H.R. 3474 (Gonzalez), the Community Development and Regulatory Act of 1994, is federal legislation which is aimed at reducing administrative requirements for insured depository institutions, including S&Ls, consistent with safe banking practices. Among other things, the bill sets stringent disclosure requirements for high-cost mortgages, requires that banks grant loans only if they first determine that a potential borrower can afford to repay the debt, and effectively makes flood insurance mandatory in high-risk areas. This bill was signed by President Clinton on September 23 (Public Law No. 103-325).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 143:

SB 1542 (Kopp), as amended August 26, would have transferred the Business, Transportation and Housing Agency to the existing Trade and Commerce Agency, and established the Office of Business and Housing in the Trade and Commerce Agency to consist of the Department of Alcoholic Beverage Control, the Department of Corporations, the Department of Housing and Community Development, the Department of Real Estate, the Department of Savings and Loan, the State Banking Department, the Stephen P. Teale Data Center, and the California Housing Finance Agency. On September 27, Governor Wilson vetoed this bill, contending that "the reorganization of state government is the prerogative of the executive branch, not the legislative branch of government." Moreover, Wilson claimed that the Secretary of Business, Transportation and Housing is already addressing many of the concerns which prompted the introduction of this legislation.

AB 2830 (Brulte), as amended May 9, would have superseded California case-law and permitted supervised financial institutions to charge and collect any fee for late payments, over-the-limit usage, and bounced checks which is stated in their customer credit agreement and is "commercially reasonable," defined as "less than or equal to a comparable fee used by at least one of the ten largest lenders headquartered outside of California providing a similar type of open-end credit." This bill contained the provisions formerly in SB 1145 (Boatwright), which was rejected on a 5–4 vote by the Senate Judiciary Committee in January; AB 2830 died in committee, in favor of SB 1333 (Lockyer), which took a compromise position between the interests of consumers and credit providers (*see above*).

AB 1756 (Tucker), as amended June 9, 1993, would have prohibited state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would have been required to annually submit a report to the legislature and to make summaries available to the public. These reports would have included specified information regarding the nature of the governance of the companies, and their lending and investment practices, with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. This bill died in committee.

LITIGATION

At this writing, the California Supreme Court is still reviewing the Second District Court of Appeal's decision in ***People v. Charles H. Keating***, 16 Cal. App. 4th 280 (1993). Keating was found guilty on 17 counts for defrauding investors by encouraging them to purchase worthless junk bonds instead of government-insured certificates; in his appeal (No. S033855), Keating contends that he never personally interacted with investors, and that criminal liability for violations of Corporations Code sections 25401 and 25540 is limited to direct solicitors and sellers. *[14:2&3 CRLR 143–44]* The action has been fully briefed; at this writing, however, oral argument has not yet been scheduled.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. At this writing, OSB is functioning with a labor representative vacancy.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS

Deadline Approaches for Adoption of Ergonomics Standards. Public comment has yet to abate concerning OSB's response to the legislature's directive to propose standards dealing with cumulative trauma disorders (CDTs)—injuries caused by poor workplace design for jobs that require long periods of repetitive physical movement, such as typing or assemblyline work. As part of the legislature's reform of the state's workers' compensation laws in 1993, AB 110 (Peace) set a January 1, 1995 deadline for OSB to develop a statewide ergonomics standard. *[13:4 CRLR 115–16, 133]* Accordingly, in November 1993, OSB published notice of its intent to adopt new section 5110, Title 8 of the CCR, which would apply to all employers and establish minimum requirements for controlling exposure to the risk of developing CTDs; the Board held two public hearings on the proposal during the spring of 1994. *[14:2&3 CRLR 144–45]*

To date, OSB has received almost 6,500 comments on proposed section 5110. The comments cover nine major areas of concern: scope of coverage; definitions; implementation dates; worksite evaluation; Appendix B regarding video display terminal (VDT) operators; medical management and vision issues; scope of general training; costs; and federal OSHA ergonomics rulemaking. A summary of some of the specific comments in each area follows:

• ***Scope***. As proposed, section 5110 would apply to all places of employment and establish minimum requirements for controlling occupational exposure to the risk of developing CTDs. The construction industry objected to its inclusion in the proposal, contending that the special circumstances of this industry—such as the prevalence of nonfixed worksites and high employee turnover—require the drafting of a separate standard for the construction industry. However, this contention was rebutted by academic and labor representatives, who stated that the construction industry is one which is heavily impacted by ergonomics problems, especially relative to back disorders from lifting and hand, wrist, and shoulder disorders from incorrect tool design and use; according to these participants, the exclusion of the construction industry would deprive construction workers of protections to which other at-risk workers would have through the adoption of section 5110.

Many management representatives for small employers argued that the proposal would be burdensome and should contain an exemption for small businesses, or should allow small employers to address ergonomics as part of their Injury and Illness Prevention Program under Labor Code section 6401.7. Labor representatives responded that ergonomic hazards are equally prevalent in small business establishments, and that the number of employees an employer has should not be the basis for determining the appropriate level of protection for workers.

• ***Definitions***. Section 5110(b)(3) would define the term "CTD risk" as the presence of specified factors in work activity in such a manner and to such an extent that a CTD is substantially likely to result. While management representatives criticized this definition as too vague and open-ended, labor representatives criticized the use of the term "substantially likely" and recommended that other language be used which provides a lesser burden of proof for DOSH in enforcement actions. Interested parties also commented on the proposed definitions of the terms "CTD symptom," "feasible engineering controls, administrative controls, and personal protective equipment," and "VDT operator."

