's abysmal 34% average passage rate (of the CLARB exam) is also

the average statewide.

Five or six states, however, do not use CLARB's method of scoring. Florida and three other states have a law which says that 75% of examinees must pass.

8) Mike McCoy and Paul Saito attended the CLARB annual meeting in Phoenix on September 25, 26 and 27, 1981. Saito ran for the Office of Regional Representative and lost. (The region to which California belongs, Region 5, has the largest number of states.) Saito also ran for Secretary Treasurer and lost.

Saito's name did not even appear on the ballot for Secretary Treasurer. When the California Board submitted his nomination earlier this year, CLARB's Executive Committee telephoned the Region 5 representative in Montana. The Committee informed him that their interpretation of the by-laws required a nominee for national office to first have served as regional representative. The Committee offered a compromise: The Montana Regional Representative could run for Secretary Treasurer and Saito could run for Regional Rep. The Board did not agree to this, however.

At the meeting, before the vote was taken, one delegate pointed out that since the meeting was supposed to operate democratically, nominations should also be allowed from the floor. "Not listing Paul Saito as a candidate on one agenda was a cliquish maneuver intended to preselect the Treasurer," McCoy, who was not a delegate, but an alternate said. Thus nominations for secretary treasurer were entertained beyond those screened by CLARB's Nominating Committee. California Board Member McCoy protested that the Committee was in fact endorsing the candidates it had screened.

One reason Saito ran for Treasurer, besides trying to get California's interests represented, was to find out how the CLARB budget actually works. (The California Board has never audited CLARB's budget.) At the meeting a resolution was moved that CLARB supply its members with a detailed breakdown of the budget. The Executive Committee replied that such a resolution was not necessary because it was already in CLARB's by-laws. The Committee asked the states to submit in writing what they would like to see in a budget breakdown.

It was determined that CLARB could not survive financially if California were to pull out of the organization. President Nancy Hardesty warned, however, that it would take an enormous time and energy commitment on the part of the Board to under take composition of its own exam. Saito said it would also be very costly.

Hardesty is on CLARB's education Committee (she is the only Western member of the eight members of the Committee). Each year she must compose her share of the 150 objective questions on the exam. This year she composed section A, the History Section. She also composed the design problems in section E. California candidates must do drawings for this portion of the exam. She estimated that it takes her a minimum of 10 hours per design problem. This year CLARB required the Committee to submit objective exam questions for both 1982 and 1983 (possibly anticipating a California mutiny). A number of Western states have approached the California Board recently asking the Board to administer a professional exam to the western states.

At the Santa Barbara meeting, Public member Ernie Spears moved that the State Board notify CLARB of their intention to develop a national exam in landscape architecture. Hardesty seconded the motion.

Several alternatives to the CLARB exam were bandied among the Board members. One was to turn around and have CLARB hire the Board to give the exam in California. Another was to seek a grant so the Board could set up its own exam. Board member Saito suggested that the Board devise a design plan that was defective and have examinees pick out the faults and enter them on scantrons (computer cards). The grading of the scantrons costs $.10 per sheet as opposed to the $9 per sheet CLARB charges for live graders.

Hardesty suggested that each state in the region write their own section of the exam but recognized this would present a problem of quality control.

In his experience with the University of California system, McCoy recalled a government rule requiring "sloe source" vendors to establish reasonableness of their price. At the Palo Alto meeting (he was absent at the Santa Barbara meeting) he suggested that the Board locate and apply that rule to the CLARB exam.

The CLARB controversy is a manifestation of another, more entrenched rivalry, i.e. that of East v. West. Known to members of the trade as the "sagebrush revolution," two professional associations had formally carried on the battle for years.

The American Society of Landscape Architects (ASLA) was formed in 1899 and has always represented the Eastern Establishment. It has 5,500 or more members nationwide. Close to 2,000 of those members are in California. The American Institute of Landscape Architects (AILA) started out as the California Institute of Landscape Architects in 1954. In 1956 the CILA incorporated under California Law as the American Institute of Landscape Architects. It has some 400 members nationwide, 30% of which are in California.

The AILA was started because, in 1954 when California first required landscape architects to be licensed, the ASLA would not accept "affiliated professions" (e.g. horticulturists, contractors, suppliers) as members. ASLA was controlled by Eastern educators who did not want to admit persons who didn't meet their academic requirements. This policy excluded those in California as licensed under a grandfather clause (allowing those already practicing landscape architecture to be licensed without meeting the requirements in the practice act).

The purposes of both AILA and ASLA are the same: that of promoting the profession and serving as a vehicle for continuing education of landscape architects.

In the last 15 years especially, the differences between both organizations have dissipated, although there is still a strong Eastern Establishment influence in the ASLA. In 1979 ASLA met with the AILA vice president Bob Cardozo to discuss unification with the California Chapter of AILA. The meeting was prompted by the sunsetting of the California Board of Landscape Architects. Cardozo told the ASLA that the AILA's interests were national and not just in California. In September of this year both organizations agreed to merge with each other. AILA will be subsumed under ASLA and title of the AILA will be transferred to ASLA. This was done because "There was a tremendous amount of investments in publications by the ASLA with the ASLA title," Cardozo, now president of the AILA, said. He said the AILA will turn its assets into a foundation for education and scholarships prior to merging with the ASLA.

LEGISLATION:

AB 1196, which would have eliminated the ceiling exam fees, passed the Assembly, then went to the Senate, where it passed with a minor amendment. A lobbyist for the Shorthand Reporters talked to the author of the bill, Dick Floyd, into calling a conference committee (normally done when the author of a bill refuses to concur in an amendment). The committee added language affecting the Shorthand Reporters. Board Executive Secretary Joe Heath got wind of the change, told the committee he wanted that language out of the bill, and the committee took the language out. The bill then went back to the Assembly. At that time, however the Republicans were furious about the reapportionment issue and refused to vote on any bills requiring two-thirds vote and authored by Demo-

crats. AB 1196 has thus become a two-year bill and is still sitting on the Assembly floor.

AB 1077, which would allow a license to practice landscape architecture to be retired for a minimal fee, has also become a two year bill. It is now in the Senate Business and Professions Committee.

The Budget Deficiency bill covered the expenses of administering this year's exam. A $20,000 surplus resulted from the overestimate of exam candidates and has been returned to the Board's special fund. That money will be available for appropriations by the Legislature next year.

FUTURE MEETINGS:

The next meeting will be October 30 at the San Francisco Airport Hyatt Hotel. The Board will continue its critique of the sunset report.

BOARD OF MEDICAL QUALITY ASSURANCE

Executive Director: Robert Rowland
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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 sets forth the background and purpose of each existing regulation in its issue papers which are currently under review.

Also of concern to the Board is the revision of the State's Medical Practice Act and, specifically, the current legal definition of the "practice of medicine." The Board does not want to directly pursue title licensure and has chosen to focus on amending section 2052 (old section 2141), the definition of "practice of medicine." An updated definition amending the provision would have a major impact on health care delivery systems.

RECENT MEETINGS:

The most recent Board meeting was September 10-12, 1981, in San Francisco. Among the activities reported by each division to the full Board were the following: The Division of Medical Quality reported on its Diversion Program for Impaired Physicians. The program diverts a physician with alcohol and/or drug abuse, mental illness or physical disorder impairments from disciplinary action resulting from these impairments. The program attempts to rehabilitate physicians with one or more of the above impairments and thus provides assistance as well as an alternative to formal disciplinary action. The Division is pleased with the program's success, noting a total of 94 physicians actively participating out of the 138 physicians referred as of July 31, 1981.

The Division of Medical Quality is also pleased with its Professional Performance Pilot Project, a new system for early detection and resolution of instances of substandard medical care. The project is currently active in three areas and the Division is considering expansion to one or two additional sites.

The Division of Licensing reiterated its position that certain subject areas were not adequately covered in physicians' education. Such areas as human sexuality, nutrition, geriatric medicine and child abuse detection and treatment will not, however, be implemented through a supplemental California licensing exam (CLEX). The bill sponsored by the Board to implement CLEX met California Medical Association (CMA) opposition and failed in the Senate. The Division is considering reintroducing the bill next year.

The Division also looks toward next year to implement its cardiopulmonary resuscitation (CPR) relicensure requirements. The Division declared a one-year moratorium to develop an accreditation system geared to physicians. Both the CMA and the California Society of Anesthesiologists (CSA) are currently developing programs. In November, the Division will meet to work with the CMA in developing its program and will decide whether to approve the CSA system.

The Division decided to award ten additional loans before the end of the year through its Physician Incentive Loan Program.

The Division of Allied Health continues to entangle itself in the controversy among physicians, registered nurses and the Attorney General's office over the legality of a nurse prescribing drugs. Contrary to the policy mandated by the Attorney General's office, many hospitals currently allow nurses to prescribe drugs. The Division, then, faces the possibility of major policy changes.

The first of two public hearings passed with little, if any, public input on the regulations.

FUTURE MEETINGS:

November 12-13, 1981 in Los Angeles. January 21-22, 1982 in San Diego. April 1-2, 1982 in Sacramento. June 10-11, 1982 in Monterey. September 16-17, 1982 in Santa Clara. November 18-19, 1982 in Palm Springs.

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 "physicians' 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 the 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 Physician's Assistants Examining Committee met September 9, 1981, at the Stanford University Medical Center. With the addition of the second Physician's Assistant on the Committee, all but one of the Committee seats are filled.

The first substantive issue from Committee dealt with in September was a Special Report on Foreign Medical Graduates (FMG's) becoming P.A.'s. Not included in the study were Americans who chose to study medicine outside the U.S. The study found 1,210 FMG's in California, and 736 of those persons were then interviewed. Of these, 211 or nearly one-third wanted to become P.A.'s. Of these, only 46 (twenty-two percent) would meet the California requirements for entrance into the P.A. program, according to this report. The vast majority of those persons desiring to become P.A.'s were ineligible not due to skill deficiency, but because they lacked English skills, permanent residence or U.S. citizenship, "interest in becoming a P.A.," or willingness to work in underserved areas. Alternatively, they were excluded for having a high interest in future licensure as an M.D. Many of these "deficiencies" are arguable bases for exclusion. Others may not present major stumbling blocks. Discussion contended that English can be taught fairly easily to people with medical backgrounds. Once an FMG found a decent job in the medical field, U.S. citizenship might follow closely. Other problems may be similarly solved. What seems to be most important is that California has over 600 unemployed Foreign Medical Graduates in a time of soaring medical costs. However, despite discussion, the Committee's present report tends to assume the status quo. The Committee has not yet completed its examination of the FMG report. Further action is expected at the November meeting.

One of the major dilemmas of the Committee is when to certify a particular Physician's Assistant as competent to perform a task that is in addition to those specifically enumerated as permissible for a particular class or category of P.A. As it now stands, before a P.A. can be licensed to do an additional task, the Committee requires that the PA perform the task under the observation of the P.A.'s supervising physician. In addition, the P.A. must also perform the task before a second, nonaffiliated doctor.

Other than these, the Committee has very few guidelines as to prohibited "additional tasks," and no written guidelines as to the number of times a P.A. should be observed doing a task prior to certification. The Committee is now looking at the standards it has used in the forty-six past requests in this area, but at this time approval or disapproval is done largely on an ad hoc basis. What is perhaps most ironic is that while the P.A. is performing an additional task under the supervision of his or her supervising physician (prior to approval by the Committee) that P.A. is technically practicing medicine without a license. Yet this process is the only one currently approved by the examining committee for certification for additional tasks. One suggested answer to this problem is to do away entirely with the "laundry list" of tasks that a P.A. may do, and let the supervising doctor delegate to the P.A. whatever tasks the doctor feels are appropriate. Allegedly, the supervising doctor is the one most capable of judging the P.A.'s competence, and retains the responsibility for the conduct of the P.A. This suggested approach is not novel and is used successfully by other states. Despite its suggestion, the Committee has not yet formally considered it.

A related issue also brought before the Committee at it's September meeting deals with "prescribing" by P.A.'s. The regulations (section 1399.522) provide that "the supervising physician and the physician's assistant shall establish in writing guidelines for timely supervision of the tasks or procedures outlined in (the specific laundry list of tasks allowable). These guidelines may be general or specific and may include standing orders or ... immediate consultation guidelines ..." The section also provides that the supervising P.A. may review, by electronic means such as telephone the performance of tasks, stating specifically that "supervision and review of such procedures or tasks need not be done prior to treatment." Among the tasks listed which may be done prior to supervision are injections and some forms of local anesthesia. In other words, a P.A. may perform any of the allowable tasks, without first checking with the supervising physician prior to treatment. The physician and the P.A. are merely required to establish written guidelines between themselves as to what will constitute timely supervision of the P.A. The argument for this rule is practical: physicians are often called away from their offices, many medical procedures are somewhat routine and more medical services can be supplied when a doctor is able to delegate certain procedures to a P.A. However, the law states that "no physician's assistant shall prescribe drugs except under the general supervision of a licensed physician and surgeon." The Committee has interpreted this language not to allow for standing orders. The Committee takes the position that it is illegal for a P.A. to use pre-signed prescription forms pursuant to a standing order, or to phone in prescriptions without having first checked with the supervising physician for each administration of medicine. Further, one of the Committee members called the practice of prescribing by P.A.'s "widespread," which another member privately told us that over 90% of the P.A.'s do not abide by the Committee's interpretation of the law. The report commissioned by the Committee on this topic is still being typed, and while it is for informational purposes only and makes no recommendations the Committee will nonetheless hear much more on this subject at its OAL Review Hearings and at future Committee meetings as well.

FUTURE MEETINGS:

The next regular meeting of the Committee is set for November 11, 8:00 PM, in Los Angeles.

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.

The Committee makes recommendations to the Division of Allied Health Services (Division) of the Board of Medical Quality Assurance, based on information gathered at public hearings and the expertise of its professional members. It serves in an advisory capacity,

and is not empowered to adopt regulations. (This function is reserved for the Division.) The Committee will become an autonomous rule-making body on July 1, 1982, and will then be known as the Acupuncture Examining Committee.

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, as 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 Division is presently evaluating the possibility of further legal action regarding the Committee's proposed regulations expanding the scope of the acupuncture licensing examination.

The necessity of these regulations was based on the professional judgment of the members of the Committee and not on empirical study. The OAL had rejected the regulations, citing a lack of necessity demonstrated in the rule-making record. The Committee contended that its members had the professional expertise to set exam standards by weighing public testimony and relying on the Committee member's professional backgrounds.

The OAL veto was upheld, however, when the Governor failed to render a decision on the Division's appeal within the ten-day statutory appeal period. the APA provides that all appeals of OAL decisions are heard by the Governor. If he does not act within ten days of receiving the appeal, the OAL decision is automatically sustained.

Acting on the advice of counsel, the Division will probably elect to re-hear the regulations rather than immediately appealing to the California District Court of Appeals. While the APA does allow such an appeal after the exhaustion of administrative remedies, the Division has been advised that re-hearing will help make a stronger case. The Division wants to confine the issue on appeal to whether the Committee's professional judgment can justify the broadening of exam standards without corroborating empirical study. Complying with the notice and hearing aspects of the APA will ensure that the appeal is not decided on procedural grounds.

If the OAL again rejects the exam regulations, the Division will appeal to the Governor and, if necessary, to the District Court of Appeals.

RECENT MEETINGS:

The Division met on September 4 in San Francisco to hear public testimony on the use of the title "Doctor" by acupuncturists. The Committee has recommended that new acupuncturists be allowed to use the title Doctor if certain requirements are met. An acupuncturist would be allowed to use the title if he or she has taken the current upgraded exam and has three years of clinical education. Presently, an acupuncturist can only use the title if he or she is an M.D. or has a doctorate from an accredited educational institution.

FUTURE MEETINGS:

The Committee will meet in San Francisco on October 17 at the State Building, 750 McCalister Street, Room 1202.

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 Committe 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 still considering "standards of practice" to outline the minimum functions required of a "dispenser" in his/her practice.

Subcommittees are developing "issue papers" regarding the regulations being reviewed under the mandate of AB 1111.

Three situations concerning possible consumer fraud were discussed by the Committee at the July 1981 meeting. The first dealt with an advertisement by a hearing aid dispenser for a new device called an "Automatic Signal Processor," or ASP. The ad implied that this new device was capable of separating speech from noise, thus enabling one to hear spoken words more clearly and distinctly in a noisy environment. The Committee concensus was that there is no system which can separate speech from noise.

The second situation had to do with hearing aid dispensers calling themselves "Doctor" in their advertisements. Several of the advertisers did have Ph.D.'s but in areas unrelated to the practice of hearing aid dispensing. In one case, the advertiser had no additional training that could justify the title of "Doctor." In light of the fact that physicians are often involved in prescribing and providing hearing aids, the Committee felt this practice of hearing aid dispensers was fraudulent and misleading to consumers.

The third situation dealt with a hearing aid dispenser whose advertisements bore a seal similar in style and design to the official seal of the State of California and included the words, "State of California."

For all three situations, the Committee drafted letters to the advertisers, detailing the violations and potential for fraud. No action is contemplated against these licensees as of yet.

Reports were also made at the Committee's July 1981 meeting on actions taken against licensees as a result of consumer complaints. The license of one Harold Monson was revoked. License revocation was stayed for John Milligan; however, a five year probation was imposed. Three licensees, John Gierke, Murray Landry and Richard Hawthorn, signed stipulations agreeing to settle with the complainants and were placed on five years probation.

Another issue addressed by the Committee in July was supervision of temporary licensees. Before obtaining a permanent license, a licensee must complete several hours of practice under the

"close supervision" of a practitioner. The Committee is concerned because, often, temporary licensees are taken in by a practitioner and then allowed to practice without the close supervision of that practitioner. The question raised is what constitutes "close supervision." The Committee is in the process of drafting guidelines which will answer this question.

LEGISLATION:

AB 1528, introduced in May 1981 by Assemblyman 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 by 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 has been made to support or oppose the bill, as the Committee remains evenly split.

FUTURE MEETINGS:

December 4, 1981 in San Diego.

PHYSICAL THERAPY EXAMINING COMMITTEE

Executive Officer: Don Wheeler
(916) 920-6373

The Physical Therapy Examining Committee is a six-member board charged with the responsibility for examining, licensing and disciplining approximately 8,600 physical therapists. The Board has three public members and three physical therapist members. Presently, one public member position is vacant.

Committee licensees fall into one of four groups: physical therapists; physical therapist assistants; physical therapist supervisors (physical therapists with at least two years' experience who, upon Committee certification, can supervise up to two physical therapist assistants); and physical therapists certified to practice electromyography. The latter certificants engage in kinesiological electromyography or the more rigorous clinical electromyography.

Lastly, the Committee approves physical therapy schools. An exam applicant must have graduated from a Committee-approved school before being permitted to take the licensing exam.

When approving schools, the Committee relies almost exclusively on the guidelines supplied by the American Physical Therapy Association and the Council on Post-Secondary Education. Because the Committee recognizes these national standards, there is at least one school in each of the 50 states and Puerto Rico whose graduates are permitted to apply for licensure in California.

Additionally, because the Committee administers a national written exam, it practices reciprocity for licensing of physical therapists with 49 other states. (Hawaii is the only exception.) Licensees in other states must demonstrate only that they achieved California's minimum grade on the national exam in order to practice in California. Of course, this reciprocity agreement does not apply to the Committee's certification programs.

Passage rates for the Committee's exam (given three times a year — October in Hayward, and July and February in Los Angeles) have been very high in recent years. The passage rate has averaged about 85%, with the success rate for electromyography certification a little lower.

The Committee's disciplinary history is not as good. There has not been a single license revocation in the last two years, and generally there has been a paucity of disciplinary activity. There was a significant increase in early fiscal year 1981-82, with at least three accusations being filed by mid-September.

The Committee has one major piece of legislation this year. AB 1980 (Moorehead) basically proposes a clean-up and modernization of the educational requirements found in Bus. and Prof. Code section 2650. The bill has passed both houses and it is expected that the Governor will sign it.

MAJOR PROJECTS:

The Committee's major project is the AB 1111 review of existing regulations. There was a disappointing turnout at the Committee's first public hearing on September 12 in San Francisco. However, it is hoped that a second informational hearing in Los Angeles will generate a better response.

The Committee is presently designing a consumer education brochure that will be distributed early in 1982. Among other things, the brochure will inform consumers of the Committee's existence (and phone number and address) and provide basic information on how to submit a consumer complaint about a physical therapist.

There is some movement in the Committee to change regulations governing physical therapist supervisors. Present regulation requires every physical therapist assistant to be supervised at least 50% of the time. Consequently, a physical therapist cannot supervise more than two assistants. There is some feeling that this requirement is too restrictive and should be reduced or eliminated.

The Committee is also facing a problem with its fees and budget. A few years ago the Committee's budget surplus was approaching the statutory limitation (an agency's surplus cannot exceed twice its annual budget). In an effort to reduce the surplus, the Committee reduced fees so that Committee expenses exceeded Committee income. Now the Committee is faced with the problem of having to raise fees because the budget surplus has dwindled dangerously. The Committee's budget problems are further complicated by the fact that it only receives fees once every two years. The biennial license renewal system makes budget projections more difficult. A biennial system also gives the Committee only one chance every two years to raise fees in anticipation of budget demands.

Executive Officer Don Wheeler indicated that he is going to explore the possibility of instituing a yearly, birthdate license renewal scheme. Wheeler also told the *Reporter* that the fee issue will be on the agenda for the Committee's scheduled November 19 meeting in Los Angeles. The Committee's 1981/82 fiscal year budget is $223,000.

FUTURE MEETINGS:

The Board meets six times each year. Its next meeting is November 19, 1981 in Los Angeles.

PODIATRY EXAMINING COMMITTEE

Executive Officer:
Aldo Avellino
(916) 920-6373

The Podiatry Examining Committee of the Board of Medical Quality Assurance

(BMQA) 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 re-licensed, 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 regulations.

The Committee is evaluating how it can inspect hospital facilities in the most thorough and cost effective way. The Department of Health Serivces presently inspects hospital facilities, and the Committee is analyzing its system of health surveys. Due to its small staff and limited recourses, the Committee believes it may be more efficient to allow the Department to inspect podiatric facilities using guidelines provided by the Committee. This method may be an alternative to direct inspection by the Committee itself.

LEGISLATION:

The Legislature recently passed AB 1201, which sets licensing standards for out-of-state podiatrists who have passed the national board examination. Presently, out-of-state podiatrists are not required to take the California exam if they have passed the national exam. If signed by the Governor, AB 1201 will require out-of-state podiatrists to take an oral exam, administered by the Committee, in order to practice in California. The bill also requires out-of-state podiatrists to serve a one-year surgical residency as a condition of licensure. If signed, the bill will take effect January 1, 1983.

RECENT MEETINGS:

The Committee met on September 12 in San Francisco to elicit public comment on its regulations pursuant to AB 1111.

FUTURE MEETINGS:

The Committee will meet in Los Angeles sometime in November. The exact date has not yet been set.

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. The PEC is composed of eight members, three of whom are public members. One public member position has been vacant for approximately one year.

MAJOR PROJECTS:

The Committee 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 Committee 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. The question which the Committee must address is how to determine whether a particular program is comparable to a Ph.D. in Psychology.

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 California State Psychological Association (CSPA) has approached the PEC with a proposal for an impaired psychologist program. The goal of the program would be rehabilitation of psychologists with alcohol and drug problems and of psychologists guilty of sexual misconduct with patients. CSPA presented to the Committee an issue paper which concluded that of the 6000 practicing psychologists in California 360 can be expected to be having sexual relations with their patients at one time. The PEC has made no decision on this issue but expects to invite further discussion with CSPA in January.

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 Committee 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 Committee also decided to adopt the national mean as a passing score, rather than the 75% raw score it had previously used. Arlene Carsten, a PEC Public member, brought suit against the PEC alleging that the PEC 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 Committee 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 Committee's grading policy. (*See* discussion in litigation section, *infra.*)

Until October, 1980 the mean for the standardized national test did, in fact, equate to a raw score of about 75%. In January, 1980 the PEC 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.

There are at present five complaints on file with the Department of Fair Employment and Housing alleging that the EPPP discriminates on the basis of either age, race or national origin. The PEC response to the charge of age discrimination reads in part:

> "The Psychology Examining Committee recognizes that the EPPP is an instrument in need of substantial improvement. We are utilizing California's economic leverage to prod the American Association of State Psychology Boards (AASPB) into modifying their exam. This effort has already met with some success in our view. The only other option available to the Committee would be to develop a California exam. Such an endeavor would be costly, time consuming and result in an uncertain end product."

Interestingly, the PEC 1982-83 budget contains budget change proposals to develop a new written examination.

RECENT MEETINGS:

At the July meeting the question arose as to how to process *present* applications for comparability status while comparability criteria are being developed. One Committee member thought that making determinations on a case by case basis is illegal. This position was challenged by another member who thought that holding up applications while deciding comparability criteria is also illegal. In rebuttal, it was stressed that comparability standards apply to schools, not individuals, and therefore delaying applications does not discriminate against individual applicants. The bout was interrupted by the chairman who directed that the credentials subcommittee and the Executive Secretary work together to resolve this issue.

Gregory Gorges, staff counsel for the Department of Consumer Affairs, reported at the July meeting that he is analyzing forms 13 and 14 of the examination to determine if there is adverse impact. Committee member Dr. Antonio Madrid stated that he had given recommendations to the Professional Examination Service for form 15 of the examination which will be administered in October, 1981. He stressed that it is important for the PEC to followup to see how many of the recommendations are actually utilized.

The PEC will be requesting applicants taking the October licensing examination to answer a short questionnaire designed to measure adverse impact. The results will provide empirical evidence to be used by both the PEC and either the Central Testing Unit or the Department of Fair Employment and Housing.

Waiver of the examination became a hotly debated issue at the July meeting. The PEC had a request for waiver from an applicant who, all committee members agreed, had more than ample credentials for the request to be granted. Unfortunately for the applicant, he made the mistake of first taking the infamous examination, flunking it and then requesting waiver. Some committee members took the position that waiver could not be granted to an applicant who fails the examination because waiver depends on the applicant demonstrating "competence in areas covered by the examination" (Bus. and Prof. Code, section 2946). Other members pointed out that the examination would perfectly measure competence only if it had perfect validity. If an applicant demonstrates competence in *other* ways, it was asserted, then the examination can be waived. Those opposing waiver reasserted that under the statute the examination is the only criteria which can be applied in this case. The waiver was not granted, but the discussion was indicative not only of the PEC's uncertainty as to the conditions allowing waiver, but also of its discomfort in relying on the examination as the sole determinant of "competence."

The executive officer reported at the May meeting that as of July 1, 1981 the PEC's budget, for the first time in years, would be in the black. The Psychology Fund was created via a transfer of funds from the BMQA Contingency Fund. The executive officer also reported that current PEC staffing patterns are adequate and backlogs have been cleared. The Committee expressed its appreciation and requested the executive officer to formally commend staff. Budget change proposals for the '82-83 budget include increased enforcement against unlicensed practice, funds for consultants to work on the oral examination and a possible ethnic psychology requirement and, as previously mentioned, funds for developing a new written examination.

