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

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The Office of Administrative Law (OAL) was established on July 1, 1980, during major and unprecedented amendments to the Administrative Procedure Act (APA) made by 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. OAL is also authorized 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. The regulations of most California agencies are published in the California Code of Regulations (CCR), which OAL is responsible for preparing and distributing.

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 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

OAL Rulemaking Update. On February 10, OAL published modifications to its original proposal regarding section 100, Title 1 of the CCR; the original changes to section 100 would have provided that the term "changes without regulatory effect" includes—among other things—a change which makes a regulation consistent with a statutory change when the regulation must be consistent with the statute and the adopting agency has no discretion to adopt a provision which differs in substance from the provision chosen. *[14:1 CRLR 14; 13:4 CRLR 15]* Among other things, the modifications:

–clarify the meaning of the term "changes without regulatory effect";

–provide that the term "changes without regulatory effect" also includes deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a U.S. District Court located in California, the U.S. Court of Appeals for the Ninth Circuit, or the U.S. Supreme Court, although OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;

–clarify the required contents of a written statement to be submitted by an agency to OAL in support of a section 100 change; and

–clarify OAL's duties with respect to changes it determines are changes without regulatory effect.

OAL accepted public comments on the modifications until February 28; on May 18, OAL approved the amendments to section 100.

OAL is currently reviewing the public comments received on its proposed adoption of new section 4, Title 1 of the CCR, to implement SB 726 (Hill) (Chapter 870, Statutes of 1993). *[14:1 CRLR 14; 13:4 CRLR 16]* Among other things, section 4 would require an agency to prepare and submit to OAL with a notice of proposed rulemaking action either the express terms of the proposed action written in plain English or, if that is not feasible due to the technical nature of the regulation, a noncontrolling plain English summary of the regulation; require the agency to include in the rulemaking file either a statement that the agency has drafted the regulation in plain English, or a statement confirming that the agency determined that it is not feasible to draft the regulation in plain English and a noncontrolling plain English summary of the regulation; and require that a state agency, when proposing to adopt, amend, or repeal a regulation, include in the notice of proposed action—among other things—a determination as to whether or not the action affects small business.

On February 1, OAL approved its revisions to section 51000, Title 2 of the CCR, which revise the list of employee positions subject to OAL's conflict of interest code. *[14:1 CRLR 14; 13:4 CRLR 15]*

LEGISLATION

AB 3674 (Johnson), as introduced February 25, would require all state agencies proposing to adopt or amend any administrative regulation to estimate the cumulative impact of all regulations on specific private sector entities that may be affected by the proposed adoption or amendment of the regulation, and to include this estimate in the notice of proposed action. The bill would also require an agency, after public comment on the estimate of cumulative impact and on any alternative regulation that would be less harmful to that private sector entity and the economy in general, to adopt the regulation that is the least harmful to the private sector entity and the economy in general. *[A. CPGE&ED]*

AB 2531 (Gotch), as amended April 21, would revise and reorganize specified provisions of the APA. Among other things, AB 2531 would change the name of the rulemaking portion of the APA from "Office of Administrative Law" to "Administrative Regulations and Rulemaking"; reorganize, consolidate, and renumber articles and sections of the APA; reorganize the procedural requirements of the APA; consolidate all provisions on assessing the impact of proposed regulations on business and the economy; define the term "substantial evidence" (in connection with the "necessity" standard of review for proposed regulations) to mean "facts, studies or testimony that are specific, relevant, reasonable, credible, and of solid value, that, together with those inferences that can rationally be drawn from these facts, studies, or testimony, would lead a reasonable mind to accept as sufficient support for the conclusion that the particular regulation is necessary"; clarify existing law to provide that the rulemaking

portion of the APA (not just the article setting forth rulemaking procedures) applies to the exercise of all quasi-legislative power conferred on a state agency by statute; delete a provision regarding Fair Political Practices Commission regulations to conform the statute to a judicial ruling; delete an obsolete reference to publishing notice of regulations in a newspaper; and make technical conforming changes. *[S. GO]*

SB 2104 (Leslie), as introduced February 25, would require the Department of Fish and Game (DFG) and the state Water Resources Control Board (WRCB), in addition to any other requirements contained in the APA, to hold at least one public hearing, in accordance with prescribed procedures, at which oral or written presentations may be made prior to adopting a new or increased fee for specified services. The bill would also prohibit DFG and WRCB from adopting a new or increased fee in an amount that exceeds the amount required to provide the service for which the fee is proposed to be adopted, and if, after an annual review, the new or increased fee is found to create revenue in excess of the actual cost required to provide the service for which the fee was adopted, DFG or WRCB would be required to adjust the fee to a level determined not to exceed the actual cost of providing the service. *[A. CPGE&ED]*

AB 3412 (Conroy), as amended May 16, would revise the APA to permit a small business, as defined, to elect to arbitrate a decision adopted by an agency after hearing, as specified, in lieu of the procedure for judicial review. *[A. CPGE&ED]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at page 15:

AB 1807 (Bronshvag), as amended March 23, authorizes regulatory agencies within the Department of Consumer Affairs to provide required written notices, including rulemaking notices, orders, or documents served under the APA, by regular mail. This bill was signed by the Governor on March 30 (Chapter 26, Statutes of 1994).