• ***Implementation Dates***. Proposed section 5110(a)(2) requires employers to comply with certain provisions within one year, and with the remaining provisions within three years. Management representatives recommended that three years be the compliance deadline for all proposed provisions of section 5110, contending that the one-year deadline on some requirements is insufficient and would place an undue burden on California business, particularly small employers. Labor commentators, however, recommended shorter timeframes than those currently set forth in the proposal.

• ***Worksite Evaluation***. Section 5110(d)(1) would require each employer to promptly perform a worksite evaluation whenever (1) an employee reports a CTD symptom, as defined, which is reasonably likely to be work-related; (2) an employee is diagnosed with a CTD, as indicated by records the employer must review under section 5110(c)(1) or any other record known to the employer; or (3) the employer acquires information that identifies CTD risk in a specific work activity in the employer's workplace. Many management representatives stated that employers should not have to initiate a worksite evaluation unless an employee is diagnosed with a CTD; according to these comments, reports of symptoms should not be "triggers" for worksite evaluations. However, academic and labor representatives argued that requiring worksite evaluations only for diagnosed cases would make the standard ineffective.

• ***VDT Operators***. Appendix B to section 5110 would provide a set of specifications which employers may choose as one means of compliance, in connection with VDT operators, with the requirement that they implement controls when job activities are substantially likely to result in the development of a CTD. Many comments from management representatives contended that Appendix B should more clearly provide for alternatives to adjustable chairs and workstations which specifically focus on fitting chairs and workstations to the individual. Labor representatives countered that maintaining maximum adjustability in VDT-related equipment is the best means of ensuring a proper fit of the workstation to the worker; labor commentators also opined that the criteria contained in Appendix B should be mandatory rather than advisory.

• ***Medical Management and Vision Issues***. Management representatives expressed concern that section 5110's medical management requirements—which would require that each employer shall make available, at no cost to employees, effective medical management when any employee reports a CTD symptom, including early detection and evaluation of work-related CTDs and CTD symptoms by a medical evaluator—conflict with workers' compensation law. Academic and labor representatives said that effective medical management supplements workers' compensation with preventive measures. Management witnesses further suggested that employers be given more flexibility in handling CTD symptoms than is currently proposed.

• ***Scope of General Training***. Some management commentators suggested narrowing the scope of proposed section 5110(g)(2), which requires that general training (including, among other things, awareness of symptoms and consequences of CTDs) be provided to all employees; some management representatives want this requirement to apply only to employees in "high-risk" occupations, while others requested that training provided by employers prior to the effective date of this subsection be "grandparented."

In response, academic and labor representatives argued that the available data indicate that the trend of rising CTDs is

significant in all occupations and that broad, general training requirements are essential to an effective standard. Many labor commentators also argued that if the effectiveness of the proposed standards is dependent upon employees coming forward when CTD warning signs first appear, then employees must understand what CTDs are, how to recognize their symptoms, how to use the employer's reporting procedure, and ergonomically safe work practices; additionally, these commentators contended that without broad, general training, preventive measures are not possible and the workers' compensation system is left to address CTDs after they have become advanced and irreversible injuries.

• ***Costs***. In general, management representatives said proposed section 5110 would be too costly in comparison to the benefits it will achieve, and that compliance with an ergonomics regulation will create significant short-term costs for California employers which could put them at a competitive disadvantage in relation to "out-of state" competitors; these commentators urged OSB to ignore the state deadline and wait for a federal ergonomics standard to avoid creating a competitive disadvantage to California employers which may cause them to leave the state. Other management commentators contended that the supporting cost/benefit data are insufficient and recommended that OSB require additional fiscal justification before promulgating mandatory provisions related to ergonomic hazards. Labor representatives argued that existing data support the conclusion that compliance with an effective ergonomics standard will reduce overall costs to employers through increased productivity and reduced injury and workers' compensation claims rates.

• ***Federal OSHA Ergonomics Rulemaking***. Federal OSHA recently announced its intent to adopt an ergonomics regulation. Although a proposal was expected to be published in the Federal Register in early October, Fed-OSHA recently announced that it would not be publishing a proposal as originally scheduled. At this writing, OSB expects Fed-OSHA to release its proposed standard for comment by late 1994.

At this writing, OSB is still responding to public comments it received at the January 13 and February 24 public hearings. At this writing, the proposed standards await adoption by OSB and review and approval by the Office of Administrative Law (OAL).

Smoke-Free Workplace Legislation and Rulemaking. On July 21, Governor Wilson signed AB 13 (T. Friedman) (Chapter 310, Statutes of 1994), which prohibits smoking in enclosed spaces at specified places of employment. Among other things, AB 13 provides that smoking may be permitted in gaming clubs, bars, and taverns, until OSB adopts a regulation reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, the U.S. Environmental Protection Agency establishes a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons, or January 1, 1997, whichever is earlier (*see* LEGISLATION).