AB 1111:

The PEC held an information hearing on September 12 in San Francisco. The committee prepared its own extensive issue paper and invited public comment. The purpose of the meeting was to generate issues only — substantive decisions on the regulations will be made at a later date.

FUTURE MEETINGS:

The next scheduled meeting of the PEC is November 20-21 in Los Angeles.

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:

The Committee, in conjunction with the Board of Medical Quality Assurance held 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:

The Committee discussed the problem of applicants for licensure who have graduated from non-accredited institutions.

The American Speech and Hearing Association reviews the curriculum and facilities of programs in the United States and through its Educational Training Board (ETB), grants approval to the programs.

Occasionally, graduates from a non-ETB accredited institution will petition the Committee for licensure in California.

The Committee decided to establish a policy that when this situation arises, it will request specific information regarding the number of degrees granted by the institution. The Committee will then evaluate the program and decided if it meets the standards which would provide a quality education in Speech Pathology and Audiology. If so, the applicant will be allowed to apply for licensure.

The next problem discussed was that dealing with the amount of credit to be allowed to applicants for licensure for courses in deaf education.

The requirement for licensure is a total of 24 semester hours in specifically Speech Pathology courses. However, it was pointed out that many deaf-education courses contain a great deal of Speech Pathology information and should be recognized. The Committee decided that these courses could possibly be counted as credit toward the 24 semester hour requirement, but would first have to be reviewed on an ad hoc basis to determine their exact content.

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 non-partisan stance.

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

FUTURE MEETINGS:

November 5, 1981 in Southern California.

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Executive Officer: Hal Tindall (916) 455-8435

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 for a license, treating any mental or physical condition without a license and violation of any rules adopted by the Board.

LEGISLATION:

AB 1551 (Bates) would exclude small Intermediate Care Facility/Developmentally Disabled Habilitative (ICF/DDH) facilities from the legal definition of "nursing homes." The Board's main concern with AB 1551 is that the administrator of a small ICF/DDH would not have to be licensed by the Board of Examiners of Nursing Home Administrators. As written in the bill, the Administrator of such a facility would either have to be professionally licensed by a state board or be a Qualified Mental Retardation Professional (QMRP), as defined in Title 22, Chapter 8. The Board is concerned that a QMRP does not have to possess knowledge of, or be tested for, administrative skills. It was pointed out however that it would be financially impossible for the Department of Health Services and the Department of Developmental Services to establish the ICF/DDH program if the administrators of such facilities were required to be licensed by the Board. The Board decided to oppose AB 1551 unless the bill is amended to require demonstrated competency on the part of administrators of small ICF/DDH facilities.

AB 107 (Lockyer) would require that continuing education courses for healing arts licensees must relate to patient care, community health or the promotion of healthful work environments. The concern of the Board is that this bill would delete accounting, management, supervision and other business administration courses as continuing education courses for Nursing Home Administrators — courses which are allegedly appropriate to their duties.

The Board decided to oppose AB 107, unless amended to either exempt Nursing Home Administrators or to provide that all continuing education courses for all healing arts licensees must relate to the

duties of the licensee.

The Board supported AB 1083 (Imbrecht) to authorize the Board of Medical Quality Assurance (BMQA) to examine applicants in "geriatrics," et al. The purpose is to improve physician competency in the field. Facing the powerful opposition of the physician lobby, the bill was killed in Committee.

MAJOR PROJECTS:

The Board has been in the process of "cleaning up" the list of courses previously approved for continuing education.

As the requirements for continuing education have decreased over the years, so has the need for a large number of accredited continuing education courses. Also, the Board now feels that many of the previously accredited courses should not remain accredited due to poor quality or irrelevant subject matter. To date, 107 courses have been withdrawn, but many more remain to be contacted and evaluated (since 1977, over 4,000 courses have received approval).

AB 1111:

The Board has continued to review its regulations in accordance with AB 1111. No problems are foreseen for completing this review on time.

RECENT MEETINGS:

At its August meeting, the Board was addressed by Ms. Lee, the Nursing Home Administration of Driftwood Convalescent Hospital who is currently on probation. Ms. Lee's concern was that a press release regarding violations at her facility was released in an untimely manner. It appeared after she had corrected her prior problems. She felt this to be unfairly damaging to her personally as well as to her facility and patients. The Board stated that the press release was a true statement of the facts, but that all future Board press releases will indicate specific dates of the inspections and violations involved in the disciplinary action.

Disciplinary Action (Closed Session): (1) Revocation of the license of Louis Bond; (2) Stay of revocations, 60 day suspension of license and 2 years probation for Lawrence Carlson; (3) Stay of suspension of licenses, 60 day suspension of license, 2 years probation for Robert Hallman.

FUTURE MEETINGS:

October 22 (Board meeting), October 23 (Informational Hearing), in San Diego, December (Board meeting), in 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. At this time there are two vacancies on the Board. 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 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 Officer are those "which do not involve a violation of statutes or Board regulations." The Executive Officer estimates that 95% of all complaints received fall into this category.

The Board is also responsible for reviewing fictitious name permits that are submitted for approval. Generally, the Board is concerned with names that might confuse the public because of their similarity to names already used, or the possibility of deceptively inferring a specialty.

RECENT MEETINGS:

Two meetings have been held since the last issue of the *Reporter*. The first, on July 11, 1981, in Fullerton, was scheduled to precede the annual optometry exam and the second on August 22 corresponded with the Board's review and grading of examination papers.

On July 11, 1981, the Board discussed the Health Manpower study of the Office of Statewide Health Planning and Development. While the Board was interested in acquiring person power information, they felt that the Office's questionnaire was too personal, gathered unnecessary information, and failed to request important information. The Board decided to continue the discussion at the August meeting.

A second questionnaire topic is the questioning of those who have had contact with the Board about the Board's performance. The Board decided that the proposed questionnaires needed revision by Committee effort before the August meeting. In August, Dr. Takahashi submitted three draft questionnaires, one for consumers, examiners, and licensees, respectively. With a few minor changes, the questionnaires were accepted by the Board for distribution.

Substantive proposals of the Relicensure Committee were submitted by Dr. Stacy at the August 22 meeting. The Committee proposed that optometrists be required to either complete 100 hours of continuing education every two years or take a relicensure exam. Discussion focused on concern that the 100-hour requirement may be onerous since fewer hours are required of doctors and other professionals. There was also a question of whether the hours would be "unit hours" or "clock hours." The Board appeared to prefer a 30 unit hour per year requirement. In addition, the Board indicated a desire to require practicing optometrists to take CPR, First Aid, or other medical emergency classes. The issue was again referred to the Relicensure Committee to submit a final proposal at the next meeting.

Prior to the July 22 Board meeting, the Regulation Review Advisory Committee met to review and make recommendations concerning Articles 6 and 8 of Chapter 15, Title 16 of the Cal. Administrative Code. Final action is still forthcoming.

LEGISLATION:

The Board reviewed and acted on several bills at the July and August meetings. AB 1079 mandates disclosure of a complaint only after completion of adjudication. While the bill would have no effect on Board of Optometry procedure, the Board voted to oppose the bill because it believed individual Boards should have the power to determine their respective procedures.

SB 483 is a DMV bill for testing eyesight. The Board generally agreed that present testing was not effective. Dr. Stacy indicated that the testing procedure should be altered to test peripheral vision. An amendment to that effect will be presented to the Board at the next meeting.

The Board voted to support SB 533. This bill is basically a one-person bill that would allow a particular dean from one of the optometry schools to be admitted into California's optometric profession without taking the required examination. While Mr. Scanlon and Dr. Stacy opposed the bill, the majority supported it because of a similar bill passed for

another dean.

AB 1170, 1040, and 1189 (licensing of health clinics) were tabled until a later date. The Board opposed SB 1035 and discussed briefly AB 1280 (individual registration of opticians).

During the public forum portion on August 22, information concerning deregulation of the telephone directories was presented *(see* SB 3011). The COA is requesting the reregulation of the directories and the Los Angeles County Optometric Society has indicated its opposition to the continued deregulation of the "classifieds" and commercial listings. The Board agreed with these organizations and voted to support resumption of telephone directory regulation.

A FINAL NOTE:

While the Board has been discussing topics of great importance to practicing optometrists, few in the trade bother to attend the meetings. Of particular concern is the topic of relicensure. Considering the effect such a requirement would have, it is surprising that the public and trade member participation is so minimal. This noninvolvement has been mentioned at previous meetings and is of concern to the Board. Dr. Takahashi has indicated that meetings are announced in trade and local papers as required by law and that notices have been sent to those requesting them. These efforts however have failed to create any substantial response. It was proposed that the Board send notices and agenda to all practicing optometrists, but this idea was rejected as being beyond the scope of the Board's budget. It was noted that perhaps trade members simply depend on the COA to represent their interests. While the COA representative attends the meetings, he cannot realistically be expected to represent the interests of every individual optometrist in California.

FUTURE MEETINGS:

The next meeting of the Board will be on November 15, 1981, in San Diego.

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 ten members, three of whom are public members.

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.

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.

At the March 1981 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.

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 two 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 expand 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 minimum of specificity. At the July meeting, the Board formed an Ad Hoc Committee to work with CPhA on a joint statement of practice.

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

The Board has proposed changing the wording of section 1724, the regulation which sets out the passing grade for the examination. The regulation presently reads "a general average of not less than seventy-five percent (75%) in all subjects and not less than sixty percent (60%) in more than two (2) subjects shall be a passing grade in an examination." After much discussion as to what the second part of this regulation really means, the Board proposed changing it to read " . . . not less than 60% in any individual subject."

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 and is waiting for the Governor's signature.

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.

AB 1079: Would restrict disclosure of consumer complaints until final adjudication. Board opposes.

SB 1029: Would allow HMOs to own pharmacies. Board opposes. (*See* discussion *supra*.)

RECENT MEETINGS:

Present law prohibits pharmacy ownership by doctors or by corporations in which 10% or more of the controlling interest is held by doctors. SB 1029 would make an exception to this law by allowing Health Maintenance Organizations (HMOs) to own pharmacies.

Only two HMOs in California would be affected by the bill. Representatives from one of these — Maxi-Care — attended both the June and July meetings seeking the Board's support of SB 1029. They cited financial and administrative reasons for their position. In addition, they pointed out that the policy reason for the general prohibition does not exist in the HMO situation. They asserted that the fear that doctors who own pharmacies may overprescribe is not a legitimate one in the HMO setting where the financial well-being of the HMO depends on preventative medicine and judicious prescribing.

A representative from the California Pharmacists Association (CPhA) voiced strong opposition to SB 1029. CPhA's position is that the overriding principle forbidding doctor-owned pharmacies should remain inviolate. CPhA is concerned that opening the door a crack for HMOs will lead to pressure by other groups for further door-opening.

The Board had originally opposed this bill. At the June meeting it changed its position to support it, conditioned on an amendment which would limit the number of prescription for non-HMO members which an HMO owned pharmacy could fill to 10% of total volume. As a result of additional testimony by Maxi-Care and CPhA in July, the Board returned to its original oppose position.

The Board decided, at the July meeting, that it would provide pharmacy boards of other states with the names of licensees against whom it has taken disciplinary action. The Board also decided to hold examinations twice a year — June and January — instead of three times a year.

The new public member, Mr. Young Youhne, was introduced at the June meeting. The Board now has its full complement of public members but is still short one professional member.

BOARD OF REGISTERED NURSING

Executive Officer:
Barbara Brusstar
(916) 322-3350

The Board of Nursing Education and Nurse Registration (Board of Registered Nursing) licenses all Registered Nurses, 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.

An ongoing function of the Board is to prepare and maintain 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.

MAJOR PROJECTS

Legislation:

AB 534 has passed the Assembly and Senate and was enrolled to the Governor in September, 1981. The bill, which authorizes the Board to increase certain fees and establish several new fees, will become effective January 1, 1982. The fee change proposals will be discussed and the amount of each fee will be determined at the November Board meeting in Los Angeles. The next step is to hold regulation hearing and adopt a fee schedule to become effective as soon as possible after January 1, 1982.

SB 617 is a bill that would have provided licensing reciprocity for foreign-trained nurses. It was amended so substantially on August 11 by the Assembly Health Committee that it emerged as an entirely different bill. The bill that was finally approved would require foreign nurses to take the California exam. It would allow them to do so in their own

country if they paid for testing. It also provides a special advisory committee to determine if the educational credentials of foreign nurse candidates meet this state's requirements. The BRN strongly opposes this new committee and was unhappy with the changes in the bill.

Transfer and Challenge Policies:

In June 1981, the Board officially adopted the transfer and challenge policies that have been under analysis for over a year. These policies are effective as of June 19, 1981. They allow applicants to the California BRN-approved program a chance to receive academic credit for previous education and work experience. All schools are required to implement the transfer credit and credit by examination policies by September 1, 1981. The Board will check on accreditation visits and collect hard data as to how many students have transferred and challenged. The Board shall deny application for accreditation or revoke accreditation given to any school of nursing which does not comply. With the change of policy, if a nurse wants to apply class credits from one nursing school to another, or take an aptitude test and receive credit for a course in which the nurse is knowledgeable, the legal right exists to do so.

The impetus for these policies was the Board's desire for nursing students to be able to "move quickly through the educational requirements for licensure with minimum expense, time and disruption of their professional careers." Transfer and challenge policies also aid career mobility.

Feasibility Study:

The National Council of State Boards of Nursing is the governing body that contracted with National League of Nursing (NLN) to develop the nursing licensure exam given in all states. This is the 'National State Board Test Pool Examination," and a nurse who passes it in one state will have "reciprocity" to be licensed in any other state.

In negotiating a new contract, the National Council solicited bids for development of a new RN licensing exam. Eight firms submitted bids. The BRN wanted to conduct a separate study of the eight firms to vote for the test firm of their choice. Testing specialist Susan Brank from the Department of Consumer Affairs Central Testing Unit was elected to evaluate the proposals. Brank's choice of the top three firms was the same as that of the National Council. The final choice was made and CTB/McGraw-Hill was the firm voted in at the June Delegate Assembly in Chicago. The final contract was signed with CTB/McGraw-Hill.

The National League of Nursing, which previously handled the exam, failed to compete adequately with the top proposals. Their contract terminates in 1982 after the July exam. The February 1983 exam will be conducted by CTB/McGraw-Hill.

The BRN voted in March to have the staff research the possibility of writing a California exam rather than using the national exam. At this time and in the foreseeable future, California will not develop its own nursing licensure exam. For reasons of reciprocity and uniformity, as well as public conflict, California will continue to use a national test. The BRN is optimistic that the proposed national test will meet California standards.

RECENT MEETINGS

Rio Hondo:

Continuing accreditation was suspended for Rio Hondo College. The school was put on warning status at the Board's June 19 meeting. It was determined at the September 18 hearing that Rio Hondo had not complied with the Board's recommendations. A majority of the Board voted to withdraw the school's July, 1982 accreditation. The school has ten months before that time in which to implement the Board's requirements. Rio Hondo may apply for reconsideration to stay the pending action upon presenting evidence of such implementation to the Board.

Representatives from Rio Hondo College expressed confusion over exactly what it was the Board wanted them to do. The Board had said at their June meeting that it was dissatisfied not with the competency of the teachers but with the fact that the faculty had been assigned in the past to teach subjects in which they were not trained. Also, the clinical program needed review. The faculty is to develop written policies to govern students and instructors in the clinical experience. The BRN wants student input.

Standardized Procedures:

There are certain functions that a nurse is not authorized to perform (i.e., "medical practice"). For example, the prescription of drugs is a task limited to licensed doctors. As medical practice becomes routine, it is often transferred to nurses. "Standardized procedures" may expand on R.N.s' scope of practice without violating the Medical Practice Act. The Department of Health Care Services establishes guidelines for licensed nurses' standardized procedures. The BRN is organizing workshops to aid in the better understanding of this topic, often defined as "policies and protocols," developed in collaboration with the M.D., nurses and the health care administration. Each hospital makes its own standardized procedures; they are not established by the BRN.

The question arose at the September 19 meeting whether or not it is nursing practice to deliver a fetus in an abortion. If it is found to be a medical function, a standardized procedure will be necessary. It was the Board's opinion that delivery of a fetus in an abortion is common nursing practice and no standardized procedure is necessary.

Adverse Impact:

Section 12944 of the Department of Fair Employment and Housing Act prohibits any licensing board from requiring a licensing exam which adversely affects minorities, "unless such practice can be demonstrated to be job-related." When adverse impact exists and there is a lack of exam validity or job-relatedness, the exam can be regarded as discriminatory and unlawful. When the Board of Registered Nursing received complaints concerning the validity of the nurse licensure exam, it sought an independent evaluation of the exam. The State's contracted consultant, Applied Research Consultants, Inc., of Sacramento, could not prove the exam to be job-related. This confirmed the similar findings of the Central Testing Unit of the Department of Consumer Affairs. They, in conjunction with the Department of Fair Employment and Housing, analyzed the exam in terms of relevance and fairness. The exam was found to have substantial adverse impact against minorities, most specifically against foreign-educated nurses. It is now up to the National Council of State Boards of Nursing to determine the validity of the licensure exam and its job-relatedness.

In the meantime, the BRN has extended interim permits until October 1, 1981. An interim permit allows a person who has fulfilled all of the educational requirements for licensure to practice nursing as an interim permittee. This temporary permit lasts until the next state exam is given and the final results are mailed out. The BRN extended the interim permits granted to those people who took the February or July exams and scored less than passing. The intent was to await the results of the job-relatedness study. The National Council of State Boards of Nursing will delete specific questions in the test that are found not to be job-related. This will change the scoring of the exams. The extension of interim permits until October 1 will allow time for the February and July exams to be rescored, thereby eliminating discriminatory and unfair questions that may lower scores.

The exams are being rescored based on the work of review teams. Each team

consists of one Board member representative, four nursing practice specialists, and one testing specialist. The nurses in current practice will assist in assessing the exam for job-relatedness and its ability to test for competency to enter the practice.

There are six parts to the nursing licensure exam. Each one will be evaluated on an item-by-item basis. Those items which appear unacceptable in terms of occupational relevance or fairness and other criteria will be identified and considered by the review teams. Patty Majcher, President of the BRN, expressed the Board's goal to be for questions on the exam to measure knowledge needed to insure quality patient care.

Interim Permits:

The BRN's most controversial proposal has been to seek a regulation change to extend interim permits to 24 months. The impact of this rule change would be to allow foreign-educated nurses who fail the nursing licensure exam to work for up to two years. Otherwise, if they fail the exam, their visas will be taken away and they will be deported. The two-year extension allows time for acculturation.

Due to a nursing shortage, hospitals claim they need these nurses. Many American R.N.s fear lowered standards and wages in a profession already steeped in labor exploitation. Further, as nurses do more, threatened quality patient care becomes an issue as nurses who fail the test are allowed to practice for two years as interim permittees.

Nurses from both sides picketed the July Board meeting in Los Angeles. Many testified as to their feelings about the possible regulation change.

Norris:

Some nurses and onlookers who attended the September 19 meeting expressed concern over the conduct of Board member Patricia Norris, R.N. They found her attitude to be unprofessional and abrasive, both to representatives of Rio Hondo College and to her fellow Board members. It is unclear at this time whether action will be recommended to rescind her appointment under section 2706 of the Nursing Practice Act.

FUTURE MEETINGS:

The Board's next meetings are October 22 and 23 in Sacramento. Agenda items include Administration and Education. On November 19 and 20, the Board will meet in Los Angeles to discuss Administration and Disciplinary Matters. Action requested that a regulation hearing be scheduled November 19, 1981, to hear and receive testimony on proposed amendments to section 1417 relating to fee increases.

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. Civil, electrical, mechanical and structural engineering and land surveying are known as "practice" disciplines. Practice registration requires that in order to call oneself the name of a discipline and in order to perform the work of such discipline, one must register with the Board unless otherwise exempted. There are other numerous "title" engineering disciplines. In order to call oneself the name of a "title" discipline, one must register with the Board. However, in contrast with "practice" disciplines one may perform the work of such disciplines without registration. An engineer, except a civil engineer, is exempt from registration if he or she works for the government, a public utility or an industrial corporation: as a result, ninety-two percent of California's engineers are exempt.

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 seven standing committees which deal with land surveying and the various branches of engineering. Previously, there had been nineteen committees, one for land surveying and one for each branch of engineering. The new system groups two, three or four related branches of engineering in one committee. This was done to make the committees more manageable. Each committee is composed of three Board members. The committees approve or deny applications for examinations and register applicants who pass. The actions taken by the committees must be approved by the Board; approval is routinely given.

To be registered as a professional engineer, the applicant must not have commited certain acts or crimes, 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 applicants who are denied registration, and engineers and land surveyors who have had their registration suspended or revoked for violations.

MAJOR PROJECTS:

During the past few meetings, the Board has been soliciting public comment on Board member I. Michael Schulman's report on title registration. Public comment, virtually all of which has come from engineers and engineering societies, has been extensive. Mr. Schulman's five proposals would substantially alter the regulation of engineering in California. They are: (1) Eliminate all "title" disciplines established by Board regulations; (2) Eliminate all "titled" disciplines 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 "practice" disciplines. ("Registration" here means that the exempt engineer would be required to submit his or her name to the Board in order to work as an engineer. No exams would be required, and the registration could be revoked for incompetence, etc.); (4) Establish criteria to determine if a discipline should be covered by "practice" registration; and (5) Review all "title" disciplines to determine whether they should become "practice" disciplines.

The Board is presently holding public healings for the purpose of AB 1111 regulation review.

RECENT MEETINGS:

May 20, 1981: The Board approved the attendance of various members at various industry group meetings, the annual meeting of the National Council of Engineering Examiners, and the Edmund G. "Pat" Brown Institute of Government Affairs Conference on AB 1111.

The Broad adopted the proposed decision of an Administrative Law Judge in a case granting registration as an engineer.

Mr. Jimmie R. Yee was elected Board President, and Ms. Mary Jane LaBelle was elected Board Vice President for the coming fiscal year. Mr. Yee was this year's Vice President.

The actions taken by the standing committees were approved. Fifty-one applicants were granted registration as engineers, and seven were denied. One engineer-in-training was registered. Exam

results for other applicants were confirmed; 22 applicants passed and six failed. One hundred fifty-nine applications to take exams were accepted and seven were found ineligible. Of the engineering applications that were re-evaluated, seven were accepted, 15 were found ineligible and five exams were changed.

The Board adopted a procedure of deliberating on the proposed decisions of Administrative Law Judges in closed session. The decision would then be announced in open meeting.

One of the special committees, the Legislative Rules Committee, reported on the status of current legislative bills. After discussion, the Board voted to take a neutral position on SB 965, which would give the Board authority to regulate Soils Engineers. The Board voted to oppose SB 602 as amended. This bill would eliminate existing law regulating the practice of engineering. An independent public corporation, called the California Association of Professional Engineers, would regulate the practice of engineering in place of the present Board. One of the reasons the Board opposes this bill is that the governing council of the Association would consist of seven engineer members and two public members. (The present Board has a majority of public members.) Curiously, the proposed Association would not regulate the practice of land surveying like the present Board does; rather, the bill would create a State Board of Land Surveyors, which would be in the Department of Consumer Affairs. Some of the present law governing land surveyors would remain intact, and some provisions would be enacted, repealed or amended. The Board also voted to oppose AB 1079 because it would place constraints on public disclosure of complaints against licensees who are governed by boards in the Department of Consumer Affairs. The Board recently enacted a complaint disclosure regulation, which has yet to be approved by the OAL.

Another special committee, the Personnel and Finance Committee, reported on the Draft Budget for 1982/1983, which was approved as meeting the needs of the Board. The committee reported on the expenditures from the current budget (1980/1981) and indicated that the expenditures were essentially within the levels anticipated when the budget year began.

The Professional Practices/Interprofessional Relations Committee, a special committee, reported on its efforts in the area of public contact in three main respects: establishing greater contact with engineering societies, obtaining input from engineering students in universities and promoting engineering as a career for handicapped persons.

On the recommendation of the Executive Secretary the following applications were cancelled by the Board: two with full refund, engineer-in-training waived under engineer applications; one full refund, application filed in error; and one no refund, failure to appear for examination after two postponments.

June 17, 1981: The Board adopted the proposed decision of the administrative law judge in one case denying registration as an engineer. The Board also registered one applicant as an engineer, and revoked the registration of another engineer for violation of the terms of probation of a previous decision and order.

The Board approved the attendance of members and the executive secretary at various meetings. These meetings will be with industry groups, at budget sessions with the Department of Consumer Affairs and with the National Council of Engineering Examiners.

Also, the Board voted to approve the actions taken by the standing committees. Thirty-seven persons were granted registration as engineers, and one was denied. One engineer-in-training was registered and one land surveyor was licensed. One hundred sixty-six applications to take engineering exams were accepted and three were found ineligible. Two engineering applications were re-evaluated; one exam change was granted and one was denied. Seven applications to take the land surveyor exam were accepted.

On the Executive Secretary's recommendation the Board approved the cancellation of the following applications: 484 with no refund, failure to appear for assigned examination; one with full refund, EIT waived under profession engineering application; and recission of a previous action cancelling one application.

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 have his/her license suspended or revoked 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:

In compliance with AB 1111, the Board is scheduled to begin public hearings for the purpose of regulatory review on December 5, in Los Angeles. These hearings will be completed on March 5. The Board had hoped to receive extra funding for two additional public hearings, but it was denied in late August. Since the Board expects little or no participation from the public (outside of the professional community) in the hearings, the denial was probably warranted. The Board intends to have complied with every mandate of AB 1111 by the end of March, 1982 as per its agreement with the OAL.

The Transcript Reimbursement Fund (TRF) is now in full operation. The TRF exist to pay the expenses of trial transcripts (an original and, if requested, a copy) for indigent appellants and is provided from a recent tenfold increase in license renewal fees. $300,000 became available on July 1; as of September 10, $4,236 has been disbursed. Guidelines for TRF claims have been distributed to Legal Aid Societies around the State, and an increasing claims rate is anticipated.

At the request of the Assembly, the Board is investigating electronic reporting methods. These involve stenotyping directly into a computer input device and having the computer write the transcript, rather than having the reporter transcribe the record by hand. Management efficiency seems to be the primary obstacle currently. It was suggested at the September meeting that the Board survey the manufacturers for more complete information on the various systems. The collection of information continues.

A Sacramento trial court is currently hearing a direct challenge to the legality of the use of electronic recording methods. It is expected that whatever decision is reached, it will be appealed; the future of electronic recording in California will, in the meantime, be uncertain.

