



custody of a dog pending investigation of charges of abuse. The agreement would not address issues such as admission to schools or training practices.

The proposal calls for the three licensed guide dog schools in California to "agree to provide to guide dog users graduating from the guide dog programs in such schools a new avenue for the resolution of disputes which involve continued use of a guide dog, or the actual physical custody of a guide dog." These disputes arise because most guide dog schools do not grant title or ownership of a dog to a user upon graduation, and have in the past abruptly relieved users of the custody of their dogs upon mere allegation of abuse or for other reasons, usually causing great hardship to the user. [12:2&3 CRLR 90; 12:1 CRLR 64] Under the proposal, a guide dog user who is dissatisfied with the decision of a school regarding his/her continued use of a guide dog may ask the Board to convene a special arbitration panel, which would consist of one person designated by the user, one person designated by the school, and a representative of the Board who would coordinate the activities of the panel and serve as chair. All findings and decisions of the arbitration panel would be final and binding.

The proposal would also provide that, as a general rule, custody of the guide dog shall remain with the guide dog user pending a resolution by the arbitration panel; however, in circumstances where the immediate health and safety of the guide dog user and/or the guide dog is threatened, the licensed school may take custody of the dog at once. If the dog is removed from the user's custody without his/her concurrence, the school must immediately provide to the Board the evidence which caused it to take such action; within five calendar days, a special committee consisting of two Board members shall determine the custody of the dog pending hearing by the arbitration panel.

The Board and two of the three licensed schools ratified the arbitration agreement at the July 24 meeting; however, the third school—Guide Dogs for the Blind—did not agree to the terms of the proposal and did not ratify it.

Following a discussion of the matter, the Board inspected Guide Dogs for the Blind in San Rafael.

## FUTURE MEETINGS

To be announced.

## BUREAU OF HOME FURNISHINGS AND THERMAL INSULATION

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The Bureau of Home Furnishings and Thermal Insulation (BHFTI) is charged with regulating the home furnishings and insulation industries in California. As a division of the state Department of Consumer Affairs (DCA), the Bureau's mandate is to ensure that these industries provide safe, properly labeled products which comply with state standards. Additionally, the Bureau is to protect consumers from fraudulent, misleading, and deceptive trade practices by members of the home furnishings, insulation, and dry cleaning industries. The Bureau is established in Business and Professions Code section 19000 *et seq.*

The Bureau establishes rules regarding furniture and bedding labeling and sanitation. To enforce its regulations, which are codified in Division 3, Title 4 of the California Code of Regulations (CCR), the Bureau has access to premises, equipment, materials, and articles of furniture. The Bureau may issue notices of violation, withhold products from sale, and refer cases to the Attorney General or local district attorney's offices for possible civil penalties. The Bureau may also revoke or suspend a licensee's registration for violation of its rules.

Until January 1, 1993, the Bureau is also charged with the registration of dry cleaning plants throughout the state. The registration process includes submission of information regarding the plant's onsite storage, treatment, and disposal of toxic wastes. The Bureau, however, has no enforcement authority regarding this function.

The Bureau is currently assisted by a thirteen-member Advisory Board consisting of seven public members and six industry representatives. However, ABX 66 (Vasconcellos) abolishes BHFTI's Advisory Board as of January 1, 1993 (*see infra* MAJOR PROJECTS and LEGISLATION). At the Advisory Board's June 9 meeting, Bureau Chief Gordon Damant announced that Don Simon, Sr., a bedding manufacturer, has been appointed to the Advisory Board. Damant also reported the resignation of Board member Lawrence Brooks; due to the pending elimination of the Advisory Board, no replacement is expected to be appointed.