On August 25, OSB considered a petition for rulemaking submitted by John Banzhaf, Executive Director of Action on Smoking and Health, which requested that OSB adopt regulations to protect workers from the carcinogenic hazards and other adverse health effects of environmental tobacco smoke and to ban smoking in the workplace. OSB staff recommended that the petition be denied as unnecessary in light of AB 13. However, Banzhaf requested that OSB defer action on the matter for six months, on the basis that Proposition 188 on the November ballot—sponsored by tobacco industry giant Philip Morris—would invalidate AB 13 and put in place statewide smoking standards considered by most observers to be significantly less restrictive than AB 13. Following discussion, OSB agreed to defer action on the petition pending the November election; at this writing, no date has been set for the rehearing of the petition.

OSB Proposes Elevator Safety Orders Revisions. On June 3, OSB published notice of its intent to amend sections 3071 and 3090, Title 8 of the CCR, and sections 7-3071 and 7-3090, Title 24 of the CCR, regarding hydraulic elevator load test tags and escalator inspections. According to OSB, Title 8 currently requires that a load test be performed on all existing hydraulic elevators at intervals not to exceed five years; however, during a hydraulic elevator inspection, it is practically impossible to determine whether an elevator has been load tested or not. Accordingly, OSB's proposed amendments to sections 3071 and 7-3071 would require that a proper tag, with specified information regarding the load test, be secured to each pumping unit in the hydraulic elevator machine room.

According to OSB, the majority of escalator machine rooms are accessible through covers installed in floor plates at top landings. "Modular type escalators" have their drive equipment located in the steps of the truss. It is necessary that steps be removed to gain access to inside the truss for inspection of the machinery, its associated equipment, and safety devices; in addition to special tools, two persons are required to remove the steps. Accordingly, OSB's proposed changes to sections 3090 and 7-3090 would require the building owner or responsible party to provide a competent person to assist DOSH's representative where step removal is required to gain access to drive units, brakes, and upthrust devices inside the escalator truss. On July 21, OSB held a public hearing on these proposed changes; no comments were received at the hearing. On August 25, OSB adopted the amendments, which await review and approval by OAL.

Also on June 3, OSB published notice of its intent to amend section 3000 and adopt new sections 3087 through 3087.8, Title 8 of the CCR, and amend section 7-3000 and adopt new sections 7-3087 through 7-3087.8, Title 24 of the CCR, regarding vertical and reciprocating conveyors. According to OSB, the existing Elevator Safety Orders presently do not address reciprocating conveyors; however, due to their use, DOSH considers them to be elevators and requires owners and/or users to remove them from service or perform major alterations to bring them into compliance with the Elevator Safety Orders. Accordingly, this rulemaking action would authorize the installation of vertical and inclined reciprocating conveyors and their related equipment; the action would also provide specific guidelines for the installation and use of reciprocating conveyors. On July 21, OSB held a public hearing on the proposed changes, and adopted them at its August 25 meeting. At this writing, the changes await review and approval by OAL.

Portable Wood and Metal Ladders. On July 8, OSB published notice of its intent to amend sections 3278 and 3279, Title 8 of the CCR, regarding the care, use, and maintenance of ladders. Proposed new section 3278(e)(21) would adopt verbatim the requirements of 29 C.F.R. Part 1926.1053(b)(14), to prohibit the use of cross-bracing on the rear section of wooden stepladders unless the ladders are designed and provided with steps for climbing on both front and rear sections; the language would also require an employer to instruct and ensure that employees do not use the cross-bracing on the rear section of stepladders for climbing. Similarly, changes to section 3279 would also require an employer to instruct and ensure that employees do not use the cross-bracing on the rear section of metal stepladders

for climbing. On August 25, OSB held a public hearing on the proposed changes; no comments were submitted at the hearing. At this writing, the proposed change awaits adoption by OSB and publication by OAL.

Personal Safety Devices and Safeguards. On July 8, OSB published notice of its intent to amend sections 3381, 3382, and 3385, Title 8 of the CCR, regarding personal safety devices and safeguards. Among other things, the proposed changes would require that helmets purchased after September 1, 1994, must comply with ANSI Z89.1-1986, Class A or Class B; permit helmets purchased on or before September 1, 1994 to meet the ANSI Z89.1-1969 standard for Class A or Class D; require employers after September 1, 1994, to select and use eye and face protection which meets current ANSI requirements; and require employers to ascertain whether footwear purchased after September 1, 1994 meets the Z41-1001 ANSI standard prior to permitting its use in the workplace. On August 25, OSB held a public hearing on the proposed changes; at this writing, the amendments await adoption by OSB and review and approval by OAL.

Belt Sanders. On July 8, OSB published notice of its intent to amend section 4312, Title 8 of the CCR, which currently requires belt sanders to have both pulleys and the unused run of the sanding belt enclosed; permits rim guards to be used for smooth disc wheels provided in-running nip points are guarded; and permits the guards on stationary belt sanders to be hinged to permit sanding on the pulley. In response to Petition No. 342 granted in January 1994 *[14:2&3 CRLR 151]*, OSB's proposed changes would exclude portable belt sanders from the guarding requirement when guarding is provided on at least one side of the pulley at the nip point where the sanding belt runs onto a pulley; the handles are located to prevent hand contact with the nip point(s); and the unused run of the sander's belt is guarded on one side and the rear.

On August 25, OSB held a public hearing on the proposed changes; no comments were submitted at that time. At this writing, the amendments await adoption by OSB and review and approval by OAL.