RECENT ACTIONS:

The Board has received complaints from some reporters working for reporting firms. The owners of the firms have occasionally either edited or interfered with the delivery of transcripts. The problem is that the Board has no jurisdiction over the owners and the reporters personally bear the pressures resulting from incompleteness and late delivery. There are two possible explanations for the problems, both of which are more than likely partially true: First, the

owners may be behaving irresponsibly or negligently and second, they may be intentionally withholding transcripts from "deadbeat lawyers" who don't pay their bills. (In the latter case, it is suggested that the owners compile a COD list.) The Board has requested more input on the matter from the professional community, and intends to schedule public hearings soon to discuss the problem.

The Board is finally ready to begin its on-site inspections of court reporting schools. Half are to be visited this year, half next year, and each will be inspected at least biannually thereafter. Board members are empowered to make their inspections unannounced, but as a general practice will give some advance notice to assure that the schools' administrators are present at the time of their visits. The focal point of the inspections will be on curriculum content.

In the current fiscal year (which began July 1), the Board's budget is set at $158,946. To date this budget seems ample and no BCP's are anticipated. The 1982-83 budget was adopted by the Board in September without dissent, but a BCP has already submitted and approved (for $8,000) for the purchase of word processing equipment.

FUTURE MEETINGS:

The Board has scheduled its next meetings at the following dates and locations:

November 12, 1981 at the LAX Hyatt; December 5, 1981 at the LAX Hyatt; and March, 1982 at either Sacramento or San Francisco.

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 Bus. and Prof. Code section 8500 et seq. and its regulations in Title 16, Cal. Admin. Code section 1900 et seq.

MAJOR PROJECTS:

Executive Officer Rodney N. Stine resigned effective October 1, 1981. Stine is leaving the SPCB to serve as the Executive Secretary of the Board of Dental Examiners. However, Stine will attend the scheduled October 30, 1981, meeting of the SPCB in Los Angeles in an advisory capacity.

The AB 1111-mandated review of the SPCB's regulations has not generated any significant comment. Neither the industry nor the public has challenged any regulation. However, the AB 1111 review process has generated some SPCB internal interest in reviewing its regulations. Stine indicated that regulation section 1999.1, which provides a formula for determining the length of suspension for a license, will be reviewed and probably strengthened.

The SPCB is scheduled to hold a public hearing on October 30, 1981, in Los Angeles. The major topic at that hearing will be a review of regulation section 1970.3, which presently requires a licensee to secure with a secondary lock all outside doors of a structure to be fumigated unless such a lock cannot be installed without defacing the property. In such a case, a fumigant warning sign must be placed over or near the primary lock.

The proposed change would require the licensee to hire a security guard instead of posting a warning sign in those instances where a secondary lock cannot be used. It is intended that the requirement of hiring a guard will provide licensees sufficient incentive to use more secondary locks.

The SPCB is continuing the process of upgrading license exams. It recently adopted an 18-month plan for revising its exams.

The SPCB's interagency agreement with the Department of Food and Agriculture and the California Agricultural Commissioner's Association appears to be paying some dividends. Stine and the Los Angeles County Agricultural and Commissioner recently signed some accusations and Stine expressed pleasure with this cooperation. However, as previously reported, the Department of Food and Agriculture remains uncooperative. There is a complete absence of progress between Food and Agriculture and SPCB on this issue.

The SPCB worked to defeat SB 125 (Montoya), which would have created a legislative monopoly for certain providers of continuing education courses required by SPCB of licensees. The bill was placed in the Senate's inactive file by its author. Passage appears unlikely.

On the other hand, SB 129 (Johnson), which permits the SPCB to levy fines against its licensees prior to an administrative hearing, if the licensee so stipulates, was approved by both houses and signed by the Governor on September 2, 1981. SB 129 becomes effective on January 1, 1982. SPCB supported this legislation.

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. Exempt from the Program's registration regulations are certified public accountants, public accountants, attorneys, banks and trust companies and persons authorized to practice before the Internal Revenue Service. Other persons wishing to become registered tax preparers must submit an application and a $1,000 bond to the Program. There is no test for competency to become a registered tax preparer but any "commercial" preparer must be registered with the Program.

MAJOR PROJECTS:

The Program handles consumer complaints regarding tax preparers. The Administrator determines the manner in which each complaint is handled. The Program handles approximately 400 complaints a year and has the authority to suspend or revoke a registration certificate.

RECENT EVENTS:

The last year the Program was funded for investigation was 1979-80. During that period, 12 registration certificates were revoked and 2 were suspended. Since that time there have been no revocations or suspensions due to the lack of investigative funding. The Program's major current function is simply to maintain the current registry.

In the recent past a surplus was created from the receipt of registration fees. Through the budgetary process, the legislature reduced the Program's administrative, as well as investigative, budget to $1. Due to that act, the Program is not empowered to collect any fees from applicants for registration. The result is a statutory framework for the Program but no funding to implement that law. A bill to repeal the existing statutes (Assembly Bill 1110; *see* CRLR Vol. 1, No. 2, (Summer, 1981) at p. 47) will be heard in

the Legislature in January 1982.

Regardless of whether that bill becomes law, all current registrations on file with the Program will expire on October 31, 1981. Apparently, there will be no attempt to register tax preparers after that date without legislation to restore the Program's budget. To date no such legislation has been introduced. Thus the existence of the Tax Preparer Program, after October 31, 1981 seems questionable.

BOARD OF EXAMINERS IN VETERINARY MEDICINE

Executive Secretary: Gary K. Hill (916) 920-7662

The Board of Examiners in Veterinary Medicine licenses all doctors of Veterinary Medicine, veterinary hospitals, animal health care facilities, and animal health technicians (AHT's). The qualifications of all applicants for veterinary licenses are evaluated through a written and a practical examination. Through its regulatory power, the Board determines the degree of discretion that a veterinarian, an animal health technician, and an unregistered assistant have in the performance of animal health care tasks. The Board reserves the power to revoke or suspend the license or registration of any veterinarian or AHT for any act committed in violation of the regulations after a proper hearing.

The Board may also at any time inspect the premises on which veterinary medicine, surgery or dentistry is practiced. All such facilities must be registered with the Board and must conform to the minimum standards set forth by the same. This registration is subject to revocation or suspension if, after a proper hearing, a facility is deemed to fall short of the Board's standards.

The Board is comprised of six members, including two public members. The Animal Health Technician Examining Committee consists of three licensed veterinarians, one of whom must be involved in AHT education, three public members, and one AHT.

MAJOR PROJECTS/
RECENT MEETINGS:

At its September 1 meeting, the Board voted unanimously to drop a 1,000-hour clinical experience requirement from the AHT training regulations. The requirement had been imposed on those AHTs' that graduated from private institutions. The 1,000-hour post-graduate requirement had been considered a necessary supplement to the private school curriculum which lasts only nine months (compared to the public program's two years). Private institution graduates have opposed the requirement as an unnecessary and discriminatory burden. In support of their argument that the added hours fall short of their intended purpose, the graduates pointed to their exam passage rates, which are superior to those of their two-year counterparts. The Board's decision to drop the 1,000 hours is still unofficial, pending a proposed study of the 1,000-hour regulation to be conducted by the AHT Committee's overall scrutiny of all state-accredited AHT schools, both public and private. The Board was urged by the AHT Committee to consider immediate suspension of the 1,000-hour rule before it began the study.

The Committee plans to probe both the nine-month and the two-year programs to determine if the post-graduate training is a necessary "padding" to the private curriculum, that it may produce graduates with credentials comparable to those of the two-year graduates. The Committee hopes that feedback from veterinarians in the field who supervise the AHT grads will aid it in reaching a conclusion.

Even if the 1,000 hours are found to serve their intended purpose, Board Executive Secretary Gary Hill feels a better solution is to "beef up" the nine-month private curriculum itself rather than retain the 1,000 hours training at the post-graduate stage. At the close of this study, the Board will give its decision official status by adding it to the regulations.

It was recommended by the Board that the AHT Committee channel some of its fund toward the Drug and Alcohol Rehabilitation Program established for its licensees.

The Board noted highlights of the recent American Association of National Boards meeting. The Association has adopted a new constitution and approved a dues increase. It will cost the Board $25 more annually (from $50) to hold membership. A continuing problem has been the lag by some states in getting exams to the Testing Service for grading. This delay hinders the grading process since exams must be received before results can be published. It has been recommended that a list of the offending states be published to deter this foot-dragging in the future.

Another ongoing concern is the low exam passage rate of graduates of unapproved veterinary colleges, a large number of which are foreign schools. The Board has implemented a program in which teaching hospitals provide one year of practical instruction to these graduates, who are of both U.S. and foreign citizenship. The goal of this program is to instruct the foreign graduates on U.S. veterinary standards and practices in preparation for the veterinary exam. One recommendation is that the requirements for the clinical competency test be eased to start the current 75% failure rate on a downward trend. It has been suggested that the foreign graduate training program be studied if the high failure rate persists. The state of California currently subscribes to only portions of the American Veterinary Medical Association's program for foreign graduates. The California version limits the gamut of tasks performable by a foreign graduate to those which an AHT may do. One feature of the A.V.M.A. program is the Test for Spoken English, which California currently disallows on the ground that it discriminates against the foreign graduate. That position may change, however, as California plans to re-evaluate its existing program and possibly opt for the A.V.M.A. version of foreign graduate training in whole or in part.

Plans to revamp the Veterinary Hospitals Inspector's Training Program are underway. The goal of the program is to send competent, well-informed inspectors into the hospitals with a command of trade terminology and knowledge of what to look for on an inspection run. The average inspection time per hospital is about 2½ hours. This time is monitored so the Board may determine how much funding is needed for the program. Each inspector is supplied with a checklist of "minimum standards" set by the Board as a guideline for evaluating each hospital. Two training sessions for inspectors are slated for the near future.

Surveys have been sent out by the Board to three groups. All those who took the last veterinary exam received questionnaires on their reactions to the exam. A second survey was directed to those veterinarians whose licenses will soon be up for renewal. The Board has thus far received 3,000 responses from this group and statistics are being compiled. All those who have made complaints to the Board will get a chance to air their feelings via a third survey.

The Board wants to crack down on animal hospitals that dubiously advertise as "emergency" facilities when, in fact, they often don't have a veterinarian on call or on the premises. A new regulation will require those hospitals that use the word "emergency" in their ads to specify if a vet is "on call" or "on the premises," and the hours he or she is available. In yellow page advertising, for example, the phone company has no discretion to require veterinarians to list their hours in an ad, but it may advise them of the new regulation. In order for an animal health

care facility to have "emergency" status, it must have a veterinarian on call or on the premises for what would be considered a reasonable time. The Board will send out a press release to advise veterinarians of this new regulation.

The Board's budget has been reduced by $18,000 for the next fiscal year. This decrease comes as a result of a reduced need for legal services. The current budget was characterized as adequate, but it was noted that more funds will be needed within five years to meet added expenses.

On this past meeting's agenda was an administrtive hearing to determine if former California veterinarian Daniel Koller should have his license reinstated. Dr. Koller's license was revoked when he was found guilty on charges of cruelty to animals and in aiding in the unlicensed practice of veterinary medicine by a student. The decision to reinstate Koller's license rests on whether the Board is convinced of his subsequent rehabilitation. The Board's decision on the matter will be made public two to three weeks after a vote is taken.

In accordance with AB 1111, the Board reviewed two articles from its Code of Regulations concerning examination and licensing and veterinary colleges. Minor changes in the legislative language were voted on and approved.

FUTURE MEETINGS:

The Board of Examiners will convene again on October 28, 1981, at the Hyatt Regency Hotel in San Francisco.

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:

A vocational nurse is licensed after applying, passing an examination and paying a license fee. After passing the exam and paying the fee, the applicant must wait another three weeks for the license to be printed and mailed. Legislation has been passed in September of 1981 (SB 532) that allows an "interim permit" to be issued to vocational nurses for the three week period while the approved licenses go through the data processing center to be printed. Previously, the vocational nurses could not work during this time but had to wait for the license.

The Board has recently repealed the portion of a regulation (Section 2585(f) Title 16, Cal. Admin. Code, Ch. 25) requiring psychiatric technician examiners to be able to read and to do simple arithmetic at the twelfth grade level. This requirement was believed to create an artificial barrier and to be unduly restrictive for candidates. A growing percentage of high school graduates have been found to have reading and math skills at a tenth grade level. That part of the regulation specifying "twelfth grade level" was deleted and the new regulation requires only that a candidate for the position of psychiatric technician examiner have a high school degree or the equivalent.

FUTURE MEETINGS:

The Board will hold rule making hearings on November 5 and 6, 1981 in Los Angeles. The proposed rule to be considered would increase vocational nurses' initial licensing fees. It would also increase the renewal fees which fall due every two years. These hearings are open to the public and interested persons may attend and submit testimony.

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.

MAJOR PROJECTS:

Recently, the ABC has been involved in the AB 1111 mandated review of its regulations. Public hearings were held on August 31-September 1 in Sacramento, September 10-11 in Los Angeles, and September 24-25 in Oakland. Mr. Jerry L. Whitfield, co-ordinator of the ABC's review, expressed concern at the lack of public response at the hearings. He had hoped that there would have been an active interchange of ideas and constructive criticism but only about two members of the public spoke at any meeting. The hearing dates were advertised in trade and local papers. Mr. Whitfield's job now is to write up the completion statements from the public comment and inhouse analysis. He anticipates that these statements will be submitted to the Office of Administrative Law around the first of December. Any questions regarding AB 1111 can be directed to Mr. Whitfield at (415) 881-3951.

In the wake of the recent vertical price-fixing cases *(Corsetti and MidCal)*, the industry promoted the passage of AB 429. The *Corsetti* case involved a liquor retailer who refused to abide by the resale price lists set by manufacturers. The California Supreme Court ultimately agreed with *Corsetti* and outlawed the statute authorizing manufacturer set resale prices. In the subsequent *MidCal* case, the United States Supreme Court upheld the invalidation of vertical price fixing as applied to wines. As a result, the ABC proposed to repeal conflicting language in Rule 105 of its regulations. The repeal of 105 would be effective on January 1, 1982. The industry, in response to the two cases and the ABC's repeal of 105, promoted AB 429 which would reauthorize certain anticompetitive agreements as to beer sales. Recently, however, AB 429 became a "two-year bill." There has been some discussion among the industry, the governor's office and the ABC concerning public response to AB 429, and its probable effects. There is some evidence that the industry will allow the ABC opposed AB 429 to die if parts or Rule 105 will remain in effect. AB 429 would allow beer manufacturers to set up "exclusive" distributors and ban competition from "outside" distributors. The bill would also prohibit volume discounts by beer manufacturers. The bill has been flying through the legislature. The ABC may agree to try and prohibit volume discounts of beer or retain some other aspect of Rule 105 in order to stave off the more complete anticompetitive effect of AB 429.

Historically, when vertical price fixing was legal, the law stipulated that a retailer or distributor must receive his supply from a manufacturer or his designated 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 by ABC as well. Small retailers started buying directly from other states and undercutting their large California competitors. These outside states (primarily Oklahoma) had "affirmation" laws which required that all manufacturers' sales within the state be at or below the lowest price at which that firm sells to anyone in any other state.

The liquor industry was concerned about the end of the primary source rule. They approached the ABC and negotiated a deal. If the ABC would support reenactment of the primary source law (contained in AB 499), it would not oppose an "affirmation" statute like Oklahoma's for California (SB 570). Then a problem developed. While both AB 499 and 570 passed, a law suit was immediately filed *(Rice v. Williams)* which successfully enjoined enforcement of the pro-industry AB 499. *See Williams V. Rice* 108 CA 3d 348 (9-24-80).

ALCOHOLIC BEVERAGE TAX:

While the alcohol industry supplies the economy with much needed income, it also created huge costs due to alcohol related problems. The state government has become particularly interested in the consumption of alcohol while or before driving. Recently, the governor signed AB 541, which will become effective at the beginning of next year. The bill mandates predetermined sanctions for those convicted of drunk driving. A first time offense will require a 2 day jail stay or an approved alcohol rehabilitation program. The sanction is considerably stricter for the second offense.

As a result of the increased desire to curb alcohol related problems, additional money must be channeled into alcoholism rehabilitation-educational programs and into law enforcement. For example, the new law will require approximately 27,000 additional jail days in San Diego County alone. This equals 75 new jail cells. Clearly there is a price that must be paid by those interested in safe streets and highways.

Those who work in alcohol abuse professions contend that the money for enforcement and rehabilitation must come directly from the sale of alcohol. Currently, revenue from alcohol tax goes for general government operations, not to rehabilitation programs. Recently, Assemblyperson Art Torres (Los Angeles) proposed a bill that would increase alcohol taxes and channel this extra money into detoxification programs in the Los Angeles area. While the bill failed on a 2-9 vote of the Assembly Revenue and Taxation Committee, the bill is coming up for reconsideration.

AB 1594 (Morehead) is a nickel a drink tax on alcohol served in bars and restaurants. While a portion of the revenue raised from this tax would surface in the general fund, a large portion of the money would be earmarked for alcohol abuse programs and procedures. AB 957 (Waters) would also increase the tax on alcohol, however, this money would be

deposited in the general fund for general use.

RECENT MEETINGS:

The Department of Alcoholic 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.

STATE BANKING DEPARTMENT

Superintendent:
Richard Dominguez
(415) 557-3232

The State Banking Department administers all laws applicable to corporations engaging in the commercial banking or 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, the chief officer of the Department, 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; the number of potential depositors; the 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 or 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 or trust experience, ability and standing to afford reasonable promise of successful operation; the proposed name does not so closely resemble as to cause confusion the name of any other bank or trust company transacting or which has previously transacted business in the state; the applicant has complied with all applicable laws.

If the Superintendent finds that the proposed bank or trust company has fulfilled all 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 all changes in the location of a head office, the establishment or relocation of branch offices, 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 savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS:

Legislation (SB 285) to revise and update the provisions of the California Banking Law relating to the licensing and regulation of foreign banks was signed by Governor Brown and took effect on June 16, 1981. Senator Rose Ann Vuich, Chair of the State Senate Committee on Banking and Commerce, authored the legislation developed by the State Banking Department with the assistance of the Foreign Banking Task Force, which includes representatives of both foreign and domestic banks.

The legislation divides offices of foreign banks into six categories: representative offices, nondepository agencies, depository agencies, limited branch offices, wholesale branch offices and retail branch offices. Existing offices of foreign banks are being relicensed in accordance with these new classifications.

Under prior law, when a foreign bank maintained a representative office in California, the individual representative(s) assigned to the office were required to obtain a license and pay annual license fees. Now it is the foreign bank itself which is licensed, not the individual representatives. In addition, the legislation provides that every foreign bank which on June 1 of each year is licensed to maintain a representative office and is not also licensed to maintain an agency or branch office, shall pay a fee of $250.00 for each representative office on or before July 1.

The Department is working with the Foreign Banking Task Force to develop regulations to implement the new law. Because the legislation was enacted on an urgency basis, the Department intends to adopt the regulations on the same basis. Although the Department hoped to submit the regulations to the Office of Administrative Law for approval during July, 1981, as of this writing the regulations had not been submitted. Subsequent to the regulations' adoption, the Department will hold public hearings and make any necessary regulatory changes.

The Department will begin accepting and processing applications by foreign banks to establish offices pursuant to the legislation upon the effective date of the regulations. At that time the Department will also authorize the transfer of pledged assets of foreign banks now held by the State Treasurer to approved depository banks.

The Superintendent has determined that state banks may offer retail repur-

chase plans ("Retail Repos") and established guidelines for the plans. When these guidelines are followed, the accounts do not consistute a borrowing which requires permission under Chapter 10, Article 1, of the California Financial Code.

Sales must be in denominations of less than $100,000.00, for a term less than 90 days, and not be automatically renewable. The securities sold must be U.S. government securities, or those of a federal agency. The market value of the security at the time of sale must equal or exceed the amount of aggregate purchase price paid by the Retail Repo purchasers secured by that security. The Department is encouraging banks offering such plans to perfect the customer's security interest, and to use an independent custodian or trustee.

Language generally associated with deposits must be avoided to prevent giving the impression insured deposits are being offered. Information concerning the nature and terms of the plan must be provided. Customers must be advised that such an account is not a deposit and is not insured or guaranteed in any way by the U.S. government. In addition, each customer must receive appropriate information about the bank and its financial condition.

Where the customers' security interest is not perfected, customers must be so informed and advised that they may become unsecured creditors of the bank. Where the customers' security interest has been perfected, the customers must be advised that they may become unsecured creditors of the bank to the extent the market value of the security falls below the amount of the funds invested.

The security underlying the transaction must be specifically identified. Customers must be advised (1) that the Retail Repo is an obligation of the issuing bank and that the underlying security serves as collateral, (2) that the bank will pay a fixed amount, including interest on the purchase price, regardless of any fluctuation in the market price of the underlying security, (3) that the interest rate paid is not that of the underlying security and (4) that general banking assets will likely be used to satisfy the bank's obligation under the Retail Repo rather than proceeds from the sale of the underlying security.

These accounts must be reflected on the bank's books as liability items with an appropriate caption, such as "securities sold under agreement to repurchase."

The Department completed its review of the status of the banking fund, the current year budget, anticipated revenue from other sources and the total resources of state chartered institutions as of June 30, 1981. After analysis of these factors, the assessment base rate has been set at $.92 per thousand dollars of total resources. The statutory maximum base rate is $2.20.

The Department is continuing its regulation review as required by AB 1111.

RECENT ACTIONS:

At the close of business on June 30, 1981, the 240 state chartered banks of deposit with 1,537 branches had total assets of $57.8 billion, an increase of $9.1 billion, or 18.6% over June 30, 1980. During this period there was a net increase of 23 banks and 150 branches.

Fiduciary assets of the trust departments of 35 state-chartered banks, 2 title insurance companies and 13 nondeposit trust companies totaled $65.8 billion, an increase of $20.6 billion, or 45.6%, over June 30, 1980. The assets of 87 foreign banking corporations, having 95 offices, increased 28.9% to $32.8 billion.

As of June 30, 1981 the ratio of equity capital to assets was 5.7% and loans to deposits 74.7%.

This increase in the number of banks, combined with a reduced level of examiners following passage of Proposition 13 has hindered the Department's ability to examine all licensees each year. As a result of AB 1182, examinations may now be conducted when the Superintendent considers it necessary, but at least once every two years. The Department is therefore continuing to work with the FDIC so that every other year, each agency examines certain licensees. New and problem banks continue to be examined each year by both agencies.

During the second quarter of 1981, 3 applications for new banks were filed, 7 applications for new banks approved, 2 denied, and certificates of authority were issued to 5 new banks. Two merger applications were filed, 3 merger applications approved, and 3 mergers were effected. One application for a California Business and Industrial Development Corporation was filed. Two applications for agency (branch) offices of foreign banking corporations were filed, 7 approved and certificates of authority were issued to 2 agency (branch) offices of foreign banking corporations. Two applications were approved and licenses issued to engage in the business of issuing travelers checks. One application for a license to engage in the business of transmitting money abroad was filed and 2 licenses were issued.

Forty-three applications for new branch offices were filed, 32 were approved and 28 licensed. Six applications for new places of business were filed, 5 approved, 1 withdrawn and 5 licensed. Seventeen applications for extension of banking offices were filed and 15 approved. Fourteen applications for a license to establish and maintain an office as a representative of a foreign banking corporation were filed, 17 approved, 1 withdrawn, 17 licenses issued and 4 licenses cancelled.

Five head office relocation applications were filed, two approved and two licensed. Six branch office relocation applications were filed, six approved and eleven were licensed. One application for foreign banking corporation relocation was filed, two were approved and one was licensed. Five place of business relocation applications were filed, three approved and two licensed.

One branch office and two representative offices were discontinued. Three applications for discontinuance of a place of business were filed, 3 approved and 3 discontinued.

Three applications for change of name were filed, 3 applications were approved, one pending application was withdrawn and one name change was effected.

The application of Santa Ana State Bank to acquire the assets and assume the liabilities of the main office and Whittier branch of Pan American National Bank was approved.

Two applications for permission to engage in the trust business were filed, 2 applications were approved and 1 bank was licensed to engage in the trust business.

Two securities aggregating $85 million were certified as legal investments for California commercial banks.

PENDING LEGISLATION:

AB 1059, introduced by Assemblyman Bosco, would increase various fees the Department charges its licensees. The bill increases the fee which must accompany an application for authority to organize a corporation to engage in the banking or trust business from $2,000.00 to $5,000.00. The fee for approval by the Superintendent of the proposed articles of incorporation is increased from $2,000.00 to $2,500.00. Approval of establishment or change of office location requires a $250.00 fee, up from $100.00. A new fee of $500.00 is required for approval of a name change.

Assemblyman Bosco also introduced AB 2164, which deletes the statutory provisions allowing the Superintendent to maintain a revolving fund of $20,000.00 for the operation of the Department. In addition, it declares that under existing law, the notice the Superintendent must give to those holding assets of the bank, upon taking possession of the property and business of any bank, is not a prere-

quisite to the taking of such possession.

SB 886 (Ellis) would require the Superintendent to maintain his or her principal office in Sacramento. Currently the principal office must be in San Francisco.

AB 650 (Bane), presently under consideration by the Senate, would require the Superintendent to adopt regulations authorizing banks to make secured real property loans with other than a fixed rate of interest, if national banks doing business in California are authorized by federal regulations to make such loans.

As introduced by Assemblyman McAlister, AB 1212 originally increased the allowable variable interest rate banks may charge on real estate loans from ¼ of 1% to ½ of 1% and prohibited prepayment charges. The bill was amended on August 11 and 19, 1981, these provisions were withdrawn, and the bill is now an urgency statute dealing with real estate brokers.

DEPARTMENT OF CORPORATIONS

Commissioner: Geraldine D. Green
(916) 445-7205 &
(213) 736-2741

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 Advisors. 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 or 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 Commissioner is empowered to adopt rules exempting securities transactions under the Corporate Securities Law of 1968 if she finds that qualifications of such transactions is not necessary or appropriate in the public interest or for the protection of investors. These exemptions are designed to avoid interference with individual transactions commonly used in commercial lending to finance specific transactions or to acquire working capital by individually negotiated loans.

There has been a substantial increase in the number of applications to qualify under the Corporate Securities Law certain notes sold as a series of notes secured by the *same* real property, or a series of undivided interests in a single note secured by real property. Concurrently, both the Department of Real Estate and the Department of Corporations have noted a significant increase in the number of enforcement cases in this area involving fraud, misappropriation of funds and other abuses, as well as violations of the qualification provisions of the law. This has led the two departments to create a Joint Enforcement Task Force. The problem has also led the Secretary of the Business and Transportation Agency to create the Task Force on Second Trust Deed Financing. The Task Force was chaired by the Commissioner of Corporations. The following proposal is the product of the discussions of the Task Force.

On August 27, 1981 the Commissioner attempted to enact emergency rules to promulgate the proposal. However, on September 4, 1981 the OAL repealed these regulations determining they were not necessary for the "immediate preservation of public peace, health and safety, or general welfare." On September 11, 1981 the Commissioner renoticed the proposed changes and will now take them through regular rulemaking procedures.