## MAJOR PROJECTS

**Advisory Board Eliminated.** As of January 1, 1993, ABX 66 (Vasconcellos) (Chapter 21X, Statutes of 1992) eliminates BHFTI's Advisory Board, which was established in 1955; at this time, it is unknown what effect, if any, the loss of the Advisory Board will have on the Bureau's activities. (*See infra* LEGISLATION.) Despite this action, BHFTI is encouraging continued industry and public input into Bureau decisionmaking, and will examine alternate ways to incorporate such input into Bureau programs.

**Technical Bulletin 133.** BHFTI's Technical Bulletin 133, which establishes higher flammability standards for furniture in certain public occupancy buildings, became law in California on March 1. [12:2&3 CRLR 90] At the Advisory Board's June 9 meeting, Bureau Chief Gordon Damant reported that several other states are considering the adoption of similar standards, and noted that members of the industry have received orders for furniture complying with Technical Bulletin 133 and its requirements. The Bureau has conducted a series of well-attended public seminars in order to publicize Technical Bulletin 133 and its requirements; upon request, Chief Damant has also conducted many seminars with individual groups. Additionally, BHFTI has prepared a comprehensive informational package which includes copies of the current flammability law and regulations, information about flammability labeling, a copy of the Technical Bulletin 133 seating product description form, Technical Bulletin 133 itself, and a question-and-answer booklet.

**Technical Bulletin 129.** In conjunction with Technical Bulletin 133, BHFTI published Technical Bulletin 129 in late May; Technical Bulletin 129 consists of a full-scale fire performance test for mattress systems intended for use in various public buildings. [12:2&3 CRLR 90] BHFTI released a draft standard in order to solicit public comment; the Bureau is currently writing the final version. At the Advisory Board's June 9 meeting, Chief Damant reported that the American Society for Testing and Materials (ASTM) is considering the adoption of Technical Bulletin 129 as an ASTM standard, and that the bedding industry is interested in using the Bulletin as a national standard for contract mattresses. At this writing, the date of adoption for Technical Bulletin 129 has not been set.

**Merger of BHFTI and Bureau of Electronic and Appliance Repair.** At its June 9 meeting, the Advisory Board dis-



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cussed the Department of General Services' proposal to consolidate all bureaus and boards within DCA to one geographic location in or near Sacramento, in an effort to combat dwindling state resources. Chief Damant reported that the general plan is to construct a new "campus" from which all of DCA's agencies could operate. Damant noted that the Department of General Services is currently considering two parcels of land; one would be for office space and the other for light industrial activities. However, this three-year plan, which is slated to be completed by 1995, is in the very early stages of discussion; at this writing, the state has neither signed any contracts nor appropriated any money. At the suggestion of Advisory Board member John McNeill, the Board agreed to ask DCA to conduct a cost feasibility study to assess the costs of relocation, and to request that DCA examine its own history with regard to the advisability of obtaining a fixed-space facility. Until relocation plans have been formalized, the planned merger of BHFTI and the Bureau of Electronic and Appliance Repair is on hold; the merger is expected to efficiently combine the activities common to both agencies, such as management and administration, consumer complaint handling, and licensing. [12:2&3 CRLR 91]

**Bureau Seeks Closer Relationship with Consumer Product Safety Commission.** At the Advisory Board's June 9 meeting, Bureau Chief Gordon Damant reported that DCA Director Jim Conran is very interested in having BHFTI develop a closer relationship with the federal Consumer Product Safety Commission (CPSC), an independent regulatory body which was formed by Congress in 1972 to protect the public against unreasonable risks of injury associated with consumer products, assist consumers in evaluating the comparative safety of consumer products, develop uniform safety standards for consumer products and minimize conflicting state and local regulations, and promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries. Specifically, CPSC has proposed to delegate authority to the Bureau to enforce various federal safety laws in California as they pertain to the following products and activities: imported children's toys decorated with paint containing lead; toys containing small parts that can be ingested by small children; babies' pacifiers, which must pass a nipple strength test and which must include breathing holes in the pacifier shield; bean bag cushions, some of which have caused the suffocation of

small children; bicycle safety; the labeling of hazardous substances; the design of children's beds, including the slat size and the design of the headboard; and children's hinged toy chests.