High Voltage Electrical Safety Orders. On August 5, OSB published notice of its intent to amend sections 2940.2, 2940.6, 2940.8, and 2951, Title 8 of the CCR, to revise its High Voltage Electrical Safety Orders. According to OSB, the rulemaking proposal is in response to federal OSHA's promulgation of 29 C.F.R. Part 1910.269, and is comparable to that regulation. Among other things, OSB's proposed changes would revise the nominal voltage ranges and minimum working and clear live line tool distances in order to conform them to their counterpart voltage and distances expressed in the federal regulation; require hand tool hose pressure to be released before hand tool connections are broken; prohibit kinked hoses; prohibit line clearance trimming work (with the exception of emergency restoration procedures) from being performed during various specified inclement weather conditions (among which are high winds) which would subject the employee to various hazards in spite of compliance with specified work practices; explain what constitutes hazardous windy working conditions and define what a high wind is in terms of miles per hour velocity; and explain that if the employer implements precautions to prevent the wind hazards described, the wind shall not be considered as presenting a hazard to the employee. At this writing, OSB is scheduled to hold a public hearing on these proposed changes on September 22.

Cranes and Other Hoisting Equipment. On August 5, OSB published notice of its intent to amend section 4884, Title 8 of the CCR, which contains requirements relating to national consensus standards for cranes and derricks. OSB's proposed changes would require all derricks placed in service after January 1, 1995 to be provided with a permanently attached metal label stating that the equipment complies with the ASME B30.6-1990 requirements; the proposal would also require employers to use only derricks which conform to that standard after January 1, 1995. At this writing, OSB is scheduled to hold a public hearing on the proposed action on September 22.

DOT Markings, Placards, and Labels for Hazardous Materials. On July 19, federal OSHA promulgated regulations addressing the retention of labels, placards, or markings required by the U.S. Department of Transportation (DOT); on September 9, OSB published notice of its intent to adopt new section 5194.1, Title 8 of the CCR, which is the same as the federal standard except for editorial and format differences. The federal regulations require all employers who receive a package, freight container, or transport vehicle which contains a hazardous material to retain any label, placard, or marking that is required under DOT's hazardous material regulations; such DOT markings, placards, and labels shall not be removed from the incoming package, container, or vehicle until the hazardous material has been removed and the packaging sufficiently cleaned to remove any potential hazard. At this writing, OSB is scheduled to hold a public hearing on the proposed action on October 27 in order to identify if there are any clear and compelling reasons for California to deviate from the federal standard; identify if there are issues unique to California related to this proposal which should be addressed in this rulemaking and/or subsequent rulemaking; and solicit comments on the proposed effective date.

Prevention of Occupational Tuberculosis. On September 9, OSB published notice of its intent to adopt new section 5197, Title 8 of the CCR, which would specify protective measures designed to control tuberculosis (TB) and the spread of TB in occupational settings. Section 5197 would apply to specifically enumerated categories of employment in which employees are known to have a significant risk of developing occupational TB. Under the proposed regulation, covered employers would be required to develop and implement an exposure control plan; provide TB surveillance, preventive therapy, and medical evaluation where appropriate; implement appropriate engineering and work practice controls and respiratory protection; provide employee training; and fulfill recordkeeping requirements. At this writing, OSB is scheduled to hold a public hearing on proposed section 5197 on October 27.

Rulemaking Update. The following is a status update on other OSB rulemaking proposals discussed in detail in previous issues of the *Reporter*:

• ***Respiratory Protective Equipment***. On June 23, OSB held a public hearing on its proposed amendments to sections 1531, 3409, and 5144, Title 8 of the CCR, which provide minimum requirements for the use of respiratory protective equipment to control harmful exposures to dusts, mists, fumes, and vapors; each of those sections prohibits the use of contact lenses in atmospheres where a respirator is required. OSB's proposed changes to those sections would eliminate that prohibition and add a training requirement regarding employees using contact lenses in atmospheres requiring respiratory protection. *[14:2&3 CRLR 146]* At this writing, the proposed changes await adoption by OSB and review and approval by OAL.

• ***Airborne Contaminants***. On June 23, OSB held a public hearing on its proposed amendments to section 5155, Title 8 of the CCR, which establishes requirements for controlling employee exposure to airborne contaminants. OSB's proposed changes to section 5155 would lower the permissible exposure limits (PEL) of thirteen compounds; raise the PEL for grain

dust; add six substances to Table AC-1 (Permissible Exposure Limits for Chemical Contaminants); add short-term exposure limits to four substances in Table AC-1; add five glycol ethers to Table AC-1 with skin notations; and add propylene glycol methyl ether acetate to Table AC-1. According to OSB, all of the proposed changes to section 5155 are considered at least as effective or more stringent than Fed-OSHA's requirements in 29 C.F.R. Part 1910.1000. *[14:2&3 CRLR 146]* At this writing, the proposed changes await adoption by OSB and review and approval by OAL.

• ***Drilling and Production Regulations.*** On June 23, OSB held a public hearing on its proposed amendments to sections 6500–6693 (non-inclusive), Title 8 of the CCR, to make a number of changes to its regulatory provisions concerning drilling and production in the petroleum industry. Among other things, the proposed changes would permit smoking only in areas designated by the employer, and require each employer to identify all areas—including areas of flammable liquids and gases—which are safe for smoking at production or oil well sites; require an employer's written employee emergency plan to include evacuation procedures; and require the regulated public to install the appropriate type of electrical equipment and wiring at petroleum production facilities or at oil drilling and servicing locations in accordance with the provisions of the Electrical Safety Orders, and require that the electrical equipment be maintained in accordance with the area classifications as defined in the Electrical Safety Orders. *[14:2&3 CRLR 146]*

At the June hearing, OSB received a number of comments from members of the petroleum industry, who questioned the scope of the proposed changes. As a result, OSB extended the comment period until July 11. At this writing, the changes await adoption by OSB and review and approval by OAL.