The provisions are designed to exempt the transactions under the Corporate Securities Law as well as to avoid abuses in cases involving fraud, misappropriation of funds and other abuses.

The proposal is broken into four areas as follows:

1. The use of the exemption is limited to persons who are licensed as a real property broker, industrial loan company or personal property broker. Such a licensee must act as either the seller or the broker in the transaction.

2. Pre-transaction duties require the broker to file a specified notice of sale including an estimate of business volume; control advertising to specified requirements; collect no advance funds from the lenders or purchasers and use a trust account for investor funds; provide servicing of the notes; and submit an annual report.

3. Transaction requirements provide the broker must conform to regulations regarding the terms of the notes, handling requirements, disclosure requirements, allowable number of offerees and purchasers and the amount each purchaser may invest.

This area prohibits the broker from having any interest as a principal in the purchase or sale of the property or in any participation, direct or indirect, in profits connected with the property, except in limited instances.

4. Post-transaction requirements identify many regulations the broker must continue to meet. These include the proper maintenance of a trust account,

the handling of payments received on the note, and the requirement for quarterly inspection by a certified public accountant if warranted by the broker volume.

Public hearings on this proposal will be held in Los Angeles on November 2, and in Sacramento on November 4, 1981. Any written comments should be received at the Department by November 4.

The Department has completed its public comment stage for regulations relating to Health Care Service Plans. The staff is now reviewing these comments. The proposals are as follows:

1. To alert trust plans to the existence of applicable requirements relating to the Attorney General, to clarify the application of Article 15 (the proposed article) to mutual benefit plans, to provide for public disclosure or confidential treatment of submissions, and to establish filing procedures.

2. To set forth the required content of notices and requests for approval of the trust, and to indicate the extent to which a written statement of the Commissioner constitutes an approval.

3. To set forth the required content of requests for rulings, and to indicate the extent to which a written statement of the Commissioner constituted a ruling.

After updating the previously prepared General Statement of Purpose, the Commissioner will submit this proposal to the Office of Administrative Law for review.

The Commissioner is also continuing "Phase 2" of the AB 1111 review. On August 18, 1981 the Commissioner noticed proposed changes relating to Real Estate Programs under the Corporate Securities Law of 1968. Some of the significant changes include the following:

1. Require a cross-reference sheet showing the location in a partnership agreement of compliance with, or variance from, all the provisions of the Real Estate Program Rules.

2. Increase the net worth alternative necessary to enter a program from $50,000 to $100,000, and add previously excluded homes, home furnishings, and automobiles to net worth.

3. Lower investor net worth requirements from $20,000 to $10,000. Additionally, investors will be limited to investing in any one program a maximum of the greater of 20% of their first $200,000 of net worth and 100% in excess of $60,000.

4. Allow commissions on reinvestment, subject to specified limitations.

5. Prohibition of commingling of funds is amended to provide for a master fiduciary account so long as the real estate program funds are protected from claims of other partnerships and creditors.

6. Lower the required reserve from 5% to 3% of the proceeds of an offering.

A statement of reasons and purpose for the proposed changes is available at the Department's Sacramento office. Public comment on this proposal was open until October 16, 1981.

FUTURE MEETINGS:

The Department does not hold regular meetings. Hearings on proposed exceptions to the Corporate Securities Law of 1968 (noted above) will be held November 2 and 4, in Los Angeles and Sacramento, respectively.

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.

MAJOR PROJECTS:

The Department of Insurance has begun review of the Department's thousands of regulations. This review, mandated by AB 1111, is being conducted in an in-house fashion. No public hearings are presently scheduled but public comment is invited.

Insurance Fraud:

Insurance fraud has become an enormous problem for the Department, as well as for the industry. It has been estimated that the percentage of fraudulent claims is as high as 1 out of 10. It is estimated that between $7 and $10 billion are paid out by insurance companies on fraudulent claims. In 1978, the Department established the Bureau fo Fraudulent Claims in an attempt to deal with this concern. In June, 1981, for example, the Bureau received 176 suspected fraudulent claims and assisted in four prosecutions.

Individual insurance companies are also now establishing fraudulent claims divisions. The Criminal Investigations Division of Farmers Insurance Group is one which has received recent publicity. This division of Farmers actually employs a former Los Angeles police detective and conducts thorough investigations into crimes affecting the insurance company. The insurance companies are recognizing that local police agencies are simply too overloaded to attend to fraudulent claims in the way a specialized internal fraud division can. These companies hope that their divisions, the law enforcement agencies and perhaps, the Insurance Department's Fraud Bureau can work together to "eliminate" insurance fraud.

Consumer Complaints:

Consumer protection is also a project of the Department. During June, for example, there were 2,337 consumer complaint files "pending" and brought forward from May of 1981. The Department accepted 1,010 complaints for investigation. While the Department is busy processing and investigating these complaints, the fact that such a large number are submitted suggests basic problems with the industry.

Litigation:

A recent case has been decided which involved the California Insurance Guarantee Association (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. In this case, the Eldorado Insurance Company went bankrupt and a portion of their Workmens' Compensation benefits were assigned to CIGA. 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 filed suit to compel payment of the claims. 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.

RECENT MEETINGS:

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 Depart-

ment publishes a monthly bulletin in order to keep interested parties informed of its activities.

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.

DEPARTMENT OF REAL ESTATE

Commissioner: David H. Fox
(916) 445-3996

The chief officer of the Department of Real Estate is the Real Estate Commissioner. 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. As its name indicates, the Commission has an advisory role only. There are ten members; six members must be licensed real estate brokers and four must be public members.

The Department regulates two areas of the real estate industry: broker and salesperson licenses, and subdivisions. In order to be licensed as a real estate broker, an applicant must have worked as a real estate salesperson for two of the previous five years, taken six specified courses, and pass an examination. In order to be licensed as a salesperson an applicant must pass an examination. There is a continuing education requirement for both brokers and salespersons. Licenses may be suspended or revoked for disciplinary reasons.

The other area the Department regulates is subdivisions offered for sale in California, whether or not they are located in the state. A standard subdivision is improved or unimproved land divided or proposed to be divided for the purpose of sale, lease or financing. The Department also has jurisdiction over undivided interests, with certain exceptions. Types of subdivisions include the creation of five or more lots, a land project, which consists of 50 or more unimproved lots, a planned development containing five or more lots, a community apartment project containing five or more apartments, a condominium project containing five or more condominiums, a stock cooperative having or intended to have five or more shareholders, a limited equity housing cooperative and a time share project consisting of twelve or more interests having terms of five years or more or terms of less than five years with options to renew.

The Department protects the public from fraud in connection with the sale of subdivisions through the use of the "public report." The public report contains a legal description of the land, a statement on the title to the land, including any encumbrances, a statement of the terms and conditions of sale, a statement of the provisions made for public utilities, a statement of the use or uses for which the subdivision is offered and other such information. Some types of subdivisions must have additional information in the report. The person who intends to offer a subdivision for sale submits this information to the Commission on a questionnaire, and when the Commissioner finds that the application is substantially complete, he will issue the public report. The Commissioner will not issue the report if there was failure to comply with any provision of the law regulating subdivisions, the sale or lease would constitute fraud of the purchasers or lessees, inability to deliver title or other interest contracted for, inability to show that certain adequate financial arrangements have been made or if other "reasonable arrangements" have not been made. A prospective purchaser or lessee of a subdivision must be given a copy of the report.

MAJOR PROJECTS:

The Department's investigation or mortgage loan brokers uncovered numerous violations. A few firms holding millions in investor funds have been closed by the state and others are under investigation. As a result, the Business and Transportation Agency has formed a "second trust deed" strike force which will combine the efforts of five departments, led by the Department of Real Estate and the Department of Corporations. The purpose of the strike force is to speed enforcement action against those who are in violation of state real estate and corporation laws. The Department of Real Estate will take priority in cases involving trust fund violations of more than $10,000 and the Department of Corporations will take priority in cases involving securities violations. The strike force has 43 cases under investigation.

Legislation to put restrictions on the mortgage loan brokerage business was drafted by the Department of Real Estate and introduced in the state senate. SB 391 would have outlawed self-dealing, the practice in which firms calling themselves brokers are actually borrowing money for their own purposes. Self-dealing was practiced by two of the loan brokers recently closed by the state. The bill also would have required annual independent audits of brokers' trust accounts to be submitted to the Department, Department approval of advertising, disclosure statements given to investors describing the property secured and a special endorsement on the broker's license if the broker does more than $1 million in loan brokerage business per year. (Presently, anyone with a real estate broker license can conduct a mortgage loan brokerage.)

The bill had the support of the California Independent Mortgage Brokers Association, a trade group of some 200 mortgage brokers. The California Association of Realtors, however, strongly lobbied against the bill, and the Senate Banking and Commerce Committee deleted most of the provisions. The bill would only require brokers who do more than $1 million business per year to submit their advertisements to the Department for approval before publication.

LICENSING:

Between December, 1980 and February, 1981 the following disciplinary actions were taken: licenses revoked, 62; licenses revoked with a right to restricted license, 37; licenses suspended, 4; licenses suspended with stays, 7; public reprovals, 1.

SUBDIVISION REGULATIONS:

Recent statutory changes give the Department jurisdiction over time-share projects. 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 of 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 now approved 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. 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.

The regulations also specify "reasonable arrangements" which must be made before a public report is issued. The provisions require transfer of control in the project to the owners' association or in trust prior to the first sale, require conveyance of the project's dwelling units in trust prior to the first sale, prescribe provisions of the trust instrument, require the sponsor to provide a bond or cash deposit to provide security for payment of any assessments against the sponsor, specify certain requirements the sponsor must follow if he undertakes to subsidize the cost of operating the program and maintaining the project, require a covenant that a sponsor may not encumber the dwelling units, require a prohibition against partition by the owners of the dwelling units, specifies procedures to be followed in case of concurrent commercial and time-share operations, require employment of a managing agent for the project, allow rental of units to public if the units are not reserved by a time-share owner, require the project to be insured against property damage (fire, etc.) and for liability resulting from the operation of the project (personal injury, etc.).

The provisions also require that "reasonable arrangements" must be made with regards to the owners' association. Procedures are specified for meetings of the association, members' voting rights, election, make-up and meetings of a governing body of the association, amending the governing instrument of the project, discipline of owners, disclosure of financial and other information to members and assessing members for the cost of operating the project.

Funds received for the purchase of interests in a time-share project may be deposited and held intact in an escrow depository acceptable to the commissioner until a prescribed percentage of time-share offerings have been sold. Whether an escrow depository is required and the percentage of sales necessary depend on specified factors.

The sponsor of a time-share project is required to record a declaration prior to the first sale in the project, dedicating the dwelling units to the time-share project, incorporating the required "reasonable arrangements" and 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.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: Linda Tsao Yang (415) 557-3666

The Department of Savings and Loan (DSL) is organized under a Commissioner charged with the administration and enforcement of all laws relating to or affecting state licensed savings and loan associations. As an executive department, it is not subject to the Open Meetings Act. The Commissioner does not hold regularly scheduled meetings, although public hearings are held where required by the Administrative Procedure Act.

MAJOR PROJECTS:

The department amends its regulations on an ongoing basis to bring them into substantive conformity with federal regulations relating to the operation and management of federally chartered associations. The purpose of such amendments is two-fold: (1) to maintain parity of lending powers between state and federally licensed associations and (2) to prevent a comparative advantage in any phase of operation of federal associations in California over state associations. The California Administrative Code sections affected by such amendments and a brief summary of each are listed below. All refer to Subchapter 17 of Ch. 2, Title 10 of the Cal. Admin. Code.

Section 235.40, (March 4, 1981), to enable state associations to make certain loans to affiliated persons (employees, officers, etc.) which are not secured by single family, owner-occupied dwellings, mobile home or pledged savings accounts.

Section 235.42, (May 15, 1981), expanding state licensed association lending powers enabling them to make 90% loans with maximum 18 month terms to facilitate trade-ins or exchanges of property.

Section 235.39(a), (May 27, 1981), to enable state associations to invest in mutual funds holding assets which state

associations may invest in without limitation.

Section 235.43, (May 27, 1981), reducing regulatory branching requirements to state associations.

Section 235, 235.45 and 235.46, (August 31, 1981), enabling state associations to make adjustable mortgage loans (interest rate adjustment) and graduated payment adjustable mortgage loans (repayment schedule adjustment). This amendment was made in response to the passage of Assembly Bill 650, which amended the California Financial Code to exempt state associations from restrictions of the California Civil Code relating to changes in the rate of interst in a lending instrument.

The DSL has proposed the review of six existing subchapters of Chapter 2 (7, 7.5, 7.6, 7.8, 8 and 9) pursuant to Section 11349.7 of the Cal. Gov. Code (AB 1111). The proposed review is to ensure the conformity of each regulation with statutory guidelines of necessity, authority, clarity, consistency and reference (Section 11349.1, Cal. Gov. Code).

The regulations mentioned immediately above govern the administration of the Sale of Loans or Participating Interests Therein; Modification Agreements; Wrap Around Loans; Alternative Mortgage Instrument Loans; Savings and Loan Holding Company; Acquisition of Control of Savings and Loan Association or Savings and Loan Holding Company; and Guarantee Stock (Sale of). DSL has solicited written comments relevant to the proposed review.

As a result of a prior DSL AB 1111 review, changes are proposed to subchapters 1 and 2 of the Department's regulations. The Subchapters affected are Accounting Procedures and Uniform Classification of Accounts, and Appraiser Classifications and Qualifications, respectively. The changes are technical, nonsubstantive and designed to achieve a more effective interpretation of accounting procedures.

Finally, the Commissioner has proposed changes to Subchapters 13 and 22, relating to Investments and Borrowings and Remote Service Units, respectively. The amendment of subchapter 13 will broaden the authority of state associations to invest in interest-rate futures. The changes will permit the use of any futures contract designated by the Federal Commodity Futures Trading Commission based upon a security in which the institution has authority to invest and will eliminate eligibility requirements for engaging in futures transactions.

The repeal and repromulgation of a new Subchapter 22 will enable state associations to operate Remote Service Units (e.g., automatic teller machines) with the same flexibility enjoyed by federally licensed associations in California. The changes relate to geographical restrictions, operating restrictions and deletion of requirements of official approval before establishing or participating in Remote Service Unit operations.

Apart from regulatory modification, the Department deals with routine matters pursuant to its statutory responsibilities. Thus, DSL approves or denies applications for branch licenses, mergers, location changes and articles of incorporation. Such applicants are entitled to a hearing before the Department. The DSL announces pending applications and the status of previously submitted applications on a weekly basis.

FUTURE ACTIVITIES:

A growing number of state associations are converting to the federal system of regulation. To discourage that trend, DSL will continue to revise and establish regulations affecting state licensed associations to maintain a regulatory parity with federal associations doing business in California.

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 the California's Interstate, 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 of 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 arrangements, 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 review 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 12,641 permits have been renewed and another 1,000 are expected. There are only 589 new permits issued in all of 1980. The OACB has never denied 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 put in 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 each year on July 1. To date, there have been 319 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 legal procedure at this time.

The Outdoor Advertising Advisory Control Committee has recently been established to work in conjunction with the OACB. The committee consists of twelve members: three members from the public at large, three members representing local government, three members representing the Outdoor Advertising industry, one state senator, one state assemblyman and one representative from OACB (currently Stan Lancaster, chief of OACB).

The purpose of the committee is to draft recommendations for the legislature to ensure compliance with state and federal legislation while eliminating conflicting regulations at the local, state and federal level. Further, the committee provides the opportunity for input from local government, the public at large and the regulated industry.

The committee has had three meetings to date and the next meeting is scheduled for October 17, 1981.

Department of Industrial Relations

CAL/OSHA

Director: Don Vial
(415) 557-3356

California is one of a number of states which administers its own occupational safety and health program. The Federal Occupational Safety and Health Act of 1970 permits a state to manage its own occupational safety and health program if it meets certain federal requirements. CAL/OSHA, approved by Federal OSHA, was enacted into law effective October 1973 with the primary purpose of ensuring safe and healthful working conditions for California workers. The Department of Industrial Relations (DIR) is charged with the responsibility for promoting occupational health and safety. Five entities operate under the Department's aegis. To assist them in fulfilling this responsibility, the Occupational Safety and Health Standards Board (OSB) was created as a quasi-legislative body empowered to adopt, amend and repeal safety and health orders applying to all employers and employees. In addition, the Standards Board may grant interim and permanent variances from occupational health and safety standards for employers upon a showing that an alternate process would provide equal or superior safety for employees. The Division of Occupational Safety and Health (DOSH) enforces the safety and health orders adopted by the OSB. An Appeals Board adjudicates disputes arising out of the enforcement of CAL/OSHA standards. A CAL/OSHA Consultation service provides on-site consultation by safety and industrial hygienists as requested by employers. These consultants assist employers in adhering to CAL/OSHA standards without the threat of citation or fines. Finally, the Hazard Evaluation System and Information Service (HESIS) was developed as an interdepartmental service providing employers and workers with up-to-date, critical information on the health effects of toxic substances and methods for using these substances safely.

MAJOR PROJECTS:

One of the DIR's major ongoing projects is complying with AB 1111, a process which has been moving very slowly. The Standards Board (OSB) submitted a plan to the Office of Administrative Law for the review of health and safety standards. This plan assumed that the Board would be able to fill nine positions to aid in the review project. Since FED/OSHA will not provide matching funds as originally anticipated, only four positions can presently be filled. However, the State has allocated three million dollars to the California Department of Finance for the purpose of assisting agencies in complying with AB 1111. CAL/OSHA has requested money to fill the five additional positions, but has not yet heard whether such monies will be forthcoming.

RECENT MEETINGS:

The Standards Board's major ongoing routine work is the amendment and repeal of existing safety orders to conform with current industrial working positions and the consideration of variance applications submitted by employers.

In a recent emergency meeting, the Board adopted DOSH recommendations on standards concerning the exposure of agricultural workers to airborne ethylene dibromide (EDB), a fumigant used on fruits and citrus. This action was in response to what has been an increasing number of workers being exposed to EDB, due to the California Medfly crisis. The Board adopted standards pursuant to the Occupational Carcinogens Control Act of 1976, thus placing EDB on the carcinogen control list. The 1976 Act requires employers to meet strict standards for the occupational health and safety of workers who handle carcinogenic substances on their jobs. These requirements would apply to the manufacture, packaging, storage, transportation, distribution, sale, handling and use of EDB. Standards adopted cover worker's respiratory and body protection, limitations on employee exposure and regulation of engineering control.

FUTURE MEETINGS:

In upcoming meetings, yet to be scheduled, the Board will consider proposed revisions to Telecommunication Safety Orders, additional regulations concerning EDB, the regulation of polychlorinated biphenyls (PCB) and revising standards of safety in earth excavation work.

Department of Food & Agriculture

Marketing orders may be covered in future issues.

Health & Welfare Agency

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

Acting Director: Paul Smith
(916) 322-5834

On January 4, 1975 President Ford signed into law the National Health Planning and Resources Development Act of 1974 (Public Law 93-641). This Act was a major experiment in the organization and regulation of the health care industry and was designed from the federal government's past experience in health planning dating back to World War II. The Act attempts to establish a rational and workable mechanism for the development of new services and consolidated several overlapping programs and organizational structures already developed.

The Act delineated specific national health priorities and established a 15-member National Council on Health Planning and Development. The Council advises the Secretary of Health and Human Services on health care programs and proposes legislation to achieve goals consistent with the Act.

At the state level, the Act provided for the designation of a single state health planning and development agency. The Act also divided the country into approximately 200 "Regional Health Services Areas," the geographic and demographic characteristics of which make these areas well-suited "units" for health planning and resource development. Each of these areas was required to establish an area-

wide Health Systems Agency (HSA), which may be a private, nonprofit corporation, an agency of the local government or a public regional planning body.

In California, the state planning agency is the Office of Statewide Health Planning and Development (OSHPD). It was created in 1978 under the guidelines of the National Health Planning and Resources Development Act. The Advisory Health Council, a 21-member board of consumers and providers, serves a function analogous to the National Council on Health Planning and Development.

The state planning agency (OSHPD) is divided into four divisions: the Health Professions Division, the Facilities Development Division, the Health Planning Division and the Certificate of Need Division. There are also several administrative offices, information processing and data gathering offices and specialty offices. These include the Health Data System office, the Legal office, the Civil Rights office (which also administers the Hill-Burton program) and the Special Studies Unit. There is a special public relations office which publishes a monthly newsletter called UPDATE. In terms of numbers, the OSHPD has approximately 180 employees and its 1980-81 budget was $16,571,086.

In addition to the Advisory Health Council, two other statutorily-created boards were set up to advise the OSHPD. The Building Safety Board supervises programs dealing with the physical structure of hospitals and other health care facilities. The Health Manpower Policy Commission promotes equality of access into the health care professions as it attempts to ensure an equitable distribution of health manpower. Members of all three of these boards are appointed by the governor.

The functions of the Advisory Health Council include:

1) divide the state into health planning areas;

2) evaluate and designate annually one agency for each health planning area;

3) integrate area plans into a single Statewide Health Facilities and Services Plan;

4) adopt a Statewide Health Facilities plan;

5) hear appeals of certificates of need decisions rendered by OSHPD;

6) request public agencies to submit data on health programs pertinent to effective planning and coordination; and

7) advise OSHPD about health planning activities and regulations and to help OSHPD set priorities in accordance with the statewide health facilities and services plan.

The area planning agencies designated by OSHPD have been the Health Systems Agencies. There are 14 HSA areas in California, 13 of which have functioning HSA's. These agencies vary in structure and in activities but they uniformly seek to meet the health planning needs of their respective areas. The goals described by the San Diego-Imperial County HSA typify these agencies. These goals are:

1) improve the health of residents of the area;

2) improve the quality, accessibility and continuity of health services provided to residents;

3) minimize increases in costs of health care services;

4) prevent duplication of health resources; and

5) preserve and improve competition in the health services area.

The HSA's also participate in the Certificate of Need Program. A Certificate of Need (CON) is an advance approval of health care projects requied by OSHPD. The program is set forth in California Health and Safety Code section 437.13. A CON must be obtained for new health facilities, expansions of already existing facilities or major capital expenditures such as the purchase of a Computer Axial Tomography unit ("CAT scanner"). The certificate represents a finding by OSHPD that the project is necessary and desirable.

INTRODUCTORY COMMENTARY ON THE APPROACHING HEALTH-CARE CONFLICT:

The procedure for obtaining a Certificate of Need is complex. The procedure was outlined in CRLR Vol. 1, No. 2 (Summer, 1981), page 56. The CON program represents the major thrust of the state's effort to control the costs and the distribution of health care.

The CON program is a relative newcomer to health care planning vaguely outlined by the Federal Health Planning Act but specifically spelled out by state legislation. It represents a shift in philosophy of health care delivery. In the late 1950's and early 1960's health planning authorities were advocating a health care system that was accessible to every one. In order to make health care easily available to all members of the Great Society, the Johnson administration began an unparalleled program of government spending. Government spending in health care more than doubled in only 4 years: from $9.5 billion in 1964 to more than $20 billion in 1968.

Behind this expansion was the notion that health care costs would respond to the law of supply and demand. However, as the supply of medical services increased so did the demand for them. The result was an unexpected increase in medical costs to new prohibitive levels. Because the costs of medical services accelerated at such a rapid pace, a dependence upon government funding was soon created. The average person could not afford health care unless the government subsidized it.

Reevaluation of the Great Society plan took into account this seemingly unique behavior of the health care system in which a greater supply of health care services did not lower their costs. Cost-effective analyses were introduced because economists held that the system that didn't obey traditional economic laws must be inefficient. They maintained that health care services had little incentive to be cost-effective because of the monopoly-like nature of these services. Obviously, the patient who has suffered multiple injuries in an automobile accident could hardly afford to bargain with competing health care facilities.

The question became out of the control of business policies in health care facilities. Many economists felt that if the patient did not control these policies then the physician must. Indeed health care facilities often operate on the assumption that the more attractive the facility is to the physician (not the patient) the more business it will be able to do. As a result, many hospitals competing for physicians, were anxious to fill their hospitals with the latest state-of-the-art equipment. This type of competition often meant increased costs to consumers in exchange for inefficient, often unnecessary equipment and services.

This realization that overbuilding in the health care area contributes greatly to escalating costs has put the government in an anomalous position. The government is now initiating programs to eliminate equipment and services that it earlier subsidized. The resulting policy of allowing expansion of equipment and services only when (and where) a documented need for such expansion exists is the essence of the CON program in California as it is in many other states.

In recent years the CON requirement for new equipment and services has survived constitutional challenges. But the extension of the CON requirement into the areas of preexisting services and equipment is currently being debated. Here the idea is not expansion but replacement or remodeling. Providers argue that a denial of a Certificate of Need in this situation is a taking of property without due process of law. Other providers maintain that even if such a taking is not prohibited by due process, it is nonetheless a compensable taking by analogy to eminent domain procedures.

Even more controversial is the yet-to-

be implemented program of Appropriateness Review. The original idea behind this program was to make health care facilities justify their already existing equipment and services in terms of consumer's needs. Those services which could not be justified would be decertified. This idea has been modified so that services justification will be done on an area-specific basis, not an institution-specific basis and no decertification would result. The OSHPD has also renamed the program the Planning Policy Section to emphasize a reorientation to future needs analysis.

Many at OSHPD feel that the Reagan administration will change the health planning climate. However, few are willing to speculate on the extent of those changes. The Reagan administration has already demonstrated a firm belief in competition and a disdain for regulation and subsidy. Funding for such programs as Professional Standards Review Organizations (PSRO's) and even the HSA's has been cut. Ceilings on grants to states for Medicaid programs are being set and direct subsidies to Health Maintenance Organizations (HMO's) are being discontinued.

In the area of health planning, no specific programs have been formulated. But there are signs that Reaganizing the health care system will reject the hypothesis that health care costs do not respond to competition.

The past may serve as a guide to the future. As governor of California, Reagan attempted to cut Medi-Cal expenditures through a system of Prepaid Health Plans (PHP's). These PHP's, similar to HMO's, were given X-amount of government dollars to take care of X-amount of Medi-Cal recipients. This put the provider in the position of allocating medical services. Thus, the potentially limitless demand for medical services would be curtailed by having the providers, not the consumers, determine the need for those services. President Reagan may well encourage the states to set up PHP's or other HMO-type facilities to deliver medical care to the poor.

Taking this projection one step further, the Reagan administration may try to institute a system of competing layers of HMO-type facilities. These prepaid plans will be paid for by a combination of employer-employee contributions. Employers will be required to pay a fixed amount towards the premium. Since each HMO will offer a defined set of benefits, monthly premiums will vary. Employees, especially the young and the childless, will be free to choose plans that offer medical care on a limited basis (only in the event of sudden illness of accident, for instance) which have low premiums, even lower than the amount contributed by the employer. The employee would be permitted to pocket the difference and consider it part of his wages. This type of system would provide incentives to consumers not to use medical facilities for minor illnesses or for conditions resulting from temporary social stresses (such as insomnia, anxiety, fatigue, etc.).