According to Damant, CPSC has activated a program in which Bureau inspectors and certain other employees would be cross-commissioned as members of CPSC, thus enabling the Bureau to act on behalf of CPSC. At this writing, the Bureau and CPSC are drafting a cooperative agreement which was expected to be signed on or before October 1.

In a related matter, BHFTI and CPSC are joining forces to address the high level of failure by the futon industry to comply with state and federal standards. A BHFTI survey found that 75% of the futons sampled were in violation of the law; a CPSC survey found that 50% of the futons sampled were in violation of the law. As a result, BHFTI and CPSC sponsored seminars on July 6 in San Francisco and on July 7 in Los Angeles in order to reacquaint the futon industry with the applicable laws and regulations, report the levels of non-compliance found by BHFTI and CPSC, and emphasize that disciplinary action may be taken if futon manufacturers fail to comply with the laws.

**Budget Issues.** BHFTI has been feeling the sting of budget cuts since the enactment of the state's 1992-93 Budget Act, which requires DCA and its agencies to reduce their collective travel expenses by 50%; according to the Bureau, 80% of its travel budget involves enforcement activities, a crucial Bureau function. Additionally, the Budget Act requires all DCA agencies to reduce their expenditures by 10% from 1991-92 levels; that 10% special-fund money will be transferred to the state's general fund next June (*see supra COMMENTARY*).

Regarding BHFTI's 1993-94 budget, DCA recently approved the Bureau's budget change proposals (BCPs) which request additional spending authority to cover a possible increase in rent; institute a toll-free consumer number; hire a data processing specialist to maintain existing systems, acquire improvements, and conduct ongoing staff training; create a new Textile Chemist I position to handle increased workload from inspections generated by Technical Bulletin 133; add two Inspector II positions; and hire a warehouse person. [12:2&3 CRLR 91] At this writing, the BCPs await approval by the Department of Finance.

**BHFTI Issues Withhold-From-Sale Orders.** On July 3, the Bureau announced its issuance of statewide withhold-from-sale orders to several upholstered furni-

ture manufacturers selling goods throughout California from truck-trailers in parking lots, on street corners, and similar locations. According to the Bureau, none of the furniture confiscated in a joint investigation by BHFTI and the Lake County and Fresno County district attorney's offices and tested in the Bureau's laboratory met California's flammability standards; further, none of the manufacturers cited were licensed to sell furniture in California. The furniture companies cited by the Bureau are Walker Frame Company of High Point, North Carolina; North Carolina Furniture Transport of North Carolina and Oregon; and Relax Manufacturing Company, Inc., International Furnishings, Hamilton House Furniture, and Carolina Furniture Industries, all of Thomasville, North Carolina.

According to DCA Director Jim Conran, upholstered furniture is the leading cause of fire deaths in the United States, resulting in more than 1,000 fatalities each year. According to the Bureau, upholstered furniture sold from trucks and trailers is liable to be in violation of California law; the Bureau warned consumers to be extremely cautious if they choose to purchase upholstered furniture from places other than established retailers.

**Public Hearings on Proposed Insulation Regulations.** On January 1, 1985, AB 3497 (Chapter 1456, Statutes of 1984) transferred jurisdiction over the sale of insulation in California from the California Energy Commission (CEC) to the Bureau. Business and Professions Code sections 19164 and 19165 mandate that no insulation material may be sold or installed in this state which is not certified by the manufacturer to have been tested in accordance with BHFTI's standards; the law also provides that CEC's standards will be enforced by the Bureau until BHFTI adopts its own regulations. On September 16, BHFTI conducted a public hearing in Sacramento on its long-awaited proposed changes to CEC's regulations, located in Part 12, Title 24 of the State Referenced Standards Code. [11:4 CRLR 81]