• ***Revision of Injury and Illness Prevention Program.*** On May 19, OSB held a public hearing on its proposed changes to section 3203, Title 8 of the CCR, which would revise the Injury and Illness Prevention Program to provide relief from specific recordkeeping requirements to certain groups of employers, including employers with fewer than twenty employees who are in industries not on a designated list of high-hazard industries established by DOSH, and who have a workers' compensation experience modification rate of 1.1 or less; employers on a designated list of low-hazard industries established by DIR; employers determined by DOSH to have historically utilized intermittent employment; and local governmental entities or any public or quasi-public corporation. These changes are the result of amendments made to Labor Code section 6401.7, Cal-OSHA's IIPP statute added by SB 198 (Greene) (Chapter 1369, Statutes of 1989), by AB 395 (Hannigan) (Chapter 928, Statutes of 1993) and by AB 1930 (Weggeland) (Chapter 927, Statutes of 1993). *[14:2&3 CRLR 146; 13:4 CRLR 133–34]*

At OSB's June 23 meeting, Board member James Smith expressed opposition to the proposed exemption from the recordkeeping requirements for local governmental entities; according to Smith, there is no rationale for exempting local governments from this requirement while requiring large private employers to comply. Although Labor Code section 6401.7 now excludes any county, city, city and county, or district, and any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, from the recordkeeping requirements, Smith stated that would oppose the proposed OSB rulemaking action in order to demonstrate his opposition to the exemption for local government. As a result of Smith's opposition, the Board's motion to approve the regulatory changes failed on a 3–1 vote, with one abstention; four affirmative votes were needed for the motion's passage.

The Board continued its discussion of this matter at its July 21 and August 25 meetings; at both meetings, some Board members noted that, pursuant to Labor Code section 6401.7, DOSH had already lost its ability to require local governments to comply with the recordkeeping requirements, and that small employers should be relieved from the IIPP recordkeeping requirements. Following discussion at the August meeting, OSB adopted the proposed changes by a 4–1 vote. On September 13, OAL approved the changes.

• ***Clarification of "Amusement Ride" Definition.*** On May 19, OSB held a public hearing on its proposed amendments to section 3901, Title 8 of the CCR, which clarify the definition of the term "amusement ride" to include the business of bungee jumping, but not slides, playground equipment, coin-operated devices, or conveyances which operate directly on the ground or operation of amusement devices of a permanent nature. *[14:2&3 CRLR 146]* On June 23, OSB adopted the proposed changes, which were approved by OAL on August 1.

• ***Portable Power-Driven Hand Saws.*** On August 25, OSB amended section 4307(b), Title 8 of the CCR, regarding safety requirements for portable power-driven circular hand saws. Existing section 4307(b) requires the lower half (point of operation) of the saw blade to be guarded to the saw teeth's root with either a telescopic or hinged guard which opens when material is fed into the saw and closes (covers the saw teeth) when the saw teeth are removed from the cut. OSB's amendment adds an exception to the guarding requirements of section 4307(b) to exclude powered rescue saws or similar devices when used by fire or rescue personnel and those persons are equipped or provided with suitable personal protective equipment. *[14:2&3 CRLR 146]* At this writing, the proposed amendments are being reviewed by OAL.

• ***Installation of Load Drum Rotation Indicators on Cranes.*** On May 19, OSB repealed section 4929(f), Title 8 of the CCR, which required the installation of load drum rotation indicators on cranes, except cranes used exclusively with a clamshell or dragline. As a result of the repeal, owners of cranes with a lifting capacity rated above three tons will no longer be required to install load drum indicators. According to OSB, there should be no diminished safety experienced by employees handling loads positioned by a crane. *[14:2&3 CRLR 146–47]* On June 27, this action was approved by OAL.

• ***Refining, Transporting, and Handling of Petroleum.*** On July 21, OSB adopted its proposed amendments to sections 6750–6791 (non-consecutive), the repeal of sections 6792, 6804, 6810, 6823, 6839, 6867, and 6872, and the addition of new sections 6751, 6788, 6789, 6799, 6800, 6801, 6806, 6807, 6808, 6809, 6887, and 6892–6894, Title 8 of the CCR, regarding the refining, transportation of, and handling of petroleum. Although many of the proposed changes have no effect on the regulated public, the proposed changes—among other things—require gas-detecting equipment to be provided, properly maintained, and used at locations where combustible gases and vapors may be present. *[14:2&3 CRLR 147]* On September 6, OAL approved the changes.

• ***Ventilation Requirements for Laboratory-Type Hood Operations/Biological Safety Cabinets.*** On August 25, OSB adopted its proposed amendments to section 5154.1 and new section 5154.2, Title 8 of the CCR, which would regulate the use of laboratory-type hoods and biological safety cabinets. Section 5154.1 currently sets forth requirements for ventilation rates, operation, and other special requirements for laboratory-type hoods.