Of course, the employee may choose a plan that offers a different spectrum of medical care according to his circumstances. A choice for a higher level of benefits may result in the employers contribution equaling the HMO premium to be paid. A choice for a still higher level of benefits may mean that the employee would have to pay a significant part of the premium himself. This type of choice based on the observation that the perceived medical needs of the consumer differ from his actual medical needs as documented by the provider will serve to discourage excess consumption of medical care.

This type of system will mean a shift in focus. Instead of trying to eliminate so-called provider abuses with the emphasis on regulation, the impetus will be to eliminate consumer abuses by not subsidizing the overutilization of health care services and forcing the overutilizing consumer to pay his own way.

Much of this speculation over the Reagan administration's future health care programs may be problematic. Nonetheless, most planners feel that the Reagan administration is likely to introduce a system that focuses more on provider capabilities and skills rather than on consumer demands. Such a system may contain aspects of the free market competition that the administration favors. And such a system would probably minimize the regulatory demands imposed by several overlapping layers of planners.

This orientation of the Reagan administration is in direct conflict with the policies of the Office of Statewide Health Planning and Development which was created under a pro-regulatory climate. It appears as if the OSHPD is digging in to oppose the coming Reagan assault.

MAJOR PROJECTS:

The OSHPD is conducting a comprehensive review of its regulations as mandated by the Office of Administrative Law (AB 1111 review). The regulations to be reviewed are those found in Chapter 1, "Health Planning and Resources Development," Division 7, Title 22 of the California Administrative Code. The OSHPD encourages written public comments seeking amendment, clarification or repeal of any of its regulations together with the possible reasons to support such action. Comments should be addressed to Gary Chen, Regulations Coordinator, Office of Statewide Health Planning and Development, 1600 9th Street, Room 435, Sacramento, California 95814. The period for public comment ended October 15, 1981. However, the OSHPD plans to complete its review by November 30, 1981 and late comments may be considered.

Cardiac Care Task Force. This 25 member task force was created last year to adopt planning methods in the field of cardiac care especially cardiac care requiring surgery. The task force has divided into three subcommittees: the Congenital Heart Disease Committee, the Acquired Heart Disease Committee and the Prevention and Alternative Treatment Committee.

A main emphasis of this program is cardiac catheterization. Cardiac catheterization is a diagnostic, X-ray procedure often performed as a preliminary to coronary artery bypass surgery. To perform a cardiac catherterization a flexible catheter is introduced at the periphery and threaded to the heart where intracardiac injections of dye at selected sites provide information as to the structure and functioning of the heart muscle and the coronary arteries. More specifically, for purposes of coronary artery bypass surgery the exact location and extent of obstructed areas of the arteries can be determined. Such information is a prerequisite to bypass surgery in which either synthetic material or leg veins from the patient are used to "bypass" the areas of obstruction.

The procedure (catheterization) carries risks of illness (morbidity) or death (mortality). The Task Force is trying to determine what type of morbidity and mortality figures should be acceptable for this procedure. It is also trying to decide if a minimum volume of catheterization will hold down the morbidity and mortality figures and, if so, what that minimum volume is. This information seems essential for planning in this area yet the information is hard to come by. Getting and reviewing statistics is difficult because of lack of standardization and voluntariness of reporting. The Task Force would like to establish a Registry to help overcome these problems but no such Registry has yet been proposed.

LEGISLATION:

SB 930. Recently the legislature has passed SB 930 which was signed by Governor Brown of September 26, 1981. This bill simplifies certificate of need procedures and in many areas eliminates certificate of need requirements altogether. The bill also simplifies certificate of need determinations for projects not directly involved with patient care and it

raises the threshold for certificate of need analysis for equipment expenditures from $223,200 to $400,000 and in some instances $600,000.

The bill establishes a Health Planning Law Revision Commission, which would recommend alternatives in the planning of health care. The Commission will have authority to appoint technical advisory committees and will report directly to the Legislature and the Governor.

Some specific changes in the process of obtaining a Certificate of Need appear to be directed towards speeding up the process. The bill establishes a special unit of hearing officers in the Office of Administrative Hearings. This unit will give priority to Certificate of Need hearings and other health planning matters removing this burden from the OSHPD and avoiding scheduling delays. Other provisions to avoid delay are the new rules for determining whether a Certificate of Need application is complete.

Existing law provides for public hearings to be held by the local planning agencies on all Certificate of Need applications. The bill would dispense with these public hearings whenever the project does not relate directly to patient care. The bill also anticipates a more direct change of policy by the Reagan administration and provides for contingency Certificate of Need procedures in the event that the National Health Planning and Resources Development Act of 1974 is repealed or funds for the programs not provided.

CURRENT MEETINGS/EVENTS:

Henry Zaretsky, director of OSHPD since its creation of 1978, announced his resignation effective August 31, 1981. He will establish a health care economics consulting firm in Sacramento. In his resignation letter to Governor Brown, Mr. Zaretsky commented, "A sound health planning program is a vital component of a state government's duty to protect and enhance the health of its residents. This is especially true when public resources are becoming more limited and public funds are so heavily involved in the health care economy. California's health care program is on a solid course and is evolving to be better able to meet the demands of this new decade."

FUTURE MEETINGS:

December 11, 1981 in Sacramento.

Resources Agency

AIR RESOURCES BOARD

Executive Officer: James D. Boyd (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: working with the South Coast Air Quality Management District (SCAQMD) to develop a suitable rule limiting the solvent content of architectural coatings, further refining the "bubble rule," and implementation of AB 1111.

In 1976 the Air Resources Board (ARB) did extensive studies of emissions associated with the use of architectural coatings and determined that substantial reductions could be achieved in the amounts of volatile organic compounds emitted from the use of solvents in paints. Based on these studies, the Air Resources Board staff developed a model rule which was approved by the Board in 1977, to serve as a guideline to air pollution control districts in adopting rules to limit the solvent content of paints. In 1977 the SCAQMD adopted Rule 1113 which closely paralleled the model ARB rule. The overall effect of this rule was to require paint manufacturers to reformulate their products to contain significantly less amounts of solvents. In many cases, this was accomplished by a shift from oil based to water based paints. Where such a shift has occurred, additional emission reductions were achieved because of the elimination of the need for use of solvent for thinning and cleanup.

On July 3, 1981, the SCAQMD Board made several modifications to Rule 1113 which changed some of those limits and thereby greatly reduced the rule's effectiveness at limiting emissions of smog-causing compounds. The Air Resources Board staff has reviewed these limits and has determined that more stringent requirements are technically feasible and are necessary to attain health-based ambient air quality standards for ozone, a major component of photochemical smog, in the South Coast Air Basin (SCAB).

The ARB staff is proposing that the ARB amend the SCAQMD's new version of Rule 1113 to make it similar to the rule in effect prior to July 3, 1981.

The purpose of the proposed action is to reduce current levels of ozone, or photochemical smog, in the SCAB. The federal and state governments have established ambient air quality standards for photochemical oxidants and for ozone, respectively. These standards, which are designed to protect the public health, are routinely and widely exceeded in the SCAB. For example, in 1979 the national one-hour standard of 0.12 parts per million (ppm) ozone, which is not to be exceeded more frequently than one day per year on an average, was exceeded on 193 separate days in the SCAB. The maximum one-hour reading was 0.47 ppm, approximately four times the standard. In addition, first stage alert levels of 0.20 ppm, a health advisory alert for sensitive populations and the young and the old, were exceeded on 106 days per year. A second stage alert level, necessitating emergency action to reduce ozone levels, occurred on 20 separate days.

Ozone is not emitted as a pollutant directly from motor vehicles or factories, but results from a complex reaction in the atmosphere between sunlight, oxides of nitrogen, and volatile organic compounds. The principal method to reduce ozone levels is through the control of emissions of volatile organic compounds and oxides of nitrogen. Virtually all paints, including architectural coatings, contain significant amounts of volatile organic compounds. These compounds make up the solvent which allows the paint to flow on to the surface to be coated. These solvents which evaporate as the paint dries, are a substantial source of air pollution.

The emission reductions attributable to the continuation of the rule in effect prior to July 3, 1981 are estimated to be eight tons per day in 1981, with another eight tons per day reduction estimated to occur when the limit of 250 grams per liter becomes effective for interior enamel paints. The rule, as it was amended by the SCAQMD on July 3, 1981 would result in approximately a one ton per day reduction.

Ambient air quality standards, which are designed to protect the public health and welfare from adverse effects of air contaminants, are currently exceeded in many of the air basins in California. Accordingly, local air pollution control districts (APCDs) have developed standards tailored to certain sources of air pollutants. These source-specific measures require reductions of specific pollutants from specific pieces of equipment, processes or products.

An alternative to source-specific rules is what has come to be known as a "bubble rule." In general, a bubble rule theoretically allows a dome or "bubble" to be placed over a facility, in effect treating all pieces of equipment or process at a facility as a single source. A source operator is allowed to propose a plan for the entire facility which would provide that the rate of all the emissions of the same pollutant that come out of the facility are no greater than if each piece of equipment or process at the facility complied with all of the individual source-specific regulations. If a district confirmed the emissions calculations, and if provisions related to enforceability and prevention of increases in emission of hazardous compounds are adequate, a bubble plan could be approved.

The proposed alternative emission control measure would provide industry with a way of tailoring more cost-effective control systems necessary to achieve emission reductions required by APCD's. Accordingly, the bubble rule serves as an adjunct to existing rules and regulations of the air pollution control districts; it does not require new control measures, and will neither increase nor decrease emissions. It merely represents an administrative tool which districts and source operators can use to reduce the cost of pollution control.

Bubble plans developed by source operators and approved by the air pollution control officer would have to contain certain minimum requirements which ensure: (1) attainment and maintenance of the ambient air quality standards as expeditiously as practicable; (2) reasonable further progress toward attainment of the ambient air quality standards; (3) enforceability; and (4) protection from increases in emissions of hazardous compounds. The proposed rule provides guidelines from which a source operator and districts can develop enforceable permit conditions which satisfy these requirements.

To further protect the public health, the alternative emission control proposal includes a list of compounds which should not be bubbled with a less hazardous compound or any other hazardous compounds. This would prevent a source operator from increasing the emissions of the hazardous substance in exchange for decreases in emissions of a less toxic compound.

At an ARB workshop the bubble rule topic was bifurcated into 1) the concept of having a bubble rule and 2) the handling of hazardous pollutants.

The next time the workshop meets to discuss "hazardous pollutants" it will likely further define the definitions of those pollutants. Hydrocarbons, for example, may not be very reactive with other chemical compounds, yet may still be very toxic. The staff has developed two listings of compounds for which evidence suggests that exposure to the compound may cause cancer in humans.

Under the proposal, source operators could develop bubble plans for those emissions sources which are regulated by source-specific control measures approved and adopted by the local districts. However, bubble plans developed under the bubble rule would not apply to or supersede the conditions that a source must meet under new source review (NSR) rules, prevention of a significant deterioration (PSD) requirements, or new source performance standards (NSPS) promulgated by EPA. The ARB staff emphasizes that the proposal is intended to serve as an adjunct to source-specific control measures and would not require emissions control beyond the current levels of these source-specific regulations.

Based on its review of the proposed bubble rule, the staff recommends that the Board find the proposal a suitable means for complying with the emission limitations set forth in district rules and regulations. The staff also recommends that the Board identify a number of compounds as hazardous for the purpose of administrating the bubble rule, and approve the provisions of the proposed bubble rule which are included to eliminate the adverse environmental and health impacts which may be associated with the bubbling of hazardous compounds.

The proposed bubble rule is designed to complement existing rules. Because the proposal does not further restrict or allow increases in emissions from any particular process, industry or pollutant. The staff report says there is no known environmental impact inherent in its adoption.

The AB 1111 review has stayed on schedule. Almost all the regulations have been noticed. October 15, 1981 is the end of the review period for the last group of regulations. The OAL is currently reviewing two packages of ARB regulations: one dealing with California Air Basins and the other dealing with Administrative Procedure.

RECENT MEETINGS:

Two California utilities, Southern California Edison and Pacific Gas and Electric, have proposed coal-fired power plants for construction in California. Before such facilities can be built, they must meet air quality requirements. In California, these requirements include those established by the Environmental Protection Agency (EPA), the Air Resources Board (ARB), and the local air pollution control districts (APCDs).

Current EPA standards for coal-fired power plants are specified in the New Source Performance Standards (NSPS) applicable to such plants. These standards represent minimum control requirements and are applicable nationwide. The ARB staff reviewed these standards as well as the actual permit conditions set by EPA and believe they do not usually represent the best available control technology.

Local districts' "new source" review rules require the application of the best available air pollution control technology on new major sources. In reviewing the applications for coal-fired power plants, the district in which the facility is being proposed must, therefore, determine what is the best available technology. In order to assist these agencies in the review process and to ensure consistent requirements, the ARB staff proposed minimum guidelines for controlling emissions of sulfur dioxide, oxides of nitrogen, and particulate matter from new coal-fired power plants.

In developing these guidelines, the staff reviewed the work of EPA and other research organizations, observed similar facilities in Japan, and conducted a workshop with the utilities, manufacturers and other state and local agencies.

In summary, the proposed minimum guidelines were: 95% reduction of sulphur dioxide; 0.005 grains per actual cubic foot (gr/ACF) emissions limit for particulate matter; and an emissions limit of 0.45 pound per million (lb/mm) BTU of heat input for NO_x below 50% of rated load, and 0.09 lb/mm BTU of heat input at 50%, and greater, of rated load. The proposed guidelines also contain technical and procedural provisions on monitoring and compliance.

Control technologies for SO_2 include

wet or dry flue gas desulfurization processes, which can produce saleable products. Such processes have achieved greater than 95% reduction on similar facilities outside California.

Fly ash, the principal component of particulate matter emissions from coal-fired power plants, can be controlled by the use of wet scrubbers, electrostatic precipitators, and fabric filters.

Control technologies for nitrogen oxides (NO_X) include combustion process modifications and flue gas treatment. Combustion process modifications currently in use include low excess air, staged combustion, flue gas recirculation, and low NO_X burners. Such processes can achieve a level of 0.45 lb/mm BTU of heat input. Flue gas treatment processes, such as the selective catalytic reduction process, can reduce NO_X emissions by at least 80%. Coupling a 0.45 lb/mm BTU NO_X boiler emission level with an 80% control of flue gas NO_X emissions, would achieve a NO_X emission level of 0.09 lb/mm BTU of heat input.

The ARB adopted a resolution June 24, 1981 which essentially echoes the minimum guidelines for coal-fired power plants proposed by the staff.

The ARB believes that coal *can* be used to produce energy without adverse impact to the atmosphere. The resolution removes uncertainty associated with the use of coal-fired power plants.

The ARB recently reaffirmed 1982 test procedures for heavy duty vehicles. The procedures were readopted with minor changes.

An exemption from emission standards for heavy duty vehicles was created for certain types of vehicles. Street sweepers, for instance, use engines that are no longer produced. The ARB is allowing those vehicles to merely conform to the federal standards, and is not requiring compliance with the more stringent California standards. Operators of such vehicles must be able to show that no engines are available that meet the California standards.

The ARB has required an 85 percent cutback in the sulfur content of diesel fuel used by motor vehicles in the South Coast Air Basin, a move that, the ARB contends, will nearly eliminate sulfur dioxide emissions from a constantly increasing number of Diesel-powered cars.

The new rule, which takes effect January, 1985, is expected to reduce sulfur dioxide emissions by 30 tons per day, and will lower concentrations of health-threatening sulfates, lessen the severity of acid rain and improve visibility up to 3 miles in the most polluted parts of Southern California.

The Board's action limits the sulfur content of Diesel fuel for passenger cars, buses and heavy-duty trucks to 0.05 percent by weight, compared to currently unregulated levels averaging approximately 0.28 percent. The rule complements sulfur limits already imposed for gasoline and industrial fuel oils in place since the late 1960s and early 1970s.

Although originally proposed by the ARB staff as a statewide rule, the Board limited it to the South Coast Air Basin and to only the largest producers of Diesel oil to prevent what is considered to be unreasonable costs to small refiners. The Board's action cut the yearly compliance cost of the rule from $103 million to $55 million.

The ARB has collected over $250,000 in fines and penalties from car dealers throughout the state in the past year for illegally selling new vehicles imported from other states which do not meet California's emission standards.

The illegal imports have been discovered through surprise visits to new car dealerships, used car lots, auto auctions and leasing companies by ARB enforcement investigators. According to investigators' reports, many of the illegal imports are obtained from dealers in other states through laundered registration, making them appear as used models not subject to California emission standards.

State law prohibits the sale of any vehicle driven less than 7,500 miles that is not certified as meeting California's emission standards. Violators face penalties up to $7,500 per vehicle and are required to dispose of the cars in other states.

James D. Boyd has succeeded Thomas L. Austin as Executive Officer of the Air Resources Board. Boyd has been a Deputy Executive Officer since 1979. Boyd formerly worked with the Department of Water Resources, The Department of Finance, the Department of Health and the Health and Welfare Agency.

LEGISLATION:

The Senate and the Assembly passed AB 127 (Kelley) which is one of two bills designed to improve the vapor recovery system. AB 127 was originally written to eliminate the vapor recovery system, but it encountered resistance in the Ways and Means Committee and was subsequently amended. The version that passed includes three main provisions: a new certification standard, a toll-free hot line for customers who have difficulty with the system, and a red-tagging inspection system for locating faulty pumps.

SB 1208 (O'Keefe), which asks for a moratorium from 1982 to 1983 so that improvements can be made on the vapor recovery system, has been sent to the Energy and Natural Resources Committee. Although the Air Resources Board (ARB) originally opposed both AB 127 and AB 1208, they support AB 1208 and AB 127 in its amended form because it was sent to a Committee favorable to air quality control.

SB 33 (Presley) passed in the Assembly. SB 33 would require implementation of an annual motor vehicle inspection program. Under SB 33, inspections will be done through privately owned garages rather than through state operated facilities. The ARB supports this measure.

AB 1005 (Duffy), which provides the ARB authority to set emission standards for airborne toxic substances, is in the Senate Governmental Organization Committee. No such standard exists statewide. The ARB supports this bill.

The Legislature passed SB 900 (Montoya) and it is expected to be signed by the Governor. SB 900 in its original form increased the number of Air Resources Board members from five to seven and required that three be local representatives, one to come from the Bay Area and South Coast Air Quality Management districts and another chosen by the County Supervisors Association of California. The ARB opposed the bill, but supports its amended form whereby the Governor will appoint all three local representatives. One of the local representatives will always be from a rural district. The other two local representatives will be chosen from the Bay Area, the South Coast Air Quality Management District and the San Diego Area. They will act on a rotating basis.

On August 27, 1981 the Legislature passed SB 274 which will exempt 940 new municipal buses from certain California Motor Vehicle Emission Control Standards. On August 26, 1981 the ARB had denied Southern California Rapid Transit District's (RTD) request for exemption from those standards.

RTD had requested ARB approval to modify the fuel injection, turbochargers and camshafts on California-approved engines at their routine two and one-half year overhaul, contending the changes would improve fuel economy and performance. RTD claimed that overall emissions from its fleet would be lowered with the changes since the new buses would replace older, more polluting models and because fewer passenger cars would be used by RTD patrons.

Finally, RTD claimed that 30-foot buses, shorter than conventional models and sought for use in traffic congested areas, were not available with California-approved engines.

In denying the petition, the Board outlined many optional methods for RTD to equip its new fleet. The Board also noted

that approving the request would increase hydrocarbon and nitrogen oxide emissions equal to that from 11,250 additional cars per day in Southern California.

The ARB did acknowledge that the newer buses consume about 3.5 percent more fuel than 1974 models despite the development of more fuel-efficient engines. However, the Board documented that most of the drop in fuel mileage stems from increases as high as 3,900 pounds (17 percent) in bus weight due to requirements for safety, accommodations for handicapped pesons and passenger comfort set by federal transportation agencies.

The Board had calculated that the increased fuel consumption would increase RTD's fuel bills by only 2 percent or ½ cent per passenger compared to recent fare hikes of 20 cents per passenger to cover other operating costs.

LITIGATION:

The Air Resources Board has filed suit against the Environmental Protection Agency (EPA) because the EPA has suspended certain regulations regarding construction of new stationary sources of air pollution. The ARB learned of the suspension of these regulations after this notice, dated July 15, 1981 appeared in the Federal Register:

"By the administrative order which appears below, EPA is partially and temporarily staying those regulations relating to the construction of new stationary sources of air pollution and modifications to existing sources which appear at 40 CFR 51.24, 52.21, Appendix S to Part 51, 51.18 and 52.24. Specifically, EPA is staying the requirement in those regulations that certain vessel emissions are to be included in determinations of whether a proposed stationary source or modification would emit a particular pollutant in "major" or "significant" amounts. EPA is also staying the requirement that a physical or operational limitation on emissions capacity must be federally enforceable in order to be taken into account in any such determination. The temporary partial stay shall be in effect for ninety (90) days. During this period EPA will decide whether these regulations should be stayed pending completion of the reconsideration process and, if so, under what conditions. This notice also establishes a thirty (30) day public comment period on these questions. DATES: The effective date of the temporary partial stay is the date of signature of this Notice. Comments must be received by August 14, 1981.

"Numerous persons have petitioned the Court of Appeals for the D.C. Circuit to review various provisions of the prevention of significant deterioration and nonattainment regulations. Some of them have also petitioned EPA to reconsider many of those provisions. In response to the petitions to the D.C. Circuit and EPA, the EPA has decided to reconsider and temporarily stay the requirements that (1) certain vessel emissions are to be included in determinations of whether a proposed marine terminal would emit a particular pollutant in "major" or "significant" amounts and (2) a physical or operational limitation on emissions capacity must be federally enforceable in order to be taken into account in any such determination. The temporarily stay shall be in effect for ninety (90) days. During this period, the Agency will take public comment on whether the stay should remain in effect until completion of the reconsideration process and, if so, under what conditions."

FUTURE MEETINGS:

The ARB will hold a public meeting to consider a suggested control measure for the control of emissions of oxides of nitrogen from cement kilns on October 21, 1981 in Los Angeles.

The Executive Officer of the ARB will conduct a public hearing to consider revision of the meterological criteria for regulating agricultural burning contained in Title 17, California Administrative Code section 80260 on November 4, 1981 in Modesto.

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 Commission for review. Changes substantially affecting the coastal area of the state cannot be started without a Commission permit where Commission jurisdiction lies. The Commission has jurisdiction over all those areas along the coastal strip where Local Coastal Programs (LCP) developed by local governments have not been accepted by the Commission.

MAJOR PROJECTS:

In recent months, the Commission has been involved in the initiation of a new permit review procedure. Prior to July 1, 1981, review of development permit applications was handled by six Regional Commissions with the Commission acting as an appellate body for review of Regional Commission decisions. On July 1, 1981 the Regional Commissions expired, became district offices and a new permit process took effect with the Commission reviewing all permit applications. Permit applications must still be submitted to the district offices (formerly "regional") where staff reviews for the required local government approval of the proposed plan and determines what type of permit is required. The permit application is scheduled for review at a Commission meeting and public notice is given. To handle the additional permit applications the Commission must review, meetings have been expanded to bi-weekly three to four day sessions at various locations in the State.

July 1, 1981 was also the date when all Local Coastal Programs (LCP) were statutorily required to be completed. There are 67 distinct geographic areas required to have Commission approved LCP's. Upon such approval, Coastal developmental permit authority switches back from the Commission to local governments. Staff reports that as of August 31, 1981, only 16 jurisdictions had received Commission approval of the Land Use Plan (LUP) portion of the LCP, which means those 18 jurisdictions need only obtain approval of the zoning implementation portion of their LCP to achieve complete LCP approval. Staff further reports that the Commission anticipates certification of an additional 24 LCP's and 32 LUP's by September 31, 1981. As the law is presently written, 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.

AB 1111:

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 reports it has requested an extension to the end of November to finish this process. Staff explained 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 Commission, clarifications of the appeal procedures from local government entities to the Commission, etc.) than AB 1111 review.

LEGISLATION:

There has been much recent legislative

activity concerning the Commission. Most important are AB 385/AB 1069 (Hannigan/Bosco), SB 626 (Mello) and AB 321 (Hannigan).

AB 385/AB 1069 would drastically revise the LCP procedure by requiring the Commission to establish a schedule for submission of uncompleted LCP's and LUP's, by returning coastal developmental authority to local governments upon LUP approval, by revising appeal procedures, and by extending exemptions for developmental permits.

SB 626 (Mello) would return all of the Commission's controversial housing authority to local governments. The Coastal Act of 1976 provided that coastal housing opportunities for low and moderate income families were to be protected. To carry out this provision, the Commission has for a long time required portions of certain sized developments to be set aside as affordable housing; a requirement akin to inclusionary zoning. The Commission has recently relaxed these requirements. SB 626 would return control to local governments which have had housing plans approved by the State Department of Housing and Community Development.

AB 321 (Hannigan) clarifies the grounds for, and standards of review of, post-LCP certification appeals.

Commission staff anticipates all these bills will be passed by the Legislature before the scheduled end of the session on September 15, 1981.

RECENT MEETINGS:

The Commission recently approved staff recommendations regarding the Los Cerritos Wetlands Enhancement Program. The program involves the Commission, the Department of Fish and Game, the State Coastal Conservancy, the City of Long Beach and other various interested parties. The program is designed to control both the preservation and development of a 244 acre wetland in the Los Cerritos area of Long Beach. The staff recommended a three step review program:

1. Determination by the Department of Fish and Game of the extent of biological degradation in the area, pursuant to section 30411 of the Coastal Act. The extent of degradation will indicate the type of development that will be pursued: those degraded to a minimal extent will be preserved; those degraded, but only to the extent that biological activity can be restored will be set aside for such restoration; and those areas which are degraded to an extent beyond restoration will be developed.

2. Development of a preliminary site development plan by the interested parties with the appropriate input from the public.

3. Final approval of a site development plan.

Staff indicates two aspects of the program are of great importance; first, the participation of the Department of Fish and Game by way of section 30411 and second, the plan may provide a workable standard for future wetlands projects.

The Commission recently granted the first new permit for exploratory oil and gas drilling in state waters since the Santa Barbara Channel oil spill in 1969. Conditioned approval was given to Arco Oil and Gas Company to drill up to 9 wells off Goleta Point. The Commission required approval by the San Barbara County Air Pollution Control District, maintenance of oil spill clean-up equipment at the drilling sites, and adequate response to an unscheduled, simulated, instantaneous oil spill. Finally, a new permit will be required if Arco intends to go into oil production at the site.