The purpose of the proposed amendments is to include in the regulatory scheme products not yet covered, such as insulated roof and wall panels, pipe insulation, and flexible insulated ducting, as well as newly-developed insulation materials including calcium silicate, flexible cellular plastic, and phenolic insulation. The proposed amendments would also update and amend existing product standard regulations to include



the latest acceptable testing criteria. Finally, the amended regulations would establish labeling standards to minimize fraudulent labeling of insulation products. According to BHFTI, the proposed amendments are necessary to protect the public from hazardous insulation products and to eliminate energy loss caused by the substandard performance of some insulation products. The Bureau is directed by statute to establish insulation standards promoting—among other things—fire safety, fungus resistance, dimensional stability, optimum density of loose fill insulations, and long-lasting thermal performance; such standards are also aimed at reducing odor emission and corrosion which may occur when chemical ingredients are improperly blended. The Bureau relied on data from the insulation industry, ASTM testing procedures, and its own performance observations in drafting its amendments.

The Bureau has determined that the amendments will have some cost impact on all manufacturers of insulation products not yet subject to the current regulations. For example, manufacturers will be required to conduct tests to verify thermal performance and fire safety and to make this data available to the Bureau. BHFTI estimates costs will be approximately \$2,000 per manufacturer per product line. According to BHFTI, most progressive manufacturers of unregulated insulation products have already conducted such tests.

At the September 16 hearing, various representatives of the insulation industry testified regarding the proposed amendments. For example, Tom Campbell of the North American Insulation Manufacturers Association (NAIMA) criticized segments of the proposal for not using terms of art common to the industry. He also suggested that the regulations include more definitions in order to reduce ambiguity, and claimed that some of the proposed tests are not appropriate for particular types of insulation. Moreover, Campbell strongly opposed the requirement for extensive labeling, citing the impossibility of printing such voluminous information on small products such as molded pipe insulation. Further, Campbell opined that such labeling could only be achieved at a substantial cost to consumers, amounting to what he characterized as a hidden tax. Campbell also requested a ban on cellulose fiber in loose fill form.

Don Bellis, an independent fire protection engineer, stated that cellulose fiber is a unique product with unique hazards; Bellis explained that cellulose fiber, used

primarily in attics and walls, allows fires to smolder and spread to hidden locations, thereby permitting fires to grow to potentially unmanageable sizes before they are even detected. Bellis also expressed concern that cellulose exhibits an aging problem in which the fiber's fire safety performance deteriorates rapidly once installed, and cited BHFTI's own test results as evidence.

Richard Holober of the California AFL-CIO testified on another dimension of the cellulose issue—the firefighters who deal with the direct results of any inadequacies in the state's standards. Like Bellis, Holober stressed that studies have shown that cellulose fiber fire-retardancy begins to fail within six months of installation. Moreover, Holober warned that chemicals within the insulation actually corrode electrical equipment, thereby increasing the opportunity for electrical fires within the structure.

Bureau Chief Damant responded that the cellulose problem must be addressed at the federal level due to federal preemption of the issue. Since California must adhere to federal standards, Damant suggested that the appropriate body to address such concerns is the federal Consumer Product Safety Commission, not BHFTI. Moreover, Damant said that even if some cellulose insulation does not meet established standards when tested, no systematic study has been conducted proving a direct correlation between alleged inadequacies in this type of insulation and a high percentage of fires. Damant urged that one must be careful to distinguish between merely potential and actual hazards, and noted that the public would have to absorb the high costs of rehabilitation of existing buildings containing cellulose fiber insulation if it were to be banned. Damant assured the public that California has the finest quality assurance program in the United States and added that, in the last two months, BHFTI has prohibited two cellulose insulation suppliers from doing business in California.