OSB's proposed amendment would, among other things, exempt biological safety cabinets from the section's requirements; biological safety cabinets are used primarily in microbiological laboratories and pharmacies where organisms and pharmaceutical materials which present a health hazard must be manipulated to maintain a sterile environment.

New section 5154.2 would include requirements for use, operation, ventilation rates and negative pressure, airflow measurements and leak testing, and other special requirements for biological safety cabinets; under the proposed language, section 5154.2 would only apply to biological safety cabinets used to control biohazard materials or hazardous substances. The section would also allow the use of biological safety cabinets to control exposure to cytotoxic drugs, aerosols, and particulate matter, provided the presence of these substances presents no risk of fire or explosion, and specified control requirements are met. *[14:2&3 CRLR 147; 14:1 CRLR 114]*

At this writing, the proposed changes await review and approval by OAL.

• ***Automotive Lift Standards Amendments***. In February, OSB adopted amendments to sections 3542 and 3543, Title 8 of the CCR, regarding automotive lifts. The amendments to section 3542 require that new lifts installed after February 1, 1994 be in accordance with the provisions of ANSI/ALI B153.1-1990, which is incorporated by reference, except for specified sections; the amendments to section 3543 require that automotive lifts manufactured after May 21, 1990, be provided with a label or statement of compliance indicating the lift was manufactured to conform to the requirements of ANSI/ALI B153.1-1990. *[14:2&3 CRLR 147; 14:1 CRLR 114]*

During its review of these proposed changes, OAL informally raised three issues of concern, two of which were editorial in nature and one which concerned the clarity of proposed section 3543.1; in response, OSB withdrew the rulemaking file from OAL, modified the proposed language pursuant to OAL's concerns, released the modified language for an additional 15-day public comment period, and resubmitted the rulemaking file to OAL. On July 18, OAL approved OSB's changes.

• ***Electrical Regulations Pertaining to Elevators***. On June 29, OAL approved the Board's amendments to sections 3011, 3012, 3016, 3020, 3040, 3050, 3071, 3073, 3078, 3090, 3092, 3093.41, 3093.42, 3100, and 3112, Title 8 of the CCR, regarding electrical regulations pertaining to elevators. *[14:2&3 CRLR 148; 13:4 CRLR 133]*

LEGISLATION

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at pages 149–50:

AB 3831 (Horcher). Existing law requires employers to comply with various health and safety provisions, imposes civil penalties for violation of these provisions, and exempts employers that are governmental entities from these penalties. As introduced March 14, this bill would have only exempted employers who are local governmental entities from the imposition of civil penalties for violation of these health and safety provisions, thereby including state governmental entities among those employers subject to the imposition of these penalties. On September 30, Governor Wilson vetoed this bill, stating that "having one state agency fine another is nothing more than a transfer of funds from one governmental unit to the other." In Wilson's opinion, "[t]he only one who would be hurt is the taxpayer who funds the transaction cost" and "[t]he penalty assessment is unnecessary and, even worse, uneconomical."

AB 13 (T. Friedman), as amended June 16, prohibits any employer from knowingly or intentionally permitting, or any person from engaging in, the smoking of tobacco products in an enclosed space at specified places of employment. The bill specifies that, for purposes of these provisions, the term "place of employment" does not include certain portions of a hotel, motel, or other lodging establishments, meeting or banquet rooms subject to certain exceptions, retail or wholesale tobacco shops, private smoker's lounges, cabs of motortrucks or truck tractors as specified, bars and taverns and gaming clubs subject to certain prescribed conditions, warehouse facilities, theatrical production sites, medical research or treatment sites, employee breakrooms under prescribed conditions, patient smoking areas in long-term health care facilities, and specified smoking areas designated by employers with fewer than five employees. It also specifies that, for purposes of these provisions, an employer who permits any nonemployee access to his/her place of employment on a regular basis has not acted knowingly or intentionally if he/she has taken certain reasonable steps to prevent smoking by a nonemployee.

This bill also specifies that the smoking prohibition set forth in these provisions shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment, and shall supersede and render unnecessary specified local ordinances regulating the smoking of tobacco products in enclosed places of employment.

This bill additionally provides that a violation of the smoking prohibition set forth in these provisions is an infraction punishable by specified fines, and provides that the smoking prohibition shall be enforced by local law enforcement agencies, as specified, but specifies that DOSH shall not be required to respond to any complaint regarding a violation of the smoking prohibition, unless the employer has been found guilty of a third violation of the smoking prohibition within the previous year. This bill was signed by the Governor on July 21 (Chapter 310, Statutes of 1994).

ACR 90 (Burton), as amended August 22, requests OSB to adopt an occupational safety and health standard for indoor air quality, including the elimination of environmental tobacco smoke. The measure requests DOSH to work in consultation with prescribed representatives, entities, and indoor air specialists to develop a proposed standard, in coordination with the California Building Standards Commission, for presentation to OSB on or before December 31, 1995. This measure was chaptered on September 9 (Chapter 121, Resolutions of 1994).

AB 2784 (Epple). Existing law imposes restrictions with respect to those persons who may certify the safety of cranes, as specified, but permits the licensure of certifiers of cranes who are employed by insurance carriers who insure the specific crane. As amended August 15, this bill additionally permits, except as to certification of tower cranes, the licensure of certifiers of cranes who are employed by an electrical, gas, or telephone corporation, as defined, or a municipal utility serving a city having a population of three million or more, that meet prescribed criteria. This bill was signed by the Governor on September 15 (Chapter 604, Statutes of 1994).