California prevailed in its controversial lawsuit against James Watt, Secretary of the Interior. The suit was filed in U.S. District Court by the Commission to stop scheduled lease sales of 32 offshore tracts for oil and gas exploration off California's central and northern coast. The decision has been appealed. After the ruling, Secretary Watt announced his decision to delay the lease sale of four other northern geologic basins for at least two years.

FUTURE MEETINGS:

October 18-21 in Los Angeles. November 3-5 in San Francisco.

BOARD OF FORESTRY

Executive Officer: Dean Cromwell (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 direction to research in the technical phases of forest management, including erosion and 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 five members be selected from the general public, three from the forest products industry, and one from the range livestock industry.

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.

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, dis-

charge, 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 requied to effectively enforce such a standard, is the reason behind the support for the proposed regulations. Further, state agencies have assured the Boad 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 standards argued for in this area may be arbitrarily enforced. Another alternative would prohibit discharge in amounts which a reasonable person (or forester) would believe to be deleterious to any of the beneficial uses of water.

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 foreseeable 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 occurring. 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 foreseeable 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 scores, 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.

RECENT MEETINGS:

In its August meeting, the Board passed regulations requiring that notice be given to nearby landowners before timber operations may take place. This was done to comply with a court decision requiring reasonable notice prior to deprivation of a significant property right. According to the new rule, a person submitting a timber harvesting plan must provide a list of up to fifteen persons who own land within 300 feet of the proposed cut, and the Department of Forestry shall send out notices to those persons. Where there are more than fifteen persons within 300 feet, no notices need be mailed, but the timber operator must publish notice in a local paper and conspicuously post a notice on his or her property.

It was contended that nearby landowners should be given notice regarding the falling of trees and other disruptive activity, as it may irreversably affect the value or character of their land. By limiting the number of mailed notices to fifteen, the Board estimates that about 10% of the timber harvest plans would be excepted. Over 200 plans, those affecting sixteen or more persons, would fall outside of the mailing requirement. Those advocating a stronger rule argued that the added costs of requiring notice to thirty persons rather than fifteen would seem minimal. Notice to 30 would take care of about 98% of the timber harvest plans. Added protection would be given to those areas where the most property interests were involved, those lands where the most people have interests.

At the September meeting of the Board, the proposed Watercourse and Lake Protection rules were passed. At present they await consideration by the OAL before becoming final. The most controversial section, entitled: "General Limitations Near Watercourse, Lakes, Marshes, and Other Wet Areas," reads as follows: "During timber operations, the timber operator shall not negligently, recklessly, or intentionally place, or otherwise 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 other substance or other material deleterious to any of the beneficial uses of water. This section does not constitute a zero discharge requirement for timber operations." The disclaimer of any zero discharge requirement in the last sentence seems at odds with the following language in the first sentence: " ... or otherwise discharge ... any ... substance ... deleterious ... " In view of this seeming contradiction, OAL review on the grounds of consistency and clarity appears likely. Were the "otherwise" language dropped, it is more likely that a clear and enforceable rule would result.

The watercourse and lake protection rules go on to protect what are defined as four different classes of waters. Class I has domestic water supplies or fish always or seasonally present; Class II has fish always or seasonally present within 1,000 feet downstream, or is a habitat for nonfish aquatic species, i.e., fish food; Class III waters are defined as having no aquatic life present but showing evidence of being capable of sediment transport to Class I or II waters; and Class IV waters are watercourses constructed by people. The first protection requires the identification of all of these waters on the timber harvesting plan* map.

Once the appropriate protection zone is determined for Class I and II waters, it must be clearly marked on the ground by flags, paint or other suitable means. These mapping and flagging requirements are designed both to prevent the occurrence of accidental harm to the protection zone, and to allow for ease of enforcing compliance with the other protection zone requirements. Industry representatives argue that requirements of mapping and flagging are unnecessary, implying that the threat of suspension or revocation of an RPF's license gives sufficient deterrence to prevent the occurrence of accidental harm to a protection zone. Industry representatives add that they do flag where a need exists and that at other times flagging is unnecessary.

*Section 4561 of the Public Resources Code provides that "no person shall conduct timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted for such operations to the State Forester." The plan must contain, among other things, the location, type of equipment to be used, and the method of cutting the timber desired. Any material misstatement in this plan found by the Board of Forestry may result in the suspension or revocation of an RPF's license. In 1980 1463 timber harvesting plans were approved of a total of 1542 submitted. THP's are disapproved when the Director of the California Department of Forestry determines that non-

conformance with the applicable laws or regulations has occurred. Such a decision of the Director is Appealable to the Board of Forestry, PRC Section 4582.7.

The proposed rules do allow for alternatives to any of the protective measures (*see* CRLR, Vol. 1, No. 2 (Summer, 1981), but the Director is required to reject the proposed alternative if more than one negative comment is received from any of the following agencies after they have conducted an on-the-ground inspection: Fish and Game; the appropriate Water Quality Control Board; the County Planning Agency; Department of Parks and Recreation; the appropriate Regional Zone Conservation Commission; the California Tahoe Regional Planning Commission; or the Tahoe Regional Planning Agency. This alternative section was put into the rules to allow for flexibility on the part of the RPF, to provide for equal or better protection by means other than those spelled out in the rules themselves. This section allegedly helps to balance out the rules package, with the exception of the general discharge limitation discussed above.

The cost of this rule package to industry has yet to be determined. The Board's public report estimates the total cost to be between $11 and $18 million dollars. Most of this results from the requirement of buffer strips limiting access to timber near certain classes of water. After some valid criticism by the Chairperson, that estimate will be significantly reduced, perhaps to a $7 to $12 million dollar range. The Board contended that these costs are reasonable when compared with the estimated 23 million acre feet of water coming from commercial forest runoff every year.

Also at the September meeting, the Board opened its hearing on proposed changes in boundaries of State Responsibility Areas (SRA's). These are the geographic areas in which the state has primary responsibility for fire protection. Local Responsibility Areas (LRA's) are those areas primarily under the protection of the appropriate local firefighting entity. These boundaries have not been reviewed in approximately ten years, and the Legislature instructed the Board to "conduct a comprehensive review of lands receiving direct protection from the department for the purpose of revising state responsibility boundaries to exclude areas which should be the responsibility of local government or federal agencies."

As a result of this mandate, the Director is presently recommending the following: that 93 parcels totaling approximately 170,823 acres be transferred from LRA's to SRA's; and that 339 parcels totaling approximately 310,549 acres, be transferred from SRA's to LRA's. The net result of this proposal will be to add approximately 139,726 acres to local firefighters throughout the state. Much of this land is located in the southern portion of the state. This is due in part to the expansion of the population there, along with the fact that no mechanism exists to automatically lift an area out of its SRA classification even after that area has been taken over by a city.

While the legislature mandated this "review," other statutes also are involved. PRC Section 21100 provides that "all ... boards ... shall prepare ... an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment." Board staff argues that the Board is not "acting," but is rather transferring the responsibility for acting from one entity to another. It is argued that the Board is giving up firefighting responsibility for nearly 140,000 acres, and in so doing is having "a significant effect on the environment." At this time, no EIR is planned. This hearing has been continued to the October meeting to be held in San Diego, in order to give individuals in the southern portion of the state a chance to comment on the proposal.

Another water quality-related package currently before the Board deals specifically with logging roads and landings. These rules are designed to regulate the construction of logging roads and landings on privately owned land. The main justification for these rules is that poorly made roads cause erosion, and thus water pollution. However, opponents contend that not all logging roads are located where they may erode, even indirectly, into lakes or streams. Also, even where water may be polluted as a result or poorly constructed logging roads, such pollution is already prohibited by the new Watercourse and Lake Protection rules. The Board's preliminary public report on logging roads and landings states that "it has been determined that many of the current forest practice rules for the planning, construction, use and maintenance of logging roads and landings do not constitute best management practices. The Federal Water Pollution Control Act requires states to develop plans and implement strategies to minimize the adverse impact of silvicultural operation. Federal law prescribes the best management practices concept as the basic strategy for achieving water quality goals. The proposed adoptions and amendments will bring the forest practice rules for logging roads into compliance with federally mandated strategy for achieving water quality goals." However, opponents argue that the logging roads and landings rules are overbroad, imposing costs where there is no water quality issue, and hence no articulated benefit to be derived.

The cost estimates for this package are presently being revised by the Board after public criticism of the wide ranges existing within 23 cost estimates for different parts of the plan. For example, the cost estimate of planning new roads is listed as from $0 — $2,220/mile. It is fairly certain that the increased costs of the logging roads and landings package will be substantial, if not readily identifiable. The hearing has been completed, but the Board has not yet reached a decision on this matter.

SOLID WASTE MANAGEMENT BOARD

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.

RECENT MEETINGS:

1. The Board has approved the State's SWM Plan which will be submitted to the Environmental Protection Agency pursuant to the Resource and Recovery Act of 1976. This Act requires all states requesting federal grants for waste management to formulate a state plan on SWM.

2. The Board is responsible for new solid waste disposal facilities and modification of existing facilities. The Board is continuing to modify and approve permits for new and expanded land fill sites.

3. The Board has improved updates of Solid Waste Management Plans for various counties.

4. The Board has recently announced a request for proposals to construct and operate a 2 to 10 tons per hour municipal waste-to-energy facility. An award of $1 million will be made to assist in getting a facility operational.

LEGISLATION:

1. SB 447 requires 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 has been passed and is presently before the Governor awaiting his signature.

2. AB 1619 would allocate $200,000 from the Environmental License Plate Fund and $200,000 from the Board Resource Recycling Grant Fund to develop techniques to control landfill gas migration without inhibiting gas as recovery. This bill is presently before the Assembly Committee Ways and Means.

3. AB 467 has been signed into law. It exempts smaller oil recyclers from regulation and requires large volume haulers/collectors to give receipts to businesses from whom they collect used oil.

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 Solid Waste Management Agency. This bill is presently before the Assembly and is being held over for an interim study between sessions.

SB 4 pertains to waste, but is not sponsored by the SWMB. This bill is a reintroduction of a mandatory reusable beer and soft drink bottle charge. A minimum of five cents per bottle deposit would be imposed, refundable upon return of the bottle. Although arguably it would have a significant impact on the recovery of normally wasted resources, strong advocacy by affected industries have killed similar proposals. This bill is being held for an interim study in the Senate.

FUTURE MEETINGS:

Future meetings of the Solid Waste Management Board will be announced. The Board is expected to meet in November.

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 waste-water 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.

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 Cal. Admin. Code). 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).

RECENT MEETINGS:

A somewhat anticlimactic 3-0 vote by the State Water Resources Control Board on September 17 culminated a four year controversy concerning discharge of timber industry herbicidal wastes in Northern California waters.

The Board adopted the North Coast Region's Basin Plan Amendments limiting discharge of 2, 4-D herbicide to 40 parts per billion (ppb) for any single discharge and 2 ppb average for any 24 hour period. Earlier, in July, the Board voted 3-1 to ban two other herbicides and instruct the Regional Board to incorporate the 40/2 ppb standard in its Basin Plan. Taken against a political backdrop of aerial spraying for medfly infestation, July's vote was sufficiently agonizing to elicit separate written comments from two State Board members. It followed extensive debate on the validity of Environmental Protection Agency (EPA) methodologies for setting local discharge standards.

Timber producers apply 2,4-D from the air to promote survival of young trees. The chemical differentiates conifers from broad leaf plants, destroying only the latter. Fall spraying by one company was set to begin within two weeks of the Board's September vote.

Industry spokesmen testified that the Board's record did not substantiate a

need for the 2,4-D restriction and expressed the fear that monitoring samples would be taken from small streams within the spraying area, resulting in elevated discharge readings. They urged the Board to adopt "guidelines" until studies of discharges under actual North Coast conditions could be completed. The adopted Amendments in fact require review of the standard in 1983.

The Environmental Council of Butte County and the California Agrarian Action Project (Davis) urged the Board to prohibit *any* 2,4-D discharge and asserted that the 40/2 ppb standard was scientific in appearance only. They called for a strong monitoring program, with costs underwritten by timber producers.

Other State agencies interested in the Board's action included the State Department of Fish and Game which had originally proposed a single 10 ppb standard as necessary to protect aquatic life and the Department of Food and Agriculture which has primary jurisdictoin over pesticide/herbicide use. *See* discussion of Agency jurisdictional implications, CRLR Vol. 1, No. 2 (Summer, 1981). The Amendments tiptoe around the jurisdictional issue, acknowledging the lead role of Food and Agriculture without relinquishing responsibility to control chemical discharges where other Agency regulations do not fully protect beneficial water uses.

GRANT FUNDING UNCERTAIN:

In another September item, the Board unanimously adopted a project priority list for State and Federal Clean Water Grants in Fiscal Year 1982. Uncertainty surrounding 1982 Federal budget appropriations threatened funding for projects representing $251 million. Five year projected costs of top priority projects labeled "Public Health Problems" and "Severe Water Pollution Problems" total $491 million.

Staff informed the Board that EPA would withhold approval of 19 existing grant projects pending answers to 10 questions received the morning of the meeting. Chairwoman Carla Bard pointed to earlier assurances from Washington that States would make the determinations on water quality and denounced the Federal action as "a cheap shot way to cut the budget." The new requirements would shift project approval (grants) from EPA's Regional Office in San Francisco to Washington for projects whose design or construction budgets exceeded specified limits.

SAN DIEGO LANDFILL:

San Diego City's much maligned North Chollas Sanitary Landfill edged toward actual operations in the same July, 1981 meeting. The State Board unanimously disposed of objections by the North Chollas Citizens Association and approved the San Diego Regional Water Quality Control Board's order setting waste discharge requirements. Approval was conditioned on (1) receipt of additional data on groundwater levels and (2) determination that wastes could be placed near a reported seepage without violating discharge requirements.

The Citizens Association petition addressed various technical aspects of the project, including historical groundwater levels, potential storm water runoff, lack of a seismic safety analysis of the nearby Chollas Reservoir Dam, adequacy of a surface water runoff pipe, lack of test borings and possible noncompliance with the California Environmental Quality Act. In all instances, the State Board found adequate compliance with existing regulations.

Concern with the runoff pipe emanated from a letter to the City of San Diego from the State Solid Waste Management Board stating that the 36 inch drain was "inadequate." However, the State Board discounted the letter's significance, noting that the same Solid Waste Board issued an operations permit three months later specifying a 36 inch pipe.

Staff from the City informally estimate that State Water Board investigations and proceedings delayed the project by six months and added approximately $50,000 in unbudgeted costs related to extensive groundwater test wells. Consequently, capacity of other landfill sites was diminished more rapidly than planned.

RECLAMATION EXPERIMENT:

Another San Diego item saw the State Board try to balance competing interests of reclaiming scarce water for an arid region while protecting coastal lagoons from surface water pollution.

In 1978, at the request of San Diego County, the State Board directed the San Diego Regional Water Quality Control Board to review the numerical water quality objectives for nitrogen and phosphorus nutrients as established in the San Diego Basin Plan. The Regional Board prepared a draft work plan element for the nutrient review, contingent upon grant funding from the State Board. Funds were not provided and the review did not occur. The County then petitioned the State Board to force compliance with the 1978 directive.

San Diego County's interest stemmed from its own Water Management Plan which envisioned replenishing seasonally depleted water supplies in the San Elijo Lagoon with reclaimed water from a planned facility. The sewage treatment plant would use a new "aquaculture" technology in which aquatic plants and animals break down organic waste. Apart from providing major energy and cost savings over the conventional activated sludge process, the reclaimed water would restore wildlife habitats which are currently destroyed when insufficient water reaches the Lagoon. However, the reclaimed water would exceed nutrient standards in the Basin Plan which were derived from EPA literature.

In seeking the exemption from Basin Plan standards the County contends that:

1. Actual nutrient levels would be close to natural levels and not detrimental to the lagoon;

2. The marginal benefit of removing additional increments of phosphorus and nitrogen do not outweigh the added costs of traditional reclamation technology; and

3. A two year San Elijo Lagoon demonstration project will prove the current standard is unnecessarily restrictive based on actual lagoon conditions.

The State Board's July action directs the Regional Board to issue a discharge permit if the County formally commits itself to a controlled demonstration project which develops the necessary pollution data. In effect, the County, through a land development, will underwrite the cost of the analysis the Regional Board refused to assume.

In other recent actions, the State Board adopted a policy for processing applications for hydroelectric power projects; authorized staff to negotiate and execute a $135,000 agreement with the Department of Fish and Game to interpret the effect of elevated levels of toxic substances in mussels; and reaffirmed its intention to provide $67,000 of Clean Water Bond funds to the Lahontan Regional Board for its revised Phase IV 208 Workplan for Lake Tahoe.

FUTURE MEETINGS:

Regularly scheduled meetings of the State Board will be held on November 19, and December 17, 1981 in the Resources Building Auditorium, 1416 9th Street, Sacramento.

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.

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 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 Cal. Admin. Code 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.

AB 868 (Lehman), which more clearly defines the scope of chiropractic practice *(see* CRLR Vol. 1, No. 2 (Summer 1981)), passed the Assembly. It is presently in the Senate.

The status of AB 610 (Berman) has passed the Assembly, with some modifications. This bill would give patients access to their health records within 5 days of submitting a request to inspect them, and require providers of health care to make reasonably priced copies available upon request.

According to Secretary Hoefling, the Board has been involved in budget planning recently, and has not had time to attend to much else.

A new public member joined the Board on September 16. He is Dale Hagey, a high school teacher from Newport Beach. This means that the Board will be complete for the first time this year. The Board member Hagey is replacing was unable to attend most meetings due to poor health.

FUTURE MEETINGS:

The Board will probably meet on December 10, 1981 for additional public hearings on AB 1111.

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:

Projects of the Commission include: the Residential Conservation Service; certification of one geothermal plant and consideration of others; development of commercial appliance standards; implementation of the Petroleum Industry Information Reporting Act; and implementation of AB 1111.

The National Energy Conservation Policy Act (NECPA) of 1978 requires implementation of a "Residential Conservation Service" (RCS) program. States, or their utility companies, must devise a plan that provides free or low cost energy audits of homes.

Most California utilities comply with the State Implementation Plan which was promulgated by the California Energy Commission (CEC) and approved by the Department of Energy (DOE) December 29, 1980. The remainder, which consist of seven municipal utilities (most notably the Los Angeles Department of Water and Power), have opted to formulate independent implementation plans; also

approved by DOE.

Under the State Plan, utilities are required to perform three basic functions: First, they are to send an announcement every 2 years to all eligible customers, notifying them of benefits currently available under the plan. Second, they are to finance and conduct home energy audits within 45 days of a customer's request. These audits include financial estimates of advantages to be derived through retrofit of the home. Third, the utilities are to give assistance in arranging installation and financing of energy saving devices such as insulation, weatherstripping, solar domestic hot water systems, and furnace efficiency modifications. All suppliers, lenders, and installers of these devices must comply with various "listing criteria" before a utility may recommend them to a customer. The Energy Commission is charged with the preparation and monthly update of a Master List of qualifying firms.

All utilities following the State Plan have begun conducting energy audits of homes. Public response has been positive, with roughly six percent of homeowners and renters answering notices sent out by the utilities. In the first three months of operation, approximately 18,000 audits were conducted by utility-trained auditors. The Energy Commission estimates that 450,000 audits will be performed during the first year of the program. Subsequent conservation measures will hopefully reduce residential energy use by five to six percent.

The Energy Commission is presently considering amendments to the State RCS Plan in order to alleviate various "start up" problems which have been encountered. The CEC staff, the 34 member State Advisory Group, and the individual RCS Utility Advisory Groups are currently discussing problems such as contractor reluctance in signing up for inclusion in the Master Lists, CEC updates on price lists for energy saving devices, and the interface between tax credit qualification and Master List inclusion.

The CEC certified a power plant (110 megawatt) proposed by Pacific Gas and Electric (PG&E) in the Geysers area (parts of Napa and Sonoma Counties) on September 30th. Commissioner Suzanne Reed was the presiding member and Emilio Varinini was the other member of the siting Committee (usually two Commissioners work with staff on every item of CEC business involving the public hearing process). This is the sixth geothermal plant certified by the CEC in the Geysers area.

It has taken this plant, "PG&E No. 16," three years to get certified. That is twice as long as the longest CEC certification process for geothermal plants. The problem was the location of the transmission line. Sonoma County was concerned about the parts of the line crossing state parks and residential areas. This was a very controversial issue.

In certifying PG&E No. 16, the CEC used its authority to override state or local standards for the first time. Section 25525 of the Public Resources Code allows the CEC to override state or local authority if:

1) "The Commission determines that (the) facility is required for public convenience and necessity," and

2) There is no alternative more prudent and feasible.

After reviewing all the alternatives the Commission concluded that PG&E's proposal, with some modifications, was the least of all possible evils. Section 1001 of the Public Utilities Code makes the CEC's findings binding on the Public Utilities Commission.

The 230 kilovolt transmission line will be the first major new line out of the Geysers in many years. It will serve all of the plants in the area for the rest of the decade. The CEC decision requires undergrounding of 1.2 miles of the 42 mile line.

Last year's AB 1905 provided for the distribution of monies received by the state from federal leasing of geothermal lands. Federal law provides for 50% of the monies received for geothermal leases to be paid to the state where the leased lands are located.

The purpose of the federal law is to stimulate geothermal development and lower impediments associated with it.

AB 1905 channels 40% of revenues from sales of leases through the State Controller to counties with geothermal projects already under way. 30% of the total funds go through the CEC for grants to local districts in planning, research development, monitoring and mitigation.

To illustrate, Lake and Sonoma Counties' Boards of Supervisors have different priorities than the school districts in those counties. More people have moved there as a result of taking jobs with geothermal plants. The enrollment in the schools was not accounted for and thus the school districts did not have enough money to accommodate the extra students. Since the monies were available to any municipality, government or public agency, the school districts could apply for funds to mitigate the effects of energy development.

The Department of Water Resources (DWR) in applying for certification of its South Geysers Geothermal project, has seen the writing on the wall and is making an agreement with Sonoma County on how to mitigate the effects of its project. The DWR geothermal project should be approved for construction by the CEC by the end of the year.

The CEC has already developed residential appliance standards (e.g., for refrigerators, air conditioners, etc.) and is now holding workshops with industry representatives to develop commercial appliance standards. These standards will apply to intermediate size air conditioners, for example, or fluorescent ballasts (unit in fluorescent fixture that supplies high voltage when turned on, then drops energy level). These standards allow for a "band" of power usage. In other words, an appliance won't use exactly the same amount of energy every time, and these standards will allow for this normal feature of appliances. The Federal Department of Energy (DOE) is required by Congress to develop standards for commercial appliances. DOE hasn't gotten around to it yet, and the CEC doesn't think they will. If DOE does, then the question whether the federal standards can supercede those of California may be an issue.

In March 1981, the California Energy Commission published an update of the Directory of Gas Space Heaters (Excluding Central Furnaces). In April 1981, the CEC published a Directory of Certified Gas and Oil Fan-Type Central Furnaces and a list of certified Central Gas Furnaces with outputs less than 45,000 British thermal units (Btu)/hour.

All gas and oil fan-type central furnaces sold or offered for sale in California which have not been certified as complying with the standards are in violation of the regulations. All room heaters, floor furnaces and wall furnaces sold or offered for sale in California which have not been certified as complying with the standards are in violation of the regulations.

The text of these regulations can be found in the California Administrative Code, Title 20, Chapter 2, Subchapter 4, Article 4.

Consumers should use these directories to aid in choosing the most energy efficient appliances. Building officials find the directories useful during field inspections to determine whether the appliances installed by the contractor have been certified.

Copies of the documents mentioned above are available from the Publications Unit of the California Energy Commission, 1111 Howe Avenue, M.S. #50, Sacramento, California 95825. Telephone: (916) 920-6216. The first copy is

free; additional copies are available at cost.

California law formerly required quarterly reports from major oil producers, major petroleum marketers, refiners, and electric utilities with respect to production, importation, and use of crude oil and petroleum products in California. This information was put into the Quarterly Fuel and Energy Summary prepared by the CEC.

The Petroleum Industry Information Reporting Act of 1980 (S.B. 1444, Holmdahl), in recognition of the deficiences in existing data systems and of the vital importance of the petroleum industry to California's economy, required the Commission to adopt regulations covering additional institutions in the petroleum production, distribution, and utilization chain. The proposed regulations subsequently developed by the Commission required monthly, rather than quarterly, reports from refiners and major petroleum products marketers. Monthly reports were also required of major oil storers (typically, utilities, airlines, railroad companies, etc.). Monthly projections of future supplies were required of refiners and marketers. Annual reports obtained from refiners, marketers, storers, producers and transporters were also to be collected. The information collected is to enable the Commission to detect important trends in the petroleum market, and enhance the state's ability to predict, verify, and respond to future fuel shortages.

The PIIRA was signed by Governor Brown on September 25, 1980, and became effective October 1, 1980. Subsequently, the California Energy Commission held a series of workshops and hearings to gather information and to solicit industry comments on the draft regulations proposed by the CEC staff. The regulations were adopted by the CEC at its July 1, 1981, business meeting and approved by the Office of Administrative Law on August 12, 1981. Prior to the implementation of the PIIRA data collection system, the most important source of petroleum supply information for the State of California was the Quarterly Fuel and Energy Summary (QFES). The reporting system for PIIRA decreases the petroleum information reporting requirements formerly mandated under QFES by 67%.

AB 1111:

The Commission has approved a Statement of Review completion for most of the regulations. Review has just commenced on "Data Collection Regulations." The Commission expects these to be done by the end of the year.

RECENT MEETINGS:

After nearly two years of revision, the Energy Commission finally adopted the Committee Report on Residential Building Standards at the July 15 meeting.

Under the auspices of Commissioner C. Suzanne Reed, the final July report is the culmination of a struggle between business persons, consumers and regulators to set uniform building standards throughout the state for energy efficiency in new homes.

Public Resources Code section 25402 requires the Energy Commission to set standards for energy efficiency in new buildings. The standards must be "cost effective when taken in their entirety, and when amortized over the economic life of the structure when compared with historic practice." The Commission is required to prescribe standards for lighting, insulation, climate control systems, and other design strategies, and also to set "performance standards" (expressed in energy consumption per square foot of the building). The statute also requires the Commission to periodically review and update the standards (for details of the report, *see* CRLR Vol. 1, No. 2, pp. 67-68).

An Energy Commission staff member had commented that the final proposal is the best possible program considering all the interests involved. "No one is pleased, but no one is displeased either," he added.

The residential building standards received unanimous approval (11-0) from the Building Standards Commission (BSC) September 25. The Energy Commission submitted much documentation in addition to the original filing, which was itself extensive.

"Our people worked hard to convince the BSC that the standards did comply with the Health and Safety Code," John Chandley, Special Advisor to Commissioner Reed, said.

Most of the eight criteria of Section 18930 of the Health and Safety Code are "procedural" and not difficult to meet, according to Chandley. The first criterion is that "the proposed building standard ... not conflict with, overlap, or duplicate other building standards."

