



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.

OFFICE OF ADMINISTRATIVE LAW

*Deputy Director: John D. Smith
(916) 323-6221*

The Office of Administrative Law (OAL) was established on July 1, 1980, during major and unprecedented amendments to the Administrative Procedure Act (AB 1111, McCarthy, Chapter 567, Statutes of 1979). OAL is charged with the orderly and systematic review of all existing and proposed regulations against six statutory standards—necessity, authority, consistency, clarity, reference and nonduplication. The goal of OAL's review is to "reduce the number of administrative regulations and to improve the quality of those regulations which are adopted...." OAL has the authority to disapprove or repeal any regulation that, in its determination, does not meet all six standards. The regulations of most California agencies are published in the California Code of Regulations (CCR), which OAL is responsible for preparing and distributing.

OAL also has the authority to review all emergency regulations and disapprove those which are not necessary for the immediate preservation of the public peace, health and safety or general welfare.

Under Government Code section 11347.5, OAL is authorized to issue determinations as to whether state agency "underground" rules which have not been adopted in accordance with the Administrative Procedure Act (APA) are regulatory in nature and legally enforceable only if adopted pursuant to APA requirements. These non-binding OAL opinions are commonly known as "AB 1013 determinations," in reference to the legislation authorizing their issuance.

MAJOR PROJECTS

AB 1013 Determinations. OAL has not published any regulatory determinations since April 1992 due to budget constraints.

LEGISLATION

AB 64 (Mountjoy), as introduced December 23, would prohibit any regulation adopted, amended, or repealed by a state agency pursuant to the APA from taking effect unless and until the legislature approves the regulation by statute within 90 days of its adoption, amendment, or repeal. [A. CPGE&ED]

LITIGATION

In *Wosley v. State of California*, No. S014557 (Oct. 26, 1992), the California Supreme Court upheld the lower courts' invalidation of the Department of Motor Vehicles' (DMV) policy of charging annual vehicle license fees and use taxes on passenger vehicles originally sold outside California that were higher than the fees and taxes charged on similar vehicles first sold within the state; according to the court, this policy violated the Commerce Clause of the federal Constitution.

In reaching its decision, the court considered a 1976 agreement between the State Board of Equalization (SBE) and the DMV which provided that in all private-party transactions, both in-state and out-of-state, the DMV would require a certificate of cost to establish the actual sale price of the vehicle, with which the use tax would be calculated; plaintiffs contended that because the policy should have been and was not adopted as a regulation pursuant to the APA, use taxes collected pursuant to the agreement should be refunded. On this issue, the Supreme Court reversed the lower courts, finding that "even if the DMV and the SBE erroneously failed to comply with the APA, use taxes collected pursuant to the invalid agreement need not be refunded because such taxes properly were due under state law....The failure of the SBE and the DMV to comply with the requirement of the APA in adopting their agreement regarding collection of use taxes does not exempt taxpayers from the obligation to pay such taxes as are required by state law, and cannot deprive the state of the tax revenues to which it is entitled."

In other litigation, the state Water Resources Control Board's appeal of the final judgment in *State Water Resources Control Board and Regional Quality Control Board, San Francisco Region v. Office of Administrative Law*, No. A054559, is still pending in the First District Court of Appeal. In a judgment favorable to OAL, the trial court held that the wetland rules at issue are regulations within the meaning of the APA; the rules are not exempt from the APA; and since the rules were not adopted pursuant to the APA, they are unenforceable. A decision is expected in early 1993. [12:1 CRLR 29]

OFFICE OF THE AUDITOR GENERAL

*Acting Auditor General:
Kurt Sjoberg
(916) 445-0255*

The Office of the Auditor General (OAG) is the nonpartisan auditing and investigating arm of the California legislature. OAG is under the direction of the Joint Legislative Audit Committee (JLAC), which is comprised of fourteen members, seven each from the Assembly and Senate. JLAC has the authority to "determine the policies of the Auditor General, ascertain facts, review reports and take action thereon...and make recommendations to the Legislature...concerning the state audit... revenues and expenditures...." (Government Code section 10501.) OAG may "only conduct audits and investigations approved by" JLAC.

Government Code section 10527 authorizes OAG "to examine any and all books, accounts, reports, vouchers, correspondence files, and other records, bank accounts, and money or other property of any agency of the state...and any public entity, including any city, county, and special district which receives state funds... and the records and property of any public or private entity or person subject to review or regulation by the agency or public entity being audited or investigated to the same extent that employees of that agency or public entity have access."

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 Governmental Activities Act (Government Code sections 10540 *et seq.*); and the Performance Audit Division, which reviews programs funded by