SB 999 (Dills), as amended April 21, permits DOSH to waive the written examination for renewal of a crane certifier's license if the applicant has passed the written certification examination on or after January 1, 1992, is currently licensed at the time of application, and has been actively engaged in certifying cranes and derricks for the five preceding years. This bill was signed by the Governor on June 16 (Chapter 105, Statutes of 1994).

SB 1464 (Marks). Existing law authorizes DOSH, after inspection or investigation, to issue to an employer a citation with respect to an alleged violation; requires

DOSH, within a reasonable time after termination of the inspection or investigation, to notify the employer by certified mail of the citation and of the 15-day period from the receipt of the notice within which the employer may notify OSB of his/her intent to appeal the citation for any reason as set forth in specified statutes; and requires the citation to fix a reasonable time for abatement of the alleged violation, and provides that that period shall not commence running until the date the citation is received by certified mail and the certified mail receipt is signed, or if not signed, the date the return is made to the post office. Existing administrative regulations further provide that all abatement periods and changes required by DOSH are stayed upon the filing of a docketed appeal with OSB, and remain stayed until the withdrawal or final disposition of that appeal. As amended May 25, this bill would have required DOSH, if it determines that an alleged violation is serious and presents such a substantial risk to the safety or health of employees that the initiation of appeal proceedings should not suspend the running of the period for abatement, to so direct in the citation issued to the employer; authorized an employer who receives a citation as described above to file a motion with OSB, concurrent with the timely initiation of an appeal, requesting that the running of the period for abatement be suspended during the pendency of the appeal; required OSB, in a case where the motion is filed, to conduct an expedited hearing within 15 days of the filing of the motion to consider and decide the employer's appeal; and authorized OSB, in its decision on the appeal, to modify the citation's direction that the period for abatement not be suspended. On September 30, Governor Wilson vetoed this bill, stating that Cal-OSHA "has sufficient authority under current law to stop unsafe working conditions and to order expedited hearings to secure prompt abatement."

S. 575 (Kennedy) and **H.R. 1280 (Ford)** are federal legislative proposals which would have enacted the Comprehensive Occupational Safety and Health Reform Act, amending the Occupational Safety and Health Act of 1970 with respect to occupational safety and health programs, committees, employee representatives, coverage, standards, enforcement, anti-discrimination, training and education, hazard and illness evaluation, state plans, and victims' rights. According to a Labor Department report released May 5, the proposed legislation could save the national economy as much as $7 billion per year through the prevention of workplace injuries, illnesses, and deaths. *[14:2&3 CRLR 150; 14:1 CRLR 113, 116]* However, Congress failed to enact either measure during its recent session.

SB 555 (Hart). Existing law requires every physician providing treatment to an injured employee for pesticide poisoning or a condition suspected to be pesticide poisoning to file a complete report with the Division of Labor Statistics and Research. As introduced March 1, 1993, this bill additionally requires every physician providing treatment for pesticide poisoning or a condition suspected to be pesticide poisoning to file, within 24 hours of the initial examination, a complete report with the local health officer by facsimile transmission or other means. The bill provides that the physician shall not be compensated for the initial diagnosis and treatment unless the report to the Division of Labor Statistics and Research is filed with the employer or, if insured, with the employer's insurer, and certifies that a copy of the report was filed with the local health officer. This bill was signed by the Governor on September 19 (Chapter 667, Statutes of 1994).

SB 1803 (Johnston), as amended June 15, is a clean-up bill to AB 110 (Peace) (Chapter 121, Statutes of 1993), which was part of a seven-bill package reforming some of the more glaring defects in the state's workers' compensation system. *[13:4 CRLR 115–16]* Among other things, SB 1803 reflects the change of the name of the Division of Industrial Accidents to the Division of Workers' Compensation, makes other technical changes, and eliminates existing law which provides for review by the Medical Bureau of certain workers' compensation matters. This bill was signed by the Governor on September 28 (Chapter 1097, Statutes of 1994).

The following bills died in committee: **AB 3495 (Mountjoy)**, which would have revised existing law imposing specified procedures for the filing and codification of state building standards; **AB 3708 (Alby)**, which would have added special access lifts, as defined, to those elevators that are exempted from regulation by the Occupational Safety and Health Act of 1973, and instead required that special access lifts be governed by specified regulations and building standards for access to public buildings for physically handicapped persons; **AB 3230 (B. Friedman)**, which would have required IIPPs to include protection of employees from violence in the workplace; **AB 1605 (B. Friedman)**, which would have required specified supermarket, grocery store, and drugstore employers with twenty or more employees to develop and implement a minimum security plan at each store site designed to protect employees from crime; and **AB 1543 (Klehs)**, which would have provided that neither OSB nor DOSH is authorized to make changes in or grant variances from specified regulations, if the proposed change or variance may have the effect of subjecting workers to increased exposure to electromagnetic fields in work on conductors or equipment energized in excess of 7500 volts.