Other agencies have authority to develop building standards. For instance, the State Fire Marshal's Office has the authority to develop standards for structural fire safety. Those standards would be concerned with the length of time a structure would stand up in a major fire. The CEC, on the other hand, requires insulation of buildings to save energy. Insulation makes buildings burn faster. This conflict did not present itself in the present case, however.

Section 18930 also requires the BSC to evaluate the cost justification and reasonableness of the standards. The standards must, for homeowner convenience, pay for themselves in the long run and at the same time, save the state energy. Section 18930 is actually a 1979 amendment to the Health and Safety Code which allows the BSC more substantive review over building standards than the 1953 statute that created it. The BSC functions like an appellate court. They must rely on the record created by the agency adopting the standards. The BSC must find the record binding unless not supported by substantial evidence.

However, as Chandley pointed out, statutory requirements that the standards be reasonable seemed to suggest that a judgment could be made independent of what was on the record.

"It was strange having another agency second-guessing our standards," Chandley said. "There was the possibility they might expand the definition of their authority. But the BSC was very judicious. They were surprised by the quantity and quality of our documentation," he said.

The proposed effective date of the standards is July 1, 1982, subject to administrative review by the Office of Administrative Law.

Preliminary hearings for *non*-residential building standards have recently begun. The status of this report will be discussed in subsequent issues.

The first step in the CEC biennial report preparation process is to collect from electric utilities their "resource plans" for 1983.

The CEC calls this step "Common Forecasting Methodology" (CFM). The utilities submit forms and instructions provided by the CEC. The forms are due on March 1, 1982 and will be used by the CEC in recommending supply planning priorities in the 1983 report. The report, in turn, helps the CEC to decide whether to grant planning permits to the utilities. The utilities have consistently overcasted energy because they have never included the effect of conservation programs in their resource plans. The CEC is now requiring that the utilities consider 35 separate conservation programs (e.g., residential building standards, appliance efficiency standards, the Residential Conservation Service, etc.), in forecasting demand.

August 17 and 18 the CEC held workshops with the utilities in an attempt to make the forms briefer. Draft forms were given to the utilities for their comments.

The CFM Committee approved a revised set of forms and instructions at a hearing August 25, 1981 with the blessing

of the utility companies. The Commission as a whole approved the forms at the September 11 business meeting.

The Energy Commission and the Public Utilities Commission are jointly conducting an investigation into electric utility system reliability.

The CEC 1981 Biennial Report identified the early 1980's as the critical period of the decade for ensuring adequate energy reserve margins for power plants. A "reserve margin" is a utility's back-up capacity; that is, the remaining unused capacity of an electrical system after satisfying customer peak demand.

The major utilities are required to participate in this hearing which is examining, inter alia, 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 the efficiency of utility operations and utility cooperation.

Reserve margins, however, as Policy Advisor Jeanine Hull points out, are only one measure of reliability. "We are expecting approximately 4500 megawatts of new nuclear capacity (to generate electricity) to be available by 1985," she said. The 4500 megawatt figure represents the aggregate "installed capacity" (the capacity a nuclear power 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 Diablo Canyon 1 and 2 nuclear facilities are scheduled to go on line by 1985.

"Experience has shown that nuclear power plants are not dependable for the first several years of operation. Just because the energy is *available* doesn't mean it's *reliable*," Hull said.

"We do have an incredibly reliable utility system, however, and it has been that way traditionally because some electric users (e.g., hospitals, computer industries, etc.) *require* 100% reliability," she said. According to Hull, the question is: Does every user require that level of reliability, and, if offered a lower price for *not* using electricity during certain periods, would the user choose that? The investigation is exploring the possibility of allowing customers to shut off energy they're not using during peak demand periods.

"The purpose is to shave off energy demand by shifting energy usage," Hull said. She emphasized that consumers must be made aware of peak usage periods because energy costs more during those periods.

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. This bill has little support and has been held over until the next session.

SB 351 (Foran) requires building standards to be cost-effective when considered individually and when compared to prevailing standards and practices at the time the new standards are adopted. The measure passed the Senate; however, it is held up in the Assembly at the Energy and Natural Resources Committee until next session.

AB 781 (Levine) is a most controversial measure for fitting residential buildings with six specific energy conservation measures and devices upon the transfer of title. Any residential building failing to conform to the standards on time could be declared a nuisance. The bill has passed out of the Energy and Natural Resources Committee but has not reached the Assembly floor.

AB 1031 and 1033 (Levine) provides financial incentives to utilities to build alternative energy plants. Because of the complexity of this measure it has been put off until next session. There will be hearings later this Fall or early Winter.

AB 784 (Levine) has passed. It makes various supplemental and technical changes to the 40% energy conservation tax credit program.

SB 178 (Boatwright) allows tax credits for converting automobiles to run on alcohol fuel. This bill passed.

SB 654 (Boatwright) has also passed. It cuts the distribution tax on alcohol fuels by one-half. The rationale of this measure is: Since the energy content of alcohol fuel is one-half gasoline, the tax should be one-half as well. (If only all legislative thinking could be so simple.)

The Office of Administrative Law (OAL) disapproved an Energy Commission proposed regulation that the installer of urea formaldehyde foam insulation must advise the purchaser of potential health hazards which may result from exposure to formaldehyde. The OAL disapproved the regulation on grounds that the Commission's authority is limited to material standards.

Fuming over this decision, the Commission appealed to the Governor. In response, his office held that the Commission *did* have the authority to make such regulations, and, considering the potential carcinogenic risk, the regulation is proper.

LITIGATION:

Two lawsuits against the CEC were filed simultaneously in district court, one by the Pacific Legal Foundation and one jointly by Pacific Gas and Electric (PG&E) and Southern California Edison.

In 1976 the California Legislature passed laws governing the general authority of the CEC in licensing nuclear power plants. Three laws resulted: one dealing with the reprocessing of nuclear wastes, one with the undergrounding of nuclear power plants and one with the disposal of nuclear power plant waste. In both suits plaintiffs alleged that the laws were unconstitutional and preempted by the Federal Atomic Energy Act.

The Pacific Legal Foundation case moved faster and the district court in San Diego handed down its decision April 12, 1979. The court ruled that the question of California authority to pass reprocessing and undergrounding laws were moot, but that the section on waste disposal was unconstitutional. The court said the CEC can't license a new power plant unless there is a federally approved way to dispose of nuclear wastes.

The CEC appealed to the Ninth Circuit in June of 1979. Four environmental organizations were intervenors on the appeal: The Sierra Club, The National Resource Defense Council, The Environmental Defense Fund and Californians for Nuclear Safeguards. In addition, 13 states filed amicus briefs.

The CEC is contending that Pacific Legal Foundation has no standing to sue because it is not the real party in interest. Only a utility company with an actual, current plan to build a nuclear facility would have a cause of action against the CEC.

The PG&E case started out similar to the first suit. In April of 1980 Sacramento District Court Judge Real struck down 17 separate sections of the law allowing CEC to cite power plants. In a three page decision, he said *all* the sections on citing were preempted by federal law and that the states cannot regulate nuclear power plants. Twenty-nine states submitted amicus briefs on the CEC appeal. The CEC is awaiting a decision in both cases from the Ninth Circuit Court of Appeals.

The CEC has instituted a suit against the Bonneville Power Administration, the federal marketing agency for Northwestern power. Bonneville has proposed new rates for the sale of power to its customers.

Since 1974 California utilities have purchased an average 6.2 million megawatt hours of Bonneville hydroelectric power at a cost of .03 cents per kilowatt hour. This amounts to about $18.4 million a year.

Bonneville's new rates will cost according to the highest cost of Bonneville's power (which depends on average hydro

conditions during the year). The highest price this year was two cents per kilowatt hour, which would result in a cost of $124 million to California.

California buys seven percent of its energy from Bonneville, which represents Bonneville's non-firm surplus energy. That is, the only time Bonneville sells to California is when there is *no* market for the energy in the Northwest. There is a predictable surplus yearly because the Columbia river system supplies massive amounts of energy and Bonneville must do *something* with the surplus energy.

The CEC filed suit September 22, 1981 in the 9th Circuit Court of Appeals which has original jurisdiction in this case according to the Pacific Northwest Electric Power and Planning Conservation Act of 1980.

The CEC has also appealed the cases to the Federal Energy Regulatory Commission, part of the Department of Energy.

The CEC suspects one reason for the rate hike is for Bonneville to subsidize its acquisition of three expensive nuclear power plants. There are no cost controls for these plants, and thus there have been tremendous cost overruns due to exhorbitant interest rates.

FUTURE MEETINGS:

The Commission has business meetings every *other* 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 parimutual 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 regultory 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, 1983, and 1984. 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 of Board concern is the use of drugs on race horses. The Board is constantly formulating standards for drug administration and evaluating the dangers resulting from the use of various types of drugs. The Board sees this role as an important step toward ensuring the safety of race horses.

RECENT MEETINGS:

The Board met in Del Mar on September 21 and allocated gate and racing dates for 1982 and 1983. The passage of AB 3033 (Vicencia), which became effective January 1, 1981, expanded the number of weeks during which various racetracks could conduct meetings. This meant a reallocation of racing dates, since meetings are staggered throughout the state so that after one meet concludes, another begins.

The Board also adopted regulations regarding the administration of drugs to race horses. The Board has passed regulations earlier this year setting allowable dosages for four approved therapeutic drugs. The OAL, however, rejected these regulations, citing insufficient scientific documentation. Rather than contest the OAL's authority to make such a determination, the Board adopted new dosage levels based on more extensive scientific documentation.

The Board also adopted regulations prohibiting any drug being give to a horse after its entrance in a race. Presently, approved drugs can be administered up to 24 hours before a race.

Finally, the Board approved regulations requiring that health and soundness examinations be given each horse before a race.

All the above-mentioned regulations are subject to OAL approval.

AB 1111:

The Board has appointed a Committee to review its regulations pursuant to AB 1111. Issue papers will be drawn up by the Committee, and public hearings will be held in November or December.

FUTURE MEETINGS:

The Board's next meeting will be held on October 23 in San Mateo.

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:

Since the last *Reporter, see* CRLR Vol. 1, No. 2 (Summer 1981), the Board has met twice. It met on August 21, 1981 at the AMFAC Hotel in Los Angeles to discuss the protest in the case of *Long Toyota, et al. vs. Toyota Motor Distributors, Inc.; Toyota Motor Sales U.S.A., Inc.; Puente Hills Toyota, Interested Party vs. The Establishment of Puente Hills Toyota.* The Board overruled the protests and permitted Toyota to establish *Puente Hills* as an additional franchise.

The Board met again on October 2, 1981, at the Ramada Inn in Burlingame. Executive Secretary Sam Jennings reported the decisions on the three protests heard at the meeting.

In the protest of *Loie Brothers M/C*

Sales, Inc. vs. U.S. Suzuki Motor Corporation, the Board denied the protest against the establishment of a new Suzuki Franchise.

In the case of *Vespa at the Beaches vs. Vespa of America Corporation, James V. and James R. Pastore dba Vespa of San Diego, Interested Party,* the Board also denied the protest against the relocation of Vespa of San Diego.

Finally, in the case of *Rice Motor Comp., et al, vs. American Honda Motor Comp., Inc.,* the Board sustained a protest against the Honda Motorcycle dealership's relocation.

FUTURE MEETINGS:

Tentatively scheduled sometime in December.

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 licensees. The Board consists of five licensed osteopathic physicians.

MAJOR PROJECTS:

The Board has begun its AB 1111 review of regulations with a public comment period from August 7, 1981 through September 18, 1981. The only public meeting the Board has scheduled is for September 18, 1981, at 8 AM at the Board's offices in Sacramento. A meeting had been scheduled for September 10th, but was postponed to the 18th.

Governor Brown has appointed two new members: President Gosenfeld is being replaced by Lewis J. Orlando, D.O. L. Arthur Moore, who is retiring, is being replaced by Robert L. Brewer, D.O. There is also a possibility that B. J. Strumillo may be reappointed.

The status of the bills which concern the board, AB 2045 (Rosenthal), AB 1258 (Rosenthal), and SB 18 (Greene) is in doubt. Dr. Williams' secretary, Helen Johnson, said that approval of the bills had been delayed due to confusion over the redistricting currently underway. *(See* CRLR Vol. 1, No. 2 (Spring, 1981).

RECENT MEETINGS:

The Board met on July 11, 1981 in San Diego. Business conducted at that meeting was fairly routine: 3 applications for permission to operate as medical corporations were approved, examination procedures were reviewed and an out-of-state osteopath received a waiver for a CPR credential (required of osteopaths practicing in the state of California).

FUTURE MEETINGS:

In addition to the AB 1111 review set for September 18, the Board will have a conference call in October, and has scheduled a meeting for November 13, 1981 at the Pomona College of Osteopathic Medicine. On November 19-21, the Board will conduct an on-site review of the College of Osteopathic Medicine and will conduct the licensing examination.

PUBLIC UTILITIES COMMISSION

Executive Director: Joseph Bodovitz
(415) 557-1487

The California Public Utilities Commission was created in 1911 and strengthened in 1946 to regulate privately owned utilities and ensure reasonable rates and service for the public. The Commission oversees more than 1,500 utility and transport companies including electric, gas, water, telephone, railroads, airlines, buses, trucks, freight services and numerous smaller services. More than 19,000 highway carriers fall under its jurisdiction.

Overseeing this effort are five commissioners appointed by the Governor with Senate approval. The commissioners serve staggered six-year terms in an increasingly complex full-time job.

MAJOR PROJECTS:

With the event of high foreign fuel dependency and its correspondingly high cost, regulating energy has received the unprecedented attention from the public. Sensing deficiencies of traditional regulation, limited often to policing service and restricting monopoly power price excesses, the Commission has sought new ways to lessen oil import dependency and provide long term energy resources. The alternatives investigated have been politically controversial and have stimulated an increased adversarial relationship between the regulators and the regulated.

The more visible Commission of the Brown Administration has also attracted the attention of legislators. Two recently appointed Commissioners, former Assemblyman Victor Calvo (D-Mountain View) and former director of the Department of Conservation Priscilla Grew recently received Senate confirmation following a heated challenge. Although much Senate hostility was directed at Governor Brown's failure to consult with Senators before submitting the nominations, opposition was substantially founded upon political and economic philosophy. Calvo and Grew were accused of being "anti-growth" and "anti-nuclear." The actual confirmation vote was not as close as originally expected. Opponents were presumably mollified by the commissioners' support of a $610 million rate hike granted Pacific Telephone *(see below).* The six month battle demonstrates the increased importance accorded the Commission and the heightened political environment in which it will have to function.

The program Governor Brown once called "a watershed in public-private sector cooperation and a centerpiece for California's sound energy policy" continues to progress. The Zero-Interest Program provides loans at zero interest for energy conservation and weatherization improvements upon residences. The loans are repaid through utility bills beginning on June 30 of the year following the year in which the loan is approved.

The first implementation of this "ZIP" program will be 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. The $10 million experimental program boasts a financing arrangement new to conservation financing programs. Called "project financing," it calls for loans granted by banks and institutional lenders without an exchange of collateral security. The flow of funds from the specific project are substituted for the traditional overall credit of the corporation.

The trumpeted "uniqueness" of the project financing does save PG&E the need to offer collateral, at a reputed cost savings to ratepayers. However, the banks have secured superior collateral in the form of a PUC commitment to ensure full recovery of all ZIP debt service costs through its rate structuring powers. In essence, all "regulatory risk" has been accepted by the rate payers. This arrangement suggests that banks may become the most enthusiastic supporters of ZIP and other conservation financing programs.

PG&E also proposed to include administrative costs in a "balancing account" (drawn from ratepayer funds) designed to "cushion" debt service payments. Observing that any incentives to minimize administrative costs and most of the program's risk would be transferred totally to ratepayers, the Commission rejected the proposal. This financing decision paves the way for acquisition of funds to commence PG&E's ZIP implementation.

Meanwhile, San Diego Gas and Electric (SDG&E) has proposed its own $1.55 million trial program targeted for 6,000 homes. The loans would be provided (and services) by local banks with SDG&E paying the suspiciously low 16% interest in lieu of the customers. The average 5 year loans will range from $120-$3,500 and are expected to be applied primraily to ceiling insulation installations.

Critics have protested the probable inability of low-income customers to qualify for these unsecured loans. Despite SDG&E's assurances that underwriting guidelines will not be income-weighted, testimony by SDG&E supervisors confirms that underwriting will be based upon payment history and income-to-debt ratios; allegedly, neither formula is an ally to low-income customers. Hearings on the SDG&E proposal continue as of this printing.

RECENT MEETINGS:

Pacific Telephone received a sizeable $610 million rate increase. The unanimous decision by the Commission granted the telephone company an overall 13% rate of return on total invested capital. The increase is $180 million less than the utility felt necessary to attract capital in the high-interest capital market for its modernization program. Nontheless, according to the released decision, the average consumer will feel an increase of over 17.9%.

The increase translates to a monthly $1 increase in one-party, flat-rate services. The Commission barred an increase in the lifeline telephone service, which provides for a certain number of local calls at a fixed low rate. The decision also ordered a 90 day waiver of its usual $22 charge for a change from flatrate to measured rate service. The move encourages customer adoption of the measured service which relates to actual phone usage. Also affected are intra-California long distance rates, business rates and telephone rental rates.

The Commission's decision included a warning to Pacific Telephone's parent company, American Telephone and Telegraph. Commissioner Richard Gravelle called the increase a "short-term effort" to compensate for "the extraordinary condition in which AT&T has placed Pacific at this time." He charged AT&T with deliberately weakening PT&T with the expectation that the California ratepayer would rescue its drained subsidiary. Gravelle admitted that the decision bordered upon "rewarding AT&T for irresponsible behavior" and listed specific goals to be achieved by PT&T within one year at the risk of serious penalty.

The summer brought increased energy rates to most Californians. Southern California Gas Company was granted an annual $69.8 million rate increased due to higher gas costs. The increase was compounded with the elimination of a scheduled $136 million refund to result in an overall $205.8 million boost to SCGC.

Pacific Gas and Electric received a $153 million hike over the subsequent four month period. This Energy Cost Adjustment was justified by the higher prices of gas and a below average run-off from the Sierra through hydroelectric dams. The rate increase is estimated to raise the average customer's electric costs by over 8% while the gas rate increase will only be felt directly by steam electric generators and large industrial users.

The epidemic of increases was allayed somewhat by a rate decrease imposed on San Diego Gas & Electric. The nominal $14.4 million reduction reflected an overestimation of gas cost increases by SDG&E in their projected cost schedule. A natural gas glut has stabilized gas prices in many regions. The decision by the Commission was accompanied by Commission President John Bryson's denunciation of SDG&E's continued dependence upon oil and gas as "alarming and unacceptable."

Many Northern California consumers received relief in the form of an expansion of lifeline rates for air conditioning. Lifeline rates are discounted rates designed to satisfy basic energy needs. The expansion of the lifeline rates is estimated to cost PG&E about $5 million in revenues. However, the Commission allowed the utility to apply this loss to its next rate adjustment application. The air conditioning lifeline is granted only in areas that do not receive heating lifeling rates. This exclusivity clause prevents most California coastal regions from qualifying for the low rate.

The PUC approved ratepayer financing of natural gas exploration and development by Pacific Gas & Electric Company and Southern California Gas Co. in instances where utility shareholders contribute at least 20 percent of the funding. But, PG&E was denied permission to charge its ratepayers for a $25 million investment the utility is making in a $275 million Mojave Desert coal gasification project in cooperation with Southern California Edison and Texaco. The Commission directed PG&E to pay for its part in the joint venture with money from a research, development and demonstration fund allocated by the Commission for such activities. Ratepayer financing of natural gas exploration and development was first approved by the PUC in 1974 in an effort to increase the development of newer and cheaper sources of fuel. The PUC contends that the added requirement of shareholder participation distributes project risks and encourages prudent investment. For those projects proposed in the Cook Inlet of Alaska, an additional requirement of 50 percent shareholder participation is imposed by the Commission, because "the timeliness of economic benefits to ratepayers from activity in this area is riskier."

The PUC permitted Pacific Gas & Electric Co. to discontinue a solar heating loan program mandated by the Commission last year. PG&E claimed that it was unable to finance the program, which called for making 9,000 loans of up to $3,800 to residential customers adding solar heating systems. The company had requested $22.3 million to administer and finance the program, but the PUC only set aside $6.1 million. None of the loans have been awarded and those customers already admitted into the program will be given rebates on their investments instead. This action casts doubt on the three year program designed to assist approximately 150,000 customers to install solar heating systems in California.

The ailing General Telephone Co. received a temporary reprieve from its financial problems this summer by the PUC. The Commission granted GTE authority to increase its rates by $13,544,000 a year to cover the cost of $100 million in first mortgage bonds, contemplated insurance of $250 million of long term debt and $25 million of preferred stock this year. The Commission was surprised by the request since the increased capital costs quoted by the utility were substantially higher than those estimated by GTE during the time of its last general rate increase in October, 1980. The increase will add about 3 percent to GTE customers' bills for local calling.

Also this summer, Victor R. Weisser, of Sacramento, was appointed director of the state Public Utilities Commission's Transportation Division. Weisser, formerly chief of Caltran's Office of Transportation Planning, is responsible for the direction of staff activities of the largest PUC division, which regulates trucking, rail, bus, pipeline and vessel transportation in the state. Weisser's activities in Caltrans included work on an in-depth study of the impact of potential economic deregulation of the intercity bus industry as well as efforts to encourage increased rail passenger transportation in California.

FUTURE MEETINGS:

Many utilities in California are facing hard financial times. The high cost of money this summer has hampered plans for large capital outlays. The phone com-

panies are trying to keep up with an increasing demand for service while conducting an unprecedented modernization program. The gas companies are preparing to build coastline terminals for the reception of liquified natural gas coming from Alaska and Malaysia. Even though most Californians are more energy conscious the producers of electricity, anticipating continued increase in demand for energy, have committed themselves to massive capital investment in complex facilities, each taking up to ten years to complete. In order to meet the enormous costs of these projects and continue to pay stockholder dividends, many utilities are selling shares, dipping into depreciation funds, borrowing on the bond market and seeking greater rate increases.

While the utilities are often able to pass on the higher cost of fuel to their customers, they would also like to be able to pass on the cost of new capital construction. The P.U.C. is loath to permit this; it prefers to have the utility shareholders finance such projects since the economic risks involved are high. The benefits accrue not to present ratepayers but to future ratepayers and the utilities have a tendency to be less cautious with ratepayer money. It appears that the P.U.C. will consider shareholder and ratepayer sharing formulas to finance increased construction.

Another proposal destined for further discussion, and mentioned last spring by P.U.C. president John E. Bryson, is the deregulation of electricity generation. This could allegedly encourage competition among the many independent electricity producers and lead to greater efficiency in the industry.

More immediately, Pacific Gas & Electric Co. is seeking an unprecedented rate increase scheduled for the beginning of 1982. Much of the increase is needed to cover the costs of constructing and licensing the Diablo Canyon Nuclear facility in San Luis Obispo County. If approved by the P.U.C. as proposed by the utility the monthly electric bill of a typical PG&E customer will rise by 40 percent next year and the average monthly natural gas bill will increase 16 percent.

STATE BAR OF CALIFORNIA

President: Sam Williams
(415) 561-8200

The State Bar of California licenses and regulates all attorneys practicing law in the State of California. The Bar is administered by a Board of Governors consisting of 16 attorneys and 6 public members.

MAJOR PROJECTS:

One of the most important functions of the State Bar involves the self-regulation and discipline of its members. The single largest item in the State Bar's budget is the disciplinary system ($4 million). The Bar receives over 6,000 complaints per year, which are winnowed by staff investigators into approximately 1,100 alleged instances of wrong doing. Of these 1,100 cases, the discipline committee will issue about 200 "orders to show cause." This formal finding results in a contested hearing conducted in front of State Bar referees (one-third of whom are non-lawyers). After the hearings, approximately 57% of the cases are either dismissed or result in private disapproval. If a complaint is upheld, the State Bar Court may recommend suspension or disbarment. Only the Supreme Court may order an attorney's permanent or temporary disqualification from the practice of law.

In response to recent criticism of the legal profession's system of self-regulation *(see* CRLR Vol. 1, No. 2 (Summer, 1981) at 73) the State Bar issued a statement noting that California's discipline system has long been considered a model for other states to follow, citing the inclusion of many non-lawyers in the discipline process. The State Supreme Court is also presently considering a proposal which would permit the State Bar to fine lawyers up to $2,500 per offense, along with the more draconian sanction of suspension.

But controversy surrounding the Board of Governors' handling of discipline persists. After months of contested debate in Committee, the Board of Governors recently voted against lifting the "confidentiality" (secret) provisions of the proceedings after formal charges (notice to show cause) have been issued. One of the public members proposed lifting confidentiality at this stage of proceedings, stating that this would insure the integrity of the disciplinary process in the eyes of the public. Certain members of the press, public and the Bar have stated that the privilege of confidentiality in State Bar matters is a special privilege not awarded to criminal defendents or to other licensed professionals. These people argue that once investigation has weeded out the frivolous cases, and reasonable cause for issuing a formal charge has been found, the public's right to know begins to outweigh the advantages of non-disclosue.

While every public member on the Board of Governors voted to life confidentiality, all the attorney members voted as a block to defeat the proposal. Noting that the vast majority of disciplinary cases are ultimately dismissed, the majority felt that the goal of protecting unjustly accused lawyers from irreparable harm to their reputations and hence their ability to practice law was paramount. The Board also argued that confidentiality encouraged members of the public to make complaints to the State Bar. The head of the discipline committee felt the Bar's problems with its disciplinary system were really a matter of "public relations."

Another major concern of the State Bar has been how to fill the gap left open by the Reagan administration's defunding of the Legal Services Corporation, which in the past provided $29 million for legal aid to the poor. The State Bar Board of Governors voted to back legislative amendments that would require attorneys to place nominal short-term deposits from clients in interest-bearing accounts to raise money for legal services for the poor. Despite fears that such a mandatory proposal might place attorneys at odds with their clients, the Board members voted 13-7 in favor of the proposal.

The Board also agonized over a request from the local San Francisco Bar to use the State Bar's building twice a month at night for a Family Law Clinic for the poor. The local bar was also asking for access to the State Bar's word processing equipment and many members were worried about the financial costs and the precedent set by favoring a local chapter with State Bar funds. After a passionate speech by former President Bill Raven citing the responsibility of the State Bar to absorb the costs precipitated by the defunding of the Legal Services Corporation, and the Bar's duty to help the poor with legal services, the request to use facilities for the Family Law Clinic was approved.