BHFTI held a second public hearing on September 22 in Long Beach to accommodate those who were unable to attend the September 16 meeting. Three hearing participants testified primarily on technical aspects of the proposal. The public comment period on these proposed regulations closed on September 22. Currently, BHFTI is analyzing all of the comments received; Bureau Chief Damant has indicated that there will probably be another round of hearings after BHFTI makes appropriate revisions.

**Review of Home Furnishings Act.** At its June 9 meeting, the Advisory Board

reviewed several BHFTI legislative proposals which are expected to be included in DCA's 1993 omnibus bill. [12.2&3 CRLR 90] Specifically, the Bureau will seek to make the following changes to the Business and Professions Code: amend sections 19051 and 19055 to incorporate the upholstered furniture retailer's license and the bedding retailer's license into a combination license; consolidate sections 19064 and 19211 to eliminate redundancy regarding the licensure of persons whose license was previously revoked or suspended; clarify section 19072 to indicate that consumers are exempt from responsibility for compliance; clarify section 19072.5 to indicate that it is the retailer's responsibility to obtain from the manufacturer and affix labels to unlabeled foreign-made upholstered furniture or bedding; amend section 19161.3 to include polyurethane foam used as carpet underlayment if it is not regulated by federal law; conform section 19172 with section 19170.5 regarding canceled licenses; delete section 19175, which provides that all fees collected by BHFTI relating to insulation standards shall be expended only for carrying out provisions of law regarding insulation standards; and amend section 19213.1 and 19213.2 to set maximum testing fees at actual cost.

## ■ LEGISLATION

**ABX 66 (Vasconcellos)** abolishes 47 specified advisory boards, including BHFTI's Advisory Board (*see supra* MAJOR PROJECTS). This bill, which takes effect on January 1, 1993, was signed by the Governor on September 28 (Chapter 21X, Statutes of 1992).

**SB 2044 (Boatwright)** declares legislative findings regarding unlicensed activity and authorizes all DCA boards, bureaus, and commissions, including BHFTI, to establish by regulation a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. This bill also provides that the unlicensed performance of activities for which a BHFTI license or registration is required may be classified as an infraction punishable by a fine not less than \$250 and not more than \$1,000. SB 2044 also provides that if, upon investigation, BHFTI has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by the Bureau to offer or perform those services, the Bureau may issue a citation containing



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an order of correction which requires the violator to cease the unlawful advertising and notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

Previous versions of SB 2044 would have substantially increased the statutory ceiling on various BHFTI licensing fees; however, the fee increase provisions were deleted in the final days of the session.

Existing law provides for the registration of dry cleaning plants with BHFTI. This bill transfers the registration of dry cleaning plants to the Department of Commerce; any monies in the Dry Cleaning Account in the Bureau of Home Furnishings Fund will transferred to the Dry Cleaning Fund, which is created by the bill. SB 2044 was signed by the Governor on September 30 (Chapter 1135, Statutes of 1992).

**AB 2370 (Canella).** Existing law requires dry cleaning plants to register with BHFTI, and expresses the intent of the legislature that the provisions relating to registration do not affect the statutes, regulations, or the jurisdiction of state agencies relating to control of toxic chemicals used in fabric care and dry cleaning. This bill establishes the California Dry Cleaning Industry Task Force and requires it to prepare a report on prescribed matters relating to the effect of dry cleaning industry practices on the environment. This bill was signed by the Governor on July 24 (Chapter 347, Statutes of 1992).

## BOARD OF LANDSCAPE ARCHITECTS

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Authorized in Business and Professions Code section 5615 *et seq.*, the Board of Landscape Architects (BLA) licenses those who design landscapes and supervise implementation of design plans. Currently, applicants must pass the written examination of the national Council of Landscape Architectural Registration Boards (CLARB) in order to qualify for licensure; however, commencing in 1993, BLA will administer its own written examination. [12:2&3 CRLR 92] In addition, an applicant must have the equivalent of six years of landscape architectural experience. This may be a combination of education from a school with a Board-approved program in landscape architecture and field experience.

The Board investigates verified complaints against any landscape architect and prosecutes violations of the Practice Act. The Board also governs the examination of applicants for certificates to practice landscape architecture and establishes criteria for approving schools of landscape architecture. BLA's regulations are codified in Division 26, Title 16 of the California Code of Regulations (CCR).

BLA consists of seven members who serve four-year terms. One of the members must be a resident of and practice landscape architecture in southern California, and one member must be a resident of and practice landscape architecture in northern California. Three members of the Board must be licensed to practice landscape architecture in the state of California. The other four members are public members and must not be licensees of the Board. On July 30, Governor Wilson appointed San Diego landscape architect Marian Marum to fill the southern California seat on the Board.

### ■ MAJOR PROJECTS

**Board Responds to Anticipated Lack of Reciprocity Licensure.** On May 8, following years of dissatisfaction, demands, and ultimatums, BLA decided to break off its relationship with CLARB and administer its own written examination. Although it has long been dissatisfied with CLARB's test, the immediate impetus for BLA's decision stemmed from its need to review and rescore the examinations of California takers of CLARB's 1991 Uniform National Examination (UNE). Under CLARB's scoring method, only 9% of California applicants successfully completed that exam; the pass rates in some states were as low as 0% and the national pass rate was 6%. In response to the troubling low pass rates, BLA convened a score modification workshop last December and subsequently revised the scores of California examinees. BLA then notified CLARB that it would continue to utilize CLARB's examination only if CLARB agreed to certain conditions, such as the use of criterion-referenced methodology for establishing the passing score for each section of the examination; providing California with the recommended passing score for each section of the examination and the results of its passing score workshop; pretesting the multiple choice questions; and using a procedure for scoring the graphic sections of the UNE where each section is graded independently by at least two evaluators. Because CLARB did not agree to BLA's conditions, BLA decided to administer its own 1993 licensing examination, and sub-

sequently selected Human Resources Strategies of Newport Beach to draft the exam. [12:2&3 CRLR 93; 12:1 CRLR 66-67]

BLA and the landscape architecture profession have expressed concern that other states will not recognize California's new test and will not grant reciprocity licensure to California landscape architects. In fact, the landscape architecture boards in several states, including Texas, Arkansas, Ohio, and Oregon, have since notified BLA that they will not accept for reciprocity licensure purposes a California examinee's 1991 UNE score, if that score has been modified. However, while acknowledging that BLA's decision would—to some extent—affect reciprocity, Department of Consumer Affairs (DCA) Director Jim Conran observed that his responsibility, and that of BLA, is to protect the people of California, and that "the fundamental purpose of state licensing programs is to protect the public of the state issuing the license. Reciprocity can only be an incidental benefit not the primary reason for state licensure."

On June 8, CLARB President Gary Bollier notified all CLARB member boards of California's decision to prepare its own examination for administration, and stated that CLARB "regret[s] this decision and the effect that it will have on reciprocity into and out of the state of California." CLARB claimed that it "made several proposals to the California Board which [CLARB] believed addressed [BLA's] technical concerns about the examination." Further, Bollier contended that BLA's decision to administer its own examination was based on "some other internal problems which were beyond [CLARB's] ability to resolve. It appears that these problems ultimately guided [BLA] to [its] decision to proceed with a California-only examination."

In response to this communication, BLA staff drafted a letter to CLARB's member boards clarifying its reasons for discontinuing the use of CLARB's examination. At its July 17 meeting, BLA reviewed the letter, which states that several factors contributed to the Board's decision to administer its own examination, only one of which was consistently low pass rates for candidates. According to BLA, testing experts consider the low passing rate to be indicative of one or more of the following factors: (1) test items that are too difficult on average; (2) a passing score that assesses "mastery" as opposed to "minimum competency" for this type of licensing examination; or (3) test items that do not measure appropriate knowledge, skills, and abilities. The letter