RECENT MEETINGS

On August 25, OSB considered Petition No. 350, submitted by Bob Horowitz of Victims of Fiberglass (VOF), a nonprofit corporation which states that its goal is to help people who have been injured by fiberglass. VOF requested that OSB adopt standards reasonable to protect insulation installers and others with high levels of exposure to airborne fiberglass particles from potential lung damage and cancer. Specifically, VOF requested that OSB adopt a permissible exposure limit (PEL) for fiberglass based on airborne fiber counts and other prudent training or personal protection guidelines. VOF contended that California law does not require people working with fiberglass insulation to take safety precautions, wear protective gear, or receive training on safe work practices.

According to DOSH, however, fiberglass is considered a hazardous substance subject to the requirements of the California Hazardous Substances Information Training Act, and specific training and other requirements for compliance with that Act are found in section 5194, Title 8 of the CCR. However, DOSH recommended that the petition be accepted based on its request that fiberglass be regulated in units of fibers per unit volume and that a change to the current PEL be considered at the next meeting of DOSH's Airborne Contaminants Advisory Committee.

OSB staff noted that many of the protections requested by VOF, such as training and personal protective equipment, are already required by existing regulations (including section 3203, the IIPP regulation). However, staff also noted that many of these protections are triggered by the current PEL in section 5155, Title 8 of the CCR, which may be set too high to adequately protect workers. OSB staff recommended that the petition be granted to the extent that the Board request DOSH's Airborne Contaminants Advisory Committee to further evaluate and address whether changes to the existing PEL are necessary and, if appropriate, propose amendments to the existing standard for consideration by OSB.

At its August meeting, OSB noted that DOSH's Advisory Committee plans to re-

convene in 1995 in order to determine whether the current PEL should be revised; accordingly, OSB denied VOF's petition as unnecessary.

FUTURE MEETINGS

September 22 in Los Angeles.
October 27 in San Francisco.
November 17 in San Diego.
December 19 in Sacramento.
January 19, 1995 in Los Angeles.
February 23, 1995 in San Francisco.
March 23, 1995 in San Diego.
April 20, 1995 in Sacramento.
May 18, 1995 in Los Angeles.

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY (CAL-EPA)

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chair: Jacqueline E. Schafer
(916) 322-2990

Pursuant to Health and Safety Code section 39003 *et seq.*, the Air Resources Board (ARB) is charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of and solutions to air pollution, and to systematically attack the serious problem caused by motor vehicle emissions, which are the major source of air pollution in many areas of the state. ARB is empowered to adopt regulations to implement its enabling legislation; these regulations are codified in Titles 13, 17, and 26 of the California Code of Regulations (CCR).

ARB regulates both vehicular and stationary pollution sources. The California Clean Air Act requires attainment of state ambient air quality standards by the earliest practicable date. ARB is required to adopt the most effective emission controls possible for motor vehicles, fuels, consumer products, and a range of mobile sources.

Primary responsibility for controlling emissions from stationary sources rests with local air pollution control districts (APCDs) and air quality management districts (AQMDs). ARB develops rules and regulations to assist the districts and oversees their enforcement activities, while providing technical and financial assistance.

Board members have experience in chemistry, meteorology, physics, law, administration, engineering, and related scientific fields. ARB's staff numbers over 400 and is divided into seven divisions: Administrative Services, Compliance, Monitoring and Laboratory, Mobile Source, Research, Stationary Source, and Technical Support.

The Senate ended its 1993–94 session on August 31 without confirming Governor Wilson's appointment of Jacqueline Schafer as ARB's Chair. In November 1993, Schafer replaced Jananne Sharpless, a strong and vocal clean air advocate who had chaired the Board for eight years prior to resigning under pressure by the Wilson administration. *[14:1 CRLR 118]* The Senate Rules Committee held a hearing on Schafer's appointment on August 22, but took no vote after receiving opposition testimony from the Sierra Club and other environmental organizations which view Sharpless' dismissal and Schafer's appointment as symbols of the Wilson administration's increasing capitulation to the oil and trucking industries. Unless the legislature convenes a special session and the Senate confirms Schafer's appointment, she must leave her post by November 22.

MAJOR PROJECTS

ARB Amends Emission Control Regulations for Utility Engines. On July 28, ARB held a public hearing to consider proposed amendments to sections 2400–2407, Title 13 of the CCR, its regulations and test procedures for controlling emissions from utility engines such as lawn mowers, chain saws, leaf blowers, and generators. ARB originally approved its landmark utility and lawn and garden (utility) engine regulations on December 4, 1990; they became effective on May 31, 1992. *[11:1 CRLR 115]* As originally adopted, the regulations were to become effective on January 1, 1994; however, in response to a petition filed by the industry, ARB delayed the implementation date of the regulations for one year, making the regulations applicable to engines produced on or after January 1, 1995. *[13:2&3 CRLR 155–56]*

Since ARB's adoption of its utility regulations, new test procedures have been adopted by two standards organizations, the U.S. Environmental Protection Agency (EPA) has proposed emission standards and procedures for new small utility engines sold in other states, and gasoline sold in California has been reformulated. The proposed amendments considered by ARB at its July meeting, many of which were developed in cooperation with utility engine manufacturers as they proceeded through the certification process, are primarily intended to conform the Board's regulations to the newly approved test procedures and to clarify and enhance the certification and compliance procedures in light of these recent events; according to ARB, they do not change the air quality and environmental impacts of the originally adopted program.

Following discussion, the Board unanimously approved the proposed amendments; at this writing, they have not yet been submitted to the Office of Adminis-