RECENT MEETINGS:

The Finance and Operations committee of the State Bar informed the Board that the State Bar was facing a possible $400,000 to $500,000 deficit for this year. There was a suggestion that that figure might be reduced to $125,000 if certain measures were taken. This news has seemed to split many members of the Board into those professing fiscal conservatism and those committed to funding what are perceived as essential projects. As a result, a $1,800 supplemental request for the attorney competence program was denied. The Board however went along with a request for $94,000 to install a data processing center. The Board also voted to extend money to continue a computer study of legal malpractice claims. The study has far reaching potential and has already revealed that second largest group of mal-

practice claims (often failure to file a suit within the statute of limitations) involves conflicts of interest.

The Board also voted to oppose legislation aimed at eliminating the controversial "exclusionary rule" which prevents the introduction of evidence seized in violation of the California Constitution. The Bar is supporting legislation that will substitute a "statement of decision" for the present findings of facts and conclusion of law. The Board is also considering a change in the rule defining attorney competence.

The annual meeting was October 10th, in San Diego.

TOXIC SUBSTANCES COORDINATING COUNCIL

Coordinator: Peter H. Weiner
Governor's Office
State Capitol Building
Sacramento, CA 95814
(916) 322-7691

On February 11, 1980, by Executive Order, Governor Brown created the Toxic Substances Coordinating Council. The Council is comprised of the following members: Director of the Department of Food and Agriculture, Director of the Department of Industrial Relations, Director of the Department of Health Services, Chairperson of the Air Resources Board, Chairperson of the State Water Resources Control Board, Secretary of the Resources Agency, Secretary of the Business and Transportation Agency, Director of the Office of Planning and Research, and the Council's Coordinator, Mr. Peter Weiner, Special Assistant to the Governor for Toxic Substances Control.

The Executive Order states that the Council shall:

*Promote the use of safer chemicals, encourage recycling and minimize the need for landfill waste disposal;

*Monitor the state's efforts in protecting the citizenry from toxic materials;

*Encourage interagency cooperation and joint projects;

*Promote regulatory consistency and reform;

*Coordinate epidemiological research; and

*Develop policy to minimize the hazards of toxic substances use and disposal.

The Council generally meets every second Tuesday of each month in the Governor's Office Conference Room. However, both time and place are subject to movement. Council meetings are open to the public.

RECENT MEETINGS:

The Council convened in the State Water Resources Control Board hearing room on September 16, 1981. The major agenda item was an update on toxics legislation. Two major pieces of toxics legislation were approved by the Legislature this year.

SB 618 is California's super-fund legislation. SB 618 is a complex piece of legislation but most simply it creates an industry funded fund of $100 million over the next ten years. SB 618 imposes a tax on the dispoal of toxic or hazardous waste. The money will be spent to meet the state's obligations under the federal super-fund legislation of 1980 (cleaning-up disposal sites and/or preventing the release of more wastes). Compensate injured persons for out-of-pocket medical expenses and lost wages and develop emergency response programs (spills) and better disposal techniques.

AB 1012 requires the Department of the California Highway Patrol to license transporters of hazardous materials. The fee money would, in turn, support the Department's hazardous materials inspection program. AB 1012 also provides that the Commissioner of the CHP may temporarily suspend a hauler's license *prior to a hearing* when such suspension is necessary "to prevent imminent and substantial danger to the public health." Apparently, with the possible exception of Illinois, California is the only state to require the licensure of haulers of hazardous wastes.

Other bills relating to toxic substances but which did not pass the Legislature before interim recess are: AB 70, AB 1005 (would enact the Airborne Toxic Substances Act of 1981), SB 95, SB 810 and SB 834.

The Council is presently trying to meet its mandated report date of November 1, 1981. At the September meeting Weiner urged all Council participants to give him a memo detailing each agency's achievements in the area of toxics control during the last two years.

The Council is also busy trying to agree upon some kind of methodology by which toxics can be prioritized. Which toxics are the most dangerous? Weiner characterized the problem by asking the question "Is there a dirty dozen?" This problem is compounded by the different agencies' statutory missions. Some agencies are simply not looking for the same toxic compounds as others. The Air Resources Board representative explained they had prioritized their ten worst carcinogens by using a three-factor test of: amount used, potency, and the likelihood that a certain toxic would get into the ambient air.

The proposed Memorandum of Understanding (MOU) between the State Water Resources Control Board and the Department of Food and Agriculture is making progress but is not yet complete. The problem revolves around SWRCB's ability to use data in DFA's pesticide registration files. Pesticide manufacturers routinely stamp all the material in their registration files "confidential — trade secret." DFA does not have the resources to review each file for actual trade secrecy and does so only when a request is made to see data in a particular file.

SWRCB, which routinely releases its data to the public, is concerned about data relating to the public health and safety (the beneficial uses of the water) and wants institutionalized access to DFA's registration files.

The problem is further complicated by the efforts of chemical manufacturers on the national level. California is the only state that registers pesticides. All other states rely on EPA's determinations. Chemical manufacturers chafe under California's independent registration and are trying at the national level to strip California of its independent registration authority.

However, in spite of these problems, the complex legal issue of trade secrecy (and the related issue of compensation) and the inability to produce a signed MOU, it was agreed by SWRCB and DFA that they have a good working relationship and SWRCB is rarely, if ever, denied access to the information it requires. (*See* AB 1274 for one suggested legislative solution to this jurisdictional dispute between SWRCB and DFA. *See also* CRLR Vol. 1, No. 2, p. 65.)

California Supreme Court Cases

United States Steel v. Public Utilities Commission
29 C 3d 603 (8/14/1981)

PUC cannot exempt some private carriers from its minimum rates without more fully considering the impact on carriers and shippers who are not exempted.

In its decision No. 90803, the Public Utilities Commission (PUC) exempted private carriers carrying goods within California before or after carrying those goods in foreign commerce from its minimum rate regulations. The effect of this decision was to allow foreign producers (particularly steel), to have their goods carried upon arrival in California at the lower federal minimum rate. Note that the minimum rate figures administered by the PUC are higher than the minimum rate figures empowered by the Interstate Commerce Commission. Hence, in exempting this particular traffic from the jurisdiction of the state PUC from its minimum rates, that traffic is subject to the lower minimum rates of the federal authorities. However, domestic California shippers whose goods are transported within the state of California remained subject to the higher minimum California rates. This would include private and common carriage vessels travelling strictly within the state of California. Domestic shippers were therefore faced with higher trucking rates than those foreign shippers whose goods are carried to and from California as they travel throughout the state of California to their final destination. Domestic shippers argued that the PUC exemption for those carriers within its jurisdiction who happened to connect with foreign points of origin or destination, places the domestic producer at an unfair disadvantage. The PUC rejected these arguments, holding that the fact domestic producers of steel might be "adversely affected" was not a material fact . . . inasmuch as it is not the function or duty of this Commission to attempt to allocate markets between competing producers, . . ." Domestic steel producer United States Steel petitioned the Supreme Court for relief.

The Supreme Court annuled the PUC decision. The Court held that the PUC "erred in refusing to consider economic impact and in detecting too much difficulty" in considering shipper consequences. Contrary to the contention of the PUC that consideration of impact on shippers involved questions of fact beyond its purview, the Supreme Court held that the PUC is required to set rates that are "just, reasonable and nondiscriminatory." In order to determine whether the rates meet these necessary criteria, the PUC must consider all facts that bear on the impact of the rates. It must consider alternatives and the economic effects of those alternatives, including the economic of its action on competing shippers.

United States Steel also argued that the exemption was discriminatory, violating the statutory and constitutional standards. The Court noted that it is the purpose of minimum rate regulation to prevent destructive competition and to provide for movement of commerce at the lowest rates possible consistent with adequate service. The Court recognized that the PUC is operating as a quasi-legislative body in establishing priorities. The Court held that in evaluating its priorities and in applying facts to those priorities the lawmakers may not be capricious, but must have a rational basis for their decisions in light of their stated objectives. A classification, even though it involves disadvantage to some group in society, may be permissible if it has some "reasonable basis." But although the PUC has wide discretion, and although it does not offend the Constitution to discriminate between economic entities, determining whether foreign steel is transported by common carrier with the application of federal rates or by private vessel where the PUC has jurisdiction, could be a burden not only on the Commission but also to truckers. The Court held that it is incumbent upon the PUC to shoulder the burden of inquiry into the more complete impact of its rate regulation policies as they interact with the regulation policies of the federal jurisdiction.

California Courts of Appeal

City of San Diego v. California Coastal Commission
119 CA 3d 228 (7/3/81)

State Coastal Commission upheld in denying City permit to alter an allegedly unsafe road on the grounds it would affect a protected lagoon.

The City of San Diego applied for a permit from the San Diego Coast Regional Commission to widen part of Carmel Valley Road near the Los Penasquitos Lagoon. The City based its permit application on safety considerations (unsafe road configuration). The Regional Commission approved the permit subject to some conditions. The matter was appealed to the California Coastal Commission and a de novo hearing was held. The California Coastal Commission denied the conditional permit on the grounds that the change in the road would conflict with the California Coastal Act, would prejudice the ability of the local government to prepare a local Coastal Program and would have substantial adverse impact on the environment. The City then petitioned for Administrative Mandate. Administrative Mandate was denied. The Commission appealed to the Court of Appeal. The Court of Appeal affirmed the San Diego Superior Court denial of the writ of mandate sought by the City of San Diego.

The Court of Appeals declared that the denial of a permit by the California Coastal Commission must be sustained if it is supported by "substantial evidence." The Court of Appeal held that where there is a conflict in balancing proposed development against the delicate coastal environment, the state Commission was justified in resolving such a conflict in a manner most protective of coastal resources. The Court reviewed the stated goals of the California Coastal Act of 1976, and commented on its recognition of the coastal zone as a distinct and valuable natural resource. The Court held that substantial evidence supported the Commission's findings in all respects. The Court noted that the record indicated that the road safety problem could be resolved without altering the Los Penasquitos Lagoon as proposed. The Court noted from the record that the Lagoon in question is one of the last coastal wetlands in San Diego County and is one of the nineteen highest priority wetlands identified by law. Further, substantial evidence indicated that the road curve safety hazard was not a major one. The Court likewise rejected the City's contention that there was no substantial evidence to support the finding that the project would prejudice the ability of the local government to prepare a local coastal program, and that the proposed project "would have a significant adverse impact on the environment."

California State Police Association v. California
120 CA 3d 674 (8/28/81)

State Personnel Board must consider in good faith comparable salaries of public and private employees in setting salary levels for civil service classes.

The State Personnel Board is empowered to establish salary ranges for each class of employee in the Civil Service of California. The law requires that salaries shall be based according to like salaries already established for comparable responsibilities. Further, the law requires that consideration be given to prevailing wages for comparable services in other public employment and in private business as well. The California State Police Association, among others, sued for declaratory relief and mandate, arguing that state police were paid substantially less than comparable classes in each of three agencies to which they wished to be compared. The State Personnel Board compared state police salaries to state traffic officer and state correctional officers and to police officers in a number of local jurisdictions which the plaintiff California State Police Association contended was an inadequate and inappropriate basis for comparison. The Trial Court sustained a demurrer of the State of California, without leave to amend, holding that the plaintiffs had failed to state a cause of action. The California State Police Association appealed the resulting dismissal judgment. The Court of Appeal reversed the dismissal and remanded the case to the Superior Court for further proceedings.

The Court of Appeals held that the effect of the Trial Court decision was to confer excessive discretion upon the State Personnel Board in establishing civil service salaries under Government Code Section 18850. The Court held that while the discretion of the State Personnel Board of the State of California may be broad, it was not absolute. The Court wrote "we have concluded that the Personnel Board is granted broad discretion in setting civil service salaries, but that discretion must be exercised after 'consideration' of the prevailing rates for comparable non-civil service employment. Plaintiffs have alleged that the Board abuses discretion in setting their salaries by refusing to consider the appropriate non-civil service employment rates. Such an allegation is sufficient to entitle plaintiffs to present their proof, however difficult it may be to succeed in their claim." The Court also rejected the argument of the state of California that the enactment of the State Employer-Employee Relations Act gave the parties the power to ignore any judicial determination rendered in the instant case. The Court also held that its judgment would not be rendered moot by the adjournment of the legislature and the failure to appropriate monies as required by a Court judgment, if any. The Court held that should its judgment result in the alteration of salary levels after the adjournment of the legislature, a subsequent year salary adjustment may be required.

City of Monterey v. California Coastal Commission
120 CA 3d 799 (8/28/81)

A coastal structure destroyed by natural disaster may be replaced, but not substantially improved, without a coastal permit.

In early 1977, Runyon sought permission from the Regional Coastal Commission to convert former warehouse space in Monterey's Cannery Row into an extensive commercial complex of some fifty stores. The Regional Commission granted permission subject to numerous restrictions.

Runyon appealed to the State Commission to void many of the restrictions. His appeal was denied. In 1979 the plaintiff City of Monterey filed a complaint against Runyon seeking an injunction to require him to abate the public nuisance existing on his property. Runyon answered and cross complained. The Trial Court ruled that Runyon had been denied fair hearing and due process and remanded the matter to the Coastal Commission for further hearing. In 1979 the Regional Coastal Commission granted Runyon a second coastal permit with altered conditions, including a requirement of lower intensity use. Runyon again appealed to the state Commission for the removal of these conditions without success. A further hearing on the city's nuisance suit produced an order allowing Runyon to make certain repairs to his warehouse. Appeal was taken by the City of Monterey from that decision to allow repairs, and after opening briefs had been filed, a 1980 fire destroyed the warehouse.

The Court of Appeals expressed unusual anger at the fact that Runyon failed to inform the Court of the destruction of the warehouse, which was the subject of the suit. The Court held that the fire mooted the nuisance and repair issues. However, it reviewed the application of law covering natural disasters for structures in the coastal zones. The Court noted that if a structure can be rebuilt in the same location for the same use as the original building and is not more than 110% of the original height, bulk and floor area, the building can be replaced. The Court held that the fire in question was a natural disaster within the meaning of this law. If Runyon chooses to meet the limited requirements of replacement, no coastal permit would be required, since replacement is specifically authorized by state law. The Court noted, however, that although the abatement issue was now moot, and Runyon was specifically authorized by statute to replace his warehouse, Runyon's plans to develop a complex 50 office development on the site would clearly exceed the scope of the repair and nuisance exceptions.

Attorney General Opinions

Physical Therapists
(81-215) (7/10/81)

Persons engaged in the practice of occupational therapy or adaptive physical education must have a physical therapist license in order to utilize the physical therapy procedures described in Business and Professions Code section 2620. Where a person in the course of his or her practice uses these procedures in order to engage in the physical corrective treatment or rehabilitation of a bodily or mental condition, a license must be obtained. Failure to obtain a license may result in prosecution for unauthorized practice.

Public Utility Commission Rates
(81-216) (7/10/81)

The Public Utility Commission (PUC) may grant to a public utility a rate increase which fixes different rates for service between different classes of customers. The decision of the PUC in this regard must be supported by findings of facts based upon evidence produced at a hearing held for such purposes, and the classification must be related to a public purpose and be reasonable. The PUC has wide discretion to make rate classifications which reflect a broad and varied range of economic considerations.

Savings and Loan Commissioner
(81-201) (9/4/81)

The Savings and Loan Commissioner may approve of the use by a state chartered savings and loan association of a composite name indicating that association's connection with another business entity. If the Savings and Loan Association is properly identified as a Savings and Loan Association and if the Savings and Loan Commissioner does not find that the composite name would mislead the public, it may be allowed.

GENERAL LEGISLATION

This volume of the *Reporter* will concentrate almost exclusively on updating previously introduced legislation. Interested readers should refer to the Spring and Summer issues of the *Reporter* (General Legislation Sections) for detailed descriptions of the bills' contents.

The reports on individual agencies *infra* each contain descriptions of the important bills affecting those agencies. If a bill is not included in the General Legislation Section it may well be covered in the relevent individual agency report.

***Commission on Judicial Appointments**

ACA 49 (W. Brown), a proposed Constitutional amendment, would revise the membership of the Commission on Judicial Appointments. ACA 49 provides for seven members: The Chief Justice as Chair; two active justices of the courts of appeal to be selected by all of the active justices of the courts of appeal; two State Bar members appointed by the State Bar's governing body; and two citizens who are not judges, retired judges, State Bar members or members of the Legislature, one appointed by each house of the Legislature.

ACA 49, which proposes to amend Section 7 of Article VI of the state Constitution, was passed by the Assembly Judiciary Committee on August 19, 1981 by an 8-6 vote.

***Judicial Impact Statements**

SB 718 (Holmdahl) requires the Legislative Analyst, on a nine month trial basis, to prepare a judicial impact analysis with respect to legislative measures that present "the greatest apparent potential impact on court manpower and costs." Of course, such analysis will be given to Committee members prior to the vote on the particular bill.

SB 718 has passed both houses and is awaiting the Governor's signatures.

***Attorney's Fees**

SB 1028 (Rains) proposes amendments to Section 1717 of the Civil Code. Section 1717 currently states that where a contract provides that attorney's fees and costs incurred to enforce the contract shall be awarded to one of the parties, then the prevailing party in the contract action is entitled to attorney's fees and costs, whether or not it is the party named in the contract.

SB 1028 would empower the court to fix reasonable attorney's fees and determine who is the prevailing party if the suit does not proceed to final judgment. If the suit is voluntarily dismissed or dismissed pursuant to settlement there shall be no prevailing party.

SB 1028 has passed both houses and is on the Governor's desk.

***Campaign Funds**

AB 2193 (Harris) is a campaign finance reform bill that proposes partial public financing of campaigns. AB 2193, the Campaign Finance Reform Act, is a complex bill that basically:

Provides public money to candidates who accept strict limitations on the amount of money that individuals or groups can give to their campaigns;

Repeals the $100 per year political contribution tax deduction; and

Finances the public financing of campaigns by providing for a $1 checkoff on state income tax forms.

***Civil Fraud Conspiracy**

AB 1933 (Torres) would overturn case law relating to the statute of limitations for civil fraud conspiracy in order to reduce the limitation to a definite period of time even if the fraud conspiracy continues. Under California case law, when a civil conspiracy is properly alleged and proved, the statute of limitations does not begin to run on any part of a plaintiff's claim until the "last overt act" in furtherance of the conspiracy has been completed.

AB 1933 is an effort by Union Home Loans to overturn that case law, *Wyatt* v. *Union Mortgage Co.*, 24 Cal. 3d 773 (1979). AB 1933 would abolish the judicial dateline of "equitable tolling" and simply provides that the statute of limitations shall not be extended by judicial doctrine even if an overt act in furtherance of the tort (conspiracy) is committed subsequent to the time of the initial injury to the plaintiff.

It should be noted that Union Home Loans sponsored a similar attempt to overturn *Wyatt* in 1980 (*see* AB 2382).

To date AB 1933 has made little progress and is still in the Assembly Judiciary Committee.

***AB 1096 (Sher)**

(Please see the case of *Deas* v. *Knapp*, 29 Cal. 3d 69 (March 27, 1981) as reported in CRLR Vol. 1, No. 2, at p. 74).

AB 1096 would statutorily enact the Mosk-Bird dissent in *Deas*. AB 1096 authorizes the Commissioner (Department of Real Estate) to relitigate any material and relevant issues in the action against the separate account which were determined in the underlying action. However, AB 1096 expressly bars the judgment debtor from relitigating matters, including, but not limited to, the issues of fraud, misrepresentation, deceit, or conversion of trust funds if such issues were finally ajudicated in the underlying action.

AB 1096 has passed both houses and is awaiting the Governor's signature.

Legislative Update

***Sunset.** As previously reported, AB 54 is the only Sunset bill that has made any progress this year. However, as amended, AB 54 is no longer a Sunset bill but, rather, a "Sunlight" bill. AB 54 no longer contains termination dates. Instead, AB 54 requires the appropriate legislative committees to review all state agencies and make recommendations to the Legislature by June 30, 1986. AB 54 also requires the Joint Legislative Audit Committee to conduct performance audits of all state agencies within the same time period.

AB 54 has not yet been voted upon by the full Assembly.

***Legislative Veto.** None of the original legislative veto proposals have made any progress. Legislative veto attention is now focused on the compromise, quasi-legislative veto bill, AB 2165. *(See* CRLR Vol. 1, No. 2 (Summer, 1981) at p. 13; *see also* this *Reporter's* Commentary Section.)

***Administrative Agencies.** As originally written, SB 216 prohibited agencies from promulgating regulations unless the full text of a proposed regulation is made available to the public at least 15 days prior to the close of the public comment period.

In addition to the above requirement, SB 216 now requires an agency to hold a public hearing if at least 15 days prior to the close of the public comment period an interested person requests a public hearing in writing.

SB 216 also contains unrelated provisions relating to the California Industrial Development Financing Advisory Commission and Medi-Cal.

SB 216 is awaiting the Governor's approval.

***Economic Impact Reports.** AB 41, as amended, requires the preparation of an economic impact report if any or all statutory authority quoted by an agency as the basis for a regulation proposed during 1983 or 1984 is 10 years old or older, and the regulation will result in total annual direct aggregate costs to persons or businesses in excess of $1 million.

AB 41 contains a Sunset termination date of December 31, 1984 and requires the Legislative Analyst to prepare a report on the efficacy of economic impact reports by June 3, 1985. Last, AB 41

creates an interagency council composed of representatives from the Department of Finance, Department of Economic and Business Development, the Office of Planning and Research and other members as the Governor may appoint to assist in developing economic impact report methodology.

AB 41 failed to secure Assembly concurrence of Senate amendments and thus becomes a two year bill, not to take effect until January 1, 1983.

***Home Improvement Contracts.** AB 424 requires a contractor, upon receipt of payment for any portion of work performed, to furnish the homeowner a full and unconditional release from any claim of mechanic's lien for that portion of the work for which payment was made. As amended, AB 424 was approved by the Assembly and is awaiting its first hearing in the Senate Judiciary Committee.

ACA 7 has made no progress.

***Products Liability.** AB 425 proposed sweeping and restrictive changes in the doctrine of products liability. AB 425 and similar measures have made no progress.

***Recycling.** SB 4, known as the Bottle Bill, was again defeated this year. Senator Rains has vowed to reintroduce the bill again next year. Bottle Bill proponents are now concentrating on a bottle bill initiative. (*See* CRLR, Vol. 1, No. 2 (Summer, 1981) at p. 7, Californians Against Waste.)

***Public Utilities.** AB 40, which would require all public utilities to provide residential customers a credit statement upon termination of service, has made no progress.

***Consumer Documents.** AB 187, Chapter 138, Statutes of 1981, is law. AB 187 requires the phrase "NOT A GOVERNMENT DOCUMENT" to appear diagonally across the face of any document which purports to be, or might deceive an ordinarily reasonable person into believing it is, a government document.

***Government Red Tape Reduction Program (GRRP).** SB 257, entitled "The Permit Reform Act of 1981," requires most state agencies (the Public Utilities Commission, Franchise Tax Board and Energy Commission are exempt) to adopt regulations expediting their permit issuing process. The two most important regulations would establish a time period in which an agency must notify an applicant if the permit application is complete and establish a time period in which an agency must make a decision on a complete permit application.

SB 257, to become operative on January 1, 1983 was approved by the Governor.

SB 512 reads as introduced with the exception that the State Commission on Voting Machines and Vote Tabulating Devices has been amended out of the bill and will not be abolished. SB 512 is on the Governor's desk.

SB 498 reads as introduced in CRLR Vol. 1, No. 2 (Summer, 1981) at p. 80 with the following exception. SB 498 no longer proposes the addition of a sixth "nonduplication" standard but, instead, redefines the "necessity" standard to include, among other things "that an agency proposing to adopt any new regulation must identify any other state regulation which is overlapped or duplicated by the proposed regulation and justify any overlap or duplication."

The Senate has occurred in Assembly amendments and SB 498 was approved by the Governor.

SB 575, as amended, permits a court to award a prevailing small business up to $7,500 in reasonable litigation expenses, including expenses incurred in administrative proceedings, attorney's fees and witness fees. However, the court must determine that the agency action was undertaken "without any substantial justification" before such an award can be made.

SB 575 was signed by the Governor.

SB 686 has been amended to provide a different penalty for delinquent agencies. If the contracting agency does not pay the small business within 30 days of the contract due date the offending agency will be assessed a penalty payment of 1/2% of the amount due, per day, starting on the 31st day.

SB 686 was vetoed by the Governor.

***Economic Impact Reports.** Approved by the Senate, SB 479 has not yet been voted on by the full Assembly.

SB 795 has been amended and no longer contains the number 95%. SB 795 now requires an agency "to make a written finding of demonstrated effectiveness that any specified technology or equipment required by [a] regulation is technologically feasible and available . . ."

SB 795 has been vetoed by the Governor.

***Legislative Conficts of Interest.** None of the "ethics bills" have made any progress this year. However, SB 884 remains alive, having made it to the Senate floor only to be re-referred to the Senate Rules Committee for a third Committee hearing.

***Attorney's Fees.** AB 661 has made no progress.

AB 1359 was approved by the Assembly on July 7, 1981 by a 76-0 vote, but failed passage in the Senate Finance Committee on September 2, 1981.

***Doctors and Clinical Laboratories.** SB 959, approved by both houses, is awaiting the Governor's signature. However, as amended, SB 959 is stripped of its meaningful provisions.

***Economic Development in Depressed Areas.** None of three bills has made any progress.

***Public Records and Open Meetings.** SB 879, which permits local legislative bodies to impose stricter requirements upon themselves with regard to public access to public records than does the California Public Records Act, is awaiting the Governor's approval.

***Consumer Access to Information.** AB 1079 as originally written would have prohibited all of the agencies within the Department of Consumer Affairs from releasing complaint information about its licensees to the public prior to final adjudication. As amended AB 1079 only applies to the Contractors State License Board and specifies the type of complaint information that the Board may release to inquiring members of the public.

As amended AB 1079 is neither excessively restrictive nor controversial. As such, it was approved by the Legislature and is awaiting the Governor's approval.

Neither SB 368 nor ACR 37 has made any progress.

***Consumer Credit and Financing.** It was the intent of AB 720 to codify the judicial doctrine of "substance over form" *(King* v. *Central Bank,* 18 Cal. 3d 840) as it relates to the "clipping" of retail installment contracts and loans. AB 720, as amended, now specifically labels "purchase money loans" as "retail installment contracts" thus bringing the former within the purview of the Unruh Act. However, AB 720 has made little progress and passage appears doubtful.

SB 107, Ch. 243, Stats. 1981, was approved by the Governor on July 21. SB 140 is awaiting the Governor's approval. AB 377 has made no progress.

***Mortgages.** AB 650 (Ch. 274, Stats. 1981) is law and thus California will soon see the "variable rate mortgage loan."

AB 2167 and AB 2168 are both on the Governor's desk and thus California will also have the "shared appreciation mortgage loan."

However, California will not soon see enforceable "due on sale" clauses in mortgage loan contracts. AB 2158, an attempt to overturn the *Wellenkamp* v. *Bank of America,* 21 Cal. 3d 943 (1978) decision, has made no progress.

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