SCA 6 (Leonard), as amended February 16, 1993, would authorize the legislature to repeal state agency regulations, in whole or in part, by the adoption of a concurrent resolution. SCA 6, which would not be applicable to specified state agencies, would require the concurrent resolution to specify the regulation to be repealed or specific references to be made, as indicated, and would subject those resolutions to the same procedural rules as those required of bills. The measure would also require every regulation to include a citation to the statute or constitutional provision being interpreted, carried out, or otherwise made more specific by the regulation. *[S. Rls]*

The following bills died in committee: **AB 64 (Mountjoy)**, which, as amended January 3, would have prohibited any regulation adopted, amended, or repealed by a state agency on or after January 1, 1995 and affecting emission and reporting requirements for air, water, and solid waste from taking effect unless and until the regulation is approved by statute; and **AB 633 (Conroy)**, which, as amended January 3, was no longer relevant to OAL.

BUREAU OF STATE AUDITS

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Created by SB 37 (Maddy) (Chapter 12, Statutes of 1993), the Bureau of State Audits (BSA) is an auditing and investigative agency under the direction of the Commission on California State Government Organization and Economy (Little Hoover Commission). SB 37 delegated to BSA most of the duties previously performed by the Office of Auditor General, such as examining and reporting annually upon the financial statements prepared by the executive branch of the state, performing other related assignments (such as performance audits) that are mandated by statute, and administering the Reporting of Improper Governmental Activities Act, Government Code section 10540 *et seq.* BSA is also required to conduct audits of state and local government requested by the Joint Legislative Audit Committee (JLAC) to the extent that funding is available. BSA is headed by the State Auditor, appointed by the Governor to a four-year term from a list of three qualified individuals submitted by JLAC.

The Little Hoover Commission reviews reports completed by the Bureau and makes recommendations to the legislature, the Governor, and the public concerning the operations of the state, its departments, subdivisions, agencies, and other public entities; oversees the activities of BSA to ensure its compliance with specified statutes; and reviews the annual audit of the State Audit Fund created by SB 37.

MAJOR PROJECTS

BSA Reviews FTB and BOE Settlement Programs. In 1992, the legislature enacted statutes authorizing the Franchise Tax Board (FTB) and the Board of Equalization (BOE) to resolve tax disputes for fiscal year 1992–93 through separate tax settlement programs. BOE's settlement program permits the Board to settle sales and use tax disputes which existed on July 1, 1992; the purpose of the BOE settlement program is to eliminate the time-consuming and costly litigation of tax issues in which neither the taxpayer nor the Board is entirely confident of winning in court. FTB's program empowers it to settle income tax disputes without having to resort to lengthy and expensive court battles; it is designed to encourage the speedy resolution of outstanding tax disputes through a voluntary program in which the taxpayer and the FTB would consider the expected value of taxes, the expense of the protest, appeals, and litigation processes, and the value each party places on paying money sooner than later.

On March 17, BSA released reports reviewing both settlement programs. In both cases, BSA determined that the settlement programs are more efficient and as effective as the boards' other alternatives for resolving such disputes. For example, for bank and corporation taxpayers, the FTB's 1992–93 settlement program resolved 99 cases in an average of three months, as compared to an average ranging from 36–46 months in each of the FTB's three other administrative tax dispute resolution processes; the program also reduced expenses incurred by the state and by taxpayers while at the same time sustaining taxes at rates comparable to the other processes.

According to BSA, BOE's program also shortens the normally lengthy tax dispute resolution process. Specifically, BOE's settlement program resolved 94 cases in fiscal year 1992–93 in an average of nine months, as compared with a range of 7–46 months on average during the same period in the Board's other administrative appeals processes. BSA also noted that the program creates a better working relationship between the Board and taxpayers when tax disputes arise, and also generally sustains taxes at rates comparable to the other processes BOE uses to resolve tax disputes.

BSA Reviews CYA and CDC Reports on Workers' Compensation Early Intervention Programs. On January 11, BSA released its review of reports submitted by the California Youth Authority (CYA) and the California Department of Corrections (CDC) on their early intervention pilot programs for workers' compensation injuries. CYA and CDC currently operate pilot programs which seek to ensure that parties involved in workers' compensation programs are fully informed of available options and that decisions on compensation for injured em-