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Environmental Protection Review of Selected 1972 California Legislation

University of the Pacific; McGeorge School of Law

Environmental Protection

Environmental Protection; environmental impact reports

Public Resources Code §§21100, 21102, 21104, 21105, 21150, 21151 (amended); §§21108, 21152, 21153, 21154, Chapter 2.5 (commencing with §21165) (new); §§21103, 21107, 21152, 21153 (repealed).
AB 889 (Knox); STATS 1972, Ch 1154

Defines terms used in Environmental Quality Act of 1970; provides that environmental impact report is required only on discretionary, as opposed to ministerial decisions; provides guidelines for the preparation of environmental impact reports; specifies limitations on actions and proceedings used to attack decisions of a public agency on the grounds of non-compliance with the Environmental Quality Act of 1970; imposes a 120-day moratorium on impact report requirements on private projects; validates specified projects and actions not in compliance with the Environmental Quality Act of 1970; makes related changes.

The Environmental Quality Act of 1970 (commencing with §21100 of the Public Resources Code) requires environmental impact reports from state agencies, boards and commissions, and from local government agencies on projects which would have a significant effect on the environment. In *Friends of Mammoth v. Board of Supervisors,* 8 Cal. 3d 1, 104 Cal. Rptr. 16, 500 P.2d 1360 (1972), the California Supreme Court interpreted the standards established by the Environmental Quality Act of 1970 as being applicable to private as well as public projects.

Chapter 2.5 (commencing with §21060) has been added to the Public Resources Code to provide definitions for certain terms used in the Environmental Quality Act of 1970. An "environmental impact report" has been defined as an informational document which, when its preparation is required by Division 13 of the Public Resources Code, shall be *considered* by every public agency prior to the agency's approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies with detailed information about the effect a proposed project is likely to have on the environ-

ment; to list ways in which any adverse effects of such a project might be minimized; and to suggest alternatives to such a project.

An environmental impact report must include a detailed statement setting forth the matters specified in Section 21100. Section 21100 has been amended to require state agencies, boards and commissions to prepare, or cause to be prepared by contract and certify the completion of, an environmental impact report on any project they propose to carry out or approve which may have a significant effect on the environment, rather than merely include an environmental impact statement in any report on such a project. The matters which must be contained within the environmental impact report are: (a) the environmental impact of the proposed action; (b) any adverse environmental effects which cannot be avoided if the proposal is implemented; (c) mitigation measures proposed to minimize the impact; (d) alternatives to the proposed action; (e) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; (f) any irreversible environmental changes which would be involved in the proposed action should it be implemented; and (g) the growth-inducing impact of the proposed action.

"Project" has been defined as: (a) activities directly undertaken by any public agency; (b) activities undertaken by a person which are supported by subsidies, loans or other forms of assistance from one or more public agencies; and (c) activities involving the issuance to a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies. "Persons" has been defined as including any person, firm, association, organization, partnership, business, trust, corporation, company, district, county, city and county, town, the state, and any of the agencies and political subdivisions of such entities. Section 17 of Chapter 1154 declares that such definitions are intended to be a clarification of existing law.

Section 21080 has been added to provide that impact reports shall be required on *discretionary* projects proposed to be carried out or approved by public agencies, as opposed to *ministerial* projects. Discretionary projects include, but are not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits and the approval of tentative subdivision maps (except where such a project is exempt from the preparation of an environmental impact report pursuant to Section 21166). Section 21166 provides that when an environmental impact report has been prepared for a project pursuant to this division, no subsequent report shall be required unless either substantial changes are proposed in

the project which will require major revisions of the environmental impact report, or substantial changes occur with respect to the circumstances under which the project is being undertaken thereby requiring revisions in the environmental impact report.

Sections 21083 *et seq.* have been added to provide guidelines and procedures for the development of objectives, criteria and procedures for the evaluation of projects and the preparation of environmental impact reports. Such guidelines must specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a "*significant effect on the enviroment*," in order to determine whether or not an environmental impact report is required. Such criteria shall *require* a finding of "significant effect on the environment" if any of the following conditions exist: (a) a proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals; (b) the possible effects of a project are individually limited but cumulatively considerable; or (c) the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly. The guidelines may categorically exempt classes of projects from the provisions of the Environmental Quality Act of 1970.

Sections 21108 and 21152 have been added to require state agencies, boards, commissions, and local agencies, which approve, or determine to carry out, a project, to file notice of such approval or determination.

Chapter 6 (commencing with §21165) has been added to place limitations on actions or proceedings used to attack, review, set aside, void or annul acts or decisions of a public agency on the grounds of noncompliance with the Environmental Quality Act of 1970. Section 21167(a) provides that an action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment *must be commenced within 180 days of the public agency's* decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project. Sections 21167(b) and 21167(c) provide that an action must be commenced within 30 days after the filing of notice required by Sections 21108 and 21152 where the action or proceeding alleges either that a public agency has improperly deter-

mined whether a project may have a significant effect on the environment or that an environmental impact report does not comply with the provisions of this division. Procedures for such actions or proceedings are set forth in Section 21167.5 *et seq.*

Section 21171 imposes a moratorium on impact report requirements on private projects until 120 days following the effective date of Chapter 1154; this section does not prohibit or prevent a public agency, prior to the 121st day after the effective date of this section, from considering environmental factors in connection with the approval or disapproval of a project. Section 21169 validates such private projects which were carried out or approved on or before the effective date of this section, and the issuance by any public agency of any lease, permit, license, certificate or other entitlement for use executed or issued on or before the effective date of this section, notwithstanding a failure to comply with this division, if such action or project is otherwise legal and valid.

Section 21170 provides that Section 21169 does not operate to validate a project which has been judicially determined, prior to the effective date of this section, to be illegal, void or ineffective because of noncompliance with this division. Section 21170 additionally provides that Section 21169 does not operate to validate a project the legality of which was being contested in a judicial proceeding if: (1) the pleadings, prior to the effective date of this section, alleged facts constituting a cause of action for, or raised the issue of, a violation of this division; and (2) the action was pending and undetermined on the effective date of this section. However, Section 21169 will validate any project to which this subdivision applies if, prior to the commencement of judicial proceedings and in good faith and in reliance upon the issuance, by a public agency, of any lease, permit, license, certificate or other entitlement for use, *substantial construction has been performed and substantial liabilities for construction and necessary materials have been incurred.*

Chapter 1154 has made several additional changes in the Environmental Quality Act of 1970. Section 21151 has been amended to delete the requirement that the legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan make a finding that a project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. Section 21151 now requires that all local agencies, rather than only those which do not have an offi-

cially adopted conservation element of a general plan, make an environmental impact report.

Section 21150 has been amended to require environmental impact reports in connection with the allocation of state or federal funds to local agencies for all projects which may have a significant effect on the environment, rather than only land acquisition or construction projects which may have such an effect.

Chapter 5 (commencing with §21160) has been added to Division 13 to authorize public agencies to require an applicant for a lease, permit, license, certificate or other entitlement for use to submit information which may be necessary to enable them to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental report.

See Generally:

1) Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 1, 500 P.2d 1360, 104 Cal. Rptr. 16 (1972).
2) 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 406 (1971).

Environmental Protection; State Air Resources Board—regulatory procedure

Health and Safety Code §39054 (repealed); §39054 (new); §39052 (amended).
AB 579 (Biddle); STATS 1972, Ch 806
Support: State Air Resources Board

Section 39054 of the Health and Safety Code prescribes the procedure by which the State Air Resources Board may adopt, amend or enforce air pollution control regulations, plans, programs and rules. Prior to amendment, whenever there was a failure to comply with the board's ambient air quality standards within an air basin, or a local or regional authority had not taken reasonable action to control emissions from nonvehicular sources, Section 39054 required a process entailing investigations, testing, a request for a report from the local authority, submission of the local report to the board, and public hearings before the board could enforce its standards. The section now only requires the board to hold a public hearing, upon 30 days written notice given to the basinwide air pollution coordinating council, if any, and the air pollution control districts affected. The board need not give 30 days notice if it receives evidence that a concentration of air contaminants in any place is presenting an imminent and substantial danger to the health of persons, and that the districts affected are not taking reason-

able action to abate the concentration of air contaminants. In such case the board shall give, orally if necessary, as much notice as possible, but no less than 24 hours. The board must state in the action taken the facts which prevented it from giving 30 days written notice.

Former Section 39054 included a clause providing misdemeanor penalties for violation of any standard, rule or regulation adopted by the board pursuant to Part 1 of the Mulford-Carrell Air Resources Act [CAL. HEALTH AND SAFETY CODE §3900 *et seq.*], in any area in which such standards, rules and regulations were being enforced by the board. This penalty provision has been deleted.

Section 39052 has been amended to provide that the review of rules and regulations of local or regional authorities be pursuant to Section 39054 *supra.*

Section 39052 has also been amended to delete the January 1, 1971, deadline for the adoption of exhaust emission standards.

COMMENT

Before amendment by Chapter 806, Section 39054 required extensive, time-consuming procedures before the board could enforce an air pollution control plan, program, rule or regulation. Several months could elapse in this process with no emergency measures available. The removal of these cumbersome procedures and the inclusion of provisions for prompt action when specified emergency situations arise should allow the board to act in a more efficient manner.

While the clause pertaining to misdemeanor penalties is not included in the revised version of §39054, the enforcement measures of §39260 of the Health and Safety Code will apply. Section 39260 provides for a civil penalty not to exceed six thousand dollars ($6,000) for each day in which a violation of any order of abatement issued by the State Air Resources Board occurs.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1967 CODE LEGISLATION 136.

Environmental Protection; motor vehicle emission standards

Health and Safety Code §§39158, 39159 (new).
SB 382 (Petris); STATS 1972, Ch 1137

Section 39158 has been added to the Health and Safety Code to require, beginning April 1, 1973, and quarterly thereafter, every person

manufacturing new motor vehicles for sale in this state to file with the State Air Resources Board a report as to that person's efforts and progress in meeting specified federal standards regarding the emissions of carbon monoxide and hydrocarbons [42 U.S.C. §1857-1(b)(1) (1970)]. The board is required to conduct such investigations with respect to the reports as it deems necessary, and must file a summary of the quarterly reports with the Legislature and the Governor as soon after each quarter as possible. No report is required once all models of vehicles of a manufacturer which are sold in California and which are subject to the federal standards meet all such standards.

Section 39158 further specifies that the manufacturers' reports shall be available to the public. However, the manufacturer may designate that a portion of the report is a trade secret and that portion shall not be released except to specified board employees; however that portion of the report may be released to the public if the board, after an investigation, determines that such portion is not in fact a trade secret.

Section 39159 has been added to the Health and Safety Code to authorize the board to revoke outstanding approvals of new motor vehicles for sale in California if the manufacturer thereof willfully fails to file the quarterly reports required by §39158 or files a report which is deemed by the board to inadequately describe the manufacturer's efforts and progress. The board may also withhold future approvals of a manufacturer's vehicles until such time as the manufacturer offers for sale in California vehicles which meet the federal standards.

Environmental Protection; air pollution variances

Health and Safety Code §§24225, 24226, 24295, 24297, 24299, 24300, 24301, 24312, 24313, 24314, 24357, 24357.1, 24365.6, 24365.8, 24365.10, 24367.2, 24367.3, 24367.4, 24367.11, 39420, 39421, 39474, 39476, 39478, 39480, 39492, 39493, 39494 (amended); §§24314.1, 24321.1, 24367.12, 24367.13, 39494.1, 39500.1 (new).
AB 1084 (Biddle); STATS 1972, Ch 950

Limits the discretion of air pollution control district hearing boards in granting variances; requires additional hearings for the continuation of variance; requires hearings to be held in a location readily accessible to the public; requires that hearing board decisions include reasons for the decision and be in writing; increases the membership of hearing boards and specifies the qualifications of

board members; amends notice requirements for hearings on the granting, revocation or modification of a variance.

Air pollution control district hearing boards are empowered to grant variances if it is found that: (a) the petitioner for a variance is in violation of a specified statute, rule, regulation or order; (b) due to conditions beyond the reasonable control of the petitioner, requiring compliance would result in either an arbitrary and unreasonable taking of property, or the practical closing and elimination of a lawful business; and (c) such closing or taking would be without a corresponding benefit in reducing air contaminants [CAL. HEALTH AND SAFETY CODE §24291 *et seq.*—county air pollution control district; §24365 *et seq.*—Bay Area Pollution Control District; and §39470 *et seq.*—regional air pollution control districts].

In prescribing other and different requirements, Sections 24297, 24365.6 and 39476 allow the hearing board to exercise a wide discretion in weighing the equities involved and the advantages to the residents of the district from the reduction of air contaminants and the disadvantages to any otherwise lawful business, occupation or activity involved, resulting from requiring compliance with applicable requirements. Chapter 950 amends §§24297, 24365.6 and 39476 to require that such decision must be consonant with the Legislature's declarations set forth in Section 24198 and subdivision (d) of Section 24199 of the Health and Safety Code, that the people of the State of California have a primary interest in atmospheric purity and freedom of the air from any air contaminants.

Sections 24301, 24365.10 and 39480 of the Health and Safety Code previously allowed a variance to be *continued* without another hearing, on the approval of the air pollution control officer. Chapter 950 allows a variance to *continue* only after another hearing.

Sections 24314.1, 24367.13 and 39494.1 have been added to the Health and Safety Code to require that any hearing conducted by the hearing board be held in a location readily accessible to the public.

Sections 24321.1 and 39500.1 have been added, and Section 24367.11 has been amended, to require that all orders of the hearing board be in writing and contain the reasons for the board's decision.

Sections 24225, 24357 and 39420 have been amended to increase the membership of the hearing boards from three to five members. One member shall have been admitted to the practice of law in California, one member must be a chemical or mechanical engineer, another member shall be a representative from the medical profession whose

specialized skills, training or interests are in the fields of environmental medicine, community medicine or occupational/toxicologic medicine, and the final two members shall be members of the public. If the air pollution control board of a county of less than 500,000 inhabitants is unable to secure a person with the prescribed qualifications, it may appoint any person.

Sections 24312, 24367.2 and 39492 previously allowed a hearing to be held with only one member present. Chapter 950 has amended these sections to require a minimum of three. A concurrence of three members is necessary to a decision under amended Sections 24313, 24367.3 and 39493. Where any matter was decided with three members present, amended Sections 24314, 24367.4 and 39494 allow the hearing board, with not less than four members present, to rehear such decision within 30 days. The length of the terms for new members created by these changes is provided for in Sections 24226, 24357.1 and 39421.

Service of notice of the time and place of a hearing to grant a variance was required, prior to the changes set forth in Chapter 950, only upon the air pollution control officer and upon the applicant. Sections 24295, 24365.8 and 39474 now require, in addition to the air pollution control officer and the applicant, that the board send notice of the hearing to every daily newspaper of general circulation in the district and to every person who requests such notice. The notice must contain, in addition to the time and place of the hearing, such information as may be necessary to apprise the people within the district of the nature and purpose of the hearing. The requirements of notice to an unknown person in Section 24300 have been amended by Chapter 950 to conform to requirements in Section 6061 of the Government Code.

COMMENT

The apparent purpose of Chapter 950 is to tighten the procedure for granting variances [A.B. 1084, §1, 1972 Regular Session, *as introduced*, March 14, 1972 ". . . variances have been granted too readily in the past, thus hindering the work of air pollution control districts"]. Several positive steps have been taken in this direction: the requirement of notice to every individual who requests such notice and notice to the public in general; meetings in a location readily accessible to the public; and the requirement of additional hearings before a variance can be continued. These provisions should insure an open and enlarged discussion of the relevant issues involved in variance hearings.

However, the actual decision of the hearing board will ultimately be determined by the guidelines under which it works. Sections 24297, 24365.6 and 39476 continue to allow a *wide discretion* in weighing the equities involved in granting a variance. Chapter 950 requires that this discretion be restricted only by the declaration that the people of this state have a primary interest in atmospheric purity. That is, the above sections now require simply that the decision of the hearing board be consonant with the people's interest in pure air.

Although Sections 24297, 24365.6 and 39476 apparently do not give the hearing board as much latitude as they did before being amended by Chapter 950, the restriction is minimal. It seems inconceivable that hearing boards, which in the past granted variances so readily as to hinder the work of air pollution control districts, will be substantially deterred by this requirement of harmony with an interest in pure air. Definite guidelines, rather than vague ideals, may be required to tighten variance procedures.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK §6.31 *et seq.* (1970).

Environmental Protection; air pollution variance performance bonds

Health and Safety Code §§24297, 24365.6, 39476 (amended).
SB 61 (Coombs); STATS 1972, Ch 343

Sections 24297, 24365.6 and 39476 of the Health and Safety Code, as amended, authorize the hearing board of a county air pollution control district to require, as a condition of granting a variance, the posting of a performance bond by the party to whom the variance is to be granted. The bond may assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. The corporate surety or sureties have the option, in case of a variance default, to promptly remedy the variance default or to pay the district an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

Vessels that are not operating in violation of any federal law enacted for the purpose of controlling emissions from combustion of vessel fuels are specifically exempted from these provisions.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK §6.31 *et seq.* (1970).

Environmental Protection; air pollution control districts—regulation of burning

Health and Safety Code §§24296, 25365.5, 39475 (repealed); §§24224.1, 24260.1, 24296, 24296.5, 24354.18, 24355.5, 24365.5, 39382.1, 39402.1, 39475, 39475.5 (new); §§24297, 24361.4, 24362.1, 24365.6, 39298.8, 39460, 39476 (amended).
AB 549 (Beverly); STATS 1972, Ch 975
Support: Los Angeles County; State Air Resources Board

Chapter 10 (commencing with §39295) of the Health and Safety Code specifies prohibitions and exceptions relating to air pollution from burning. Section 24260.1 has been added, and Sections 24361.4, 24362.1 and 39460 have been amended to grant specific authority to air pollution control districts to make and enforce all needful orders, rules and regulations necessary or proper to accomplish the purposes of such burning provisions. Sections 24354.18 and 39382.1 have been added to require Bay Area and regional air pollution control districts to do such acts as may be necessary to carry out such burning provisions. Sections 24224.1, 24355.5 and 39402.1 have been added to require that such burning provisions be observed and enforced by the air pollution control officers of the air pollution control districts.

Prior to repeal, Sections 24296, 24365.5 and 39475 provided that no variance from a statute or rule, regulation or order of an air pollution control board could be granted if the operation under the variance would result in a nuisance. These sections have been reenacted to provide that such variance shall not be granted if the operation under the variance will result in a violation of Sections 24243, 24360 or 39430, which provide that a person shall not discharge from any source such quantities of air contaminants, smoke or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such persons or the public, or which cause or have a natural tendancy to cause injury or damage to business or property.

Sections 24296.5, 24365.5 and 39475.5 have been added to the Health and Safety Code to revise the requirements for the granting of a variance. These sections provide that the petitioner must already be in violation of a specified statute, rule, regulation or order; and that "conditions beyond the reasonable control of the petitioner" are required for a variance, rather than "conditions beyond control" as stated in Sections 24296, 24365.5 and 39475 prior to their repeal.

Section 39298.8 has been amended to require that implementation plans for the control and regulation of agricultural burning be adopted by regulation of air pollution control districts, rather than by ordinance by local and regional authorities.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK §§6.34-6.36 (1970).
2) 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 407 (1971).
3) Comment, *California Legislation on Air Contaminant Emissions from Stationary Sources*, 58 CALIF. L. REV. 1474 (1970).

Environmental Protection; wood waste burning

Health and Safety Code §§39297.6, 39297.7 (new); §39077.3 (repealed).
AB 149 (Chappie); STATS 1972, Ch 78
(Effective May 19, 1972)
Support: County Supervisors Association; Sacramento Air Basin Coordinating Council

Section 39296 of the Health and Safety Code prohibits the use of open fires for the purpose of disposal of petroleum wastes, demolition debris, tires, tar, wood waste or other combustible or flammable solid or liquid waste. Chapter 78 adds Section 39297.6 to the Health and Safety Code to allow air pollution control districts, upon the request of any person, to authorize the disposal of wood waste from property being developed for commercial or residential purposes by open outdoor fires on the property where it was grown. Such wood waste from trees, vines or bushes may be disposed of by open outdoor fires under the following conditions: (1) there has been a finding by a county health officer within such air pollution control district that it is more beneficial to the general public health to burn such waste on location than to dispose of it by other means; (2) the district has developed criteria for such disposal which shall include provisions reducing the smoke level from such waste; (3) the State Air Resources Board has approved such criteria; (4) the authorization granted is in the form of a permit, issued by the air pollution control officer, and such permit allows burning only on permissive burn days (Section 39298); if permissive burn days are not designated for the county, the air pollution control district shall determine on which days such burning may take place; and (5) no such authorization shall be granted after July 1, 1975.

Section 39297.6 further provides that it is the intent of the Legislature that such wood waste disposal be reasonably regulated so as not to

create a public nuisance nor significantly reduce the quality of the ambient air. The State Air Resources Board is required to conduct studies of alternative methods of disposing of wood waste from trees, vines or bushes other than by outdoor fires.

Section 39297.7 has been added to provide that notwithstanding the prohibition on the use of open fires in Section 39296, any person actively constructing a replacement facility for an open wood waste burner may be permitted, until January 1, 1973, to burn on all days for the purpose of disposing wood waste in such burner.

COMMENT

Sanitary landfill sites are valuable and very difficult to obtain. The purpose for enacting Chapter 78 is apparently to prolong the life of these landfill sites by reserving them for high priority waste such as garbage and low-volume rubbish [§39297.6(c)]. Allowing open outdoor fire disposal of high-volume wood waste until alternative methods of disposal can be developed by the State Air Resources Board will serve this purpose.

A point of inquiry is whether the phrase "no such authorization shall be granted after July 1, 1975" will prohibit burning after this date, or simply prohibit the issuance of new permits, thus allowing burning to continue under permits issued before July 1, 1975.

See Generally:

1) 2 PAC. L.J., REVIEW OF SELECTED 1970 CALIFORNIA LEGISLATION 407 (1971).

Environmental Protection; revenue bonds for pollution control equipment

Health & Safety Code Division 27 (commencing with §39600) (new).
AB 1925 (Knox); STATS 1972, Ch 1257
Support: California Manufacturers Association; California Association of Sanitation Agencies; Los Angeles Area Chamber of Commerce

Assembly Constitutional Amendment No. 81, which was approved by the voters of California at the 1972 general election, added Section 14 to article XVI of the California Constitution. This amendment empowered the Legislature to make loans to private bodies for the acquisition, construction and installation of environmental pollution control facilities, including the acquisition of all technological facilities necessary or convenient for pollution control. The Legislature was further authorized to issue revenue bonds, not secured by the taxing power

of the state, to raise funds for the purpose of financing such pollution control facilities.

Chapter 1257 has added Division 27 (commencing with §39600) to the Health and Safety Code to create the California Pollution Control Financing Authority, and to authorize it to issue and sell tax-exempt revenue bonds and bond anticipation notes to finance the installation of pollution control equipment on private industrial facilities. Article 3 (commencing with §39620) provides that the state assumes no obligation for repayment of the principal or interest on such bonds. The amount of indebtedness shall not exceed $200 million of new debt, except as the Legislature may approve.

Section 39615 provides that no project shall be eligible for financing under this division unless the State Water Resources Control Board, State Air Resources Board or the Resources Agency certifies that there is reasonable assurance that: (a) the project is necessary to further compliance with applicable federal and state standards; and (b) the project is consistent with an approved regional, basin or state plan for environmental protection. In addition, no project for water pollution control is eligible for financing under this division unless the authority finds that local public financing cannot reasonably be obtained.

Environmental Protection; air pollution enforcement

Health and Safety Code §§39079, 39079.6, 39276 (new).
AB 580 (Biddle); STATS 1972, Ch 949
(Effective August 16, 1972)

Section 39079 has been added to the Health and Safety Code to provide that the State Air Resources Board or any air pollution control district may, for the purpose of carrying out their duties, adopt rules and regulations to require the owner or operator of any air pollution emisssion source to take such action as the board or the district may determine to be reasonable for the determination of the amount of pollution emission from such source.

Section 39079.5 has been added to the Health and Safety Code to provide that the executive of the board or any air pollution control officer having jurisdiction, or any authorized representative of such officer, shall have the right of entry to any premises on which an air pollution emission source is located for the purpose of inspecting such source, securing samples of emissions therefrom, or securing any records required to be maintained in connection therewith by the board or any

air pollution control officer. Such entry must be for the purpose of enforcing or administering any state law, order, regulation or rule relating to air pollution. The officer must present his credentials or, if necessary under the circumstances, obtain an inspection warrant pursuant to Title 13 (commencing with §1822.50) of the Code of Civil Procedure [*See* Vidaurri v. Superior Court, 13 Cal. App. 3d 550, 91 Cal. Rptr. 704 (1970)].

Section 39276 has been added to the Health and Safety Code to require the State Air Resources Board and air pollution control districts to endeavor to attain ambient air quality standards established by the Environmental Protection Agency pursuant to Section 1857c-4 of Title 42 of the United States Code. Section 39276 further authorizes the board to require a basinwide regional district or a basinwide air pollution control coordinating council to review its coordinated basinwide air pollution control plans for revisions necessary to meet such federal standards.

See Generally:

1) Vidaurri v. Superior Court, 13 Cal. App. 3d 550, 91 Cal. Rptr. 704 (1970) (warrantless inspection held unconstitutional).
2) CAL. CODE CIV. PROC. Title 13 (commencing with §1822.50) (Inspection Warants).

Environmental Protection; electronic billboards

Business and Professions Code §5405 (amended).
AB 669 (Murphy); STATS 1972, Ch 853
Support: California Electric Sign Association

Section 5405 of the Business and Professions Code states that notwithstanding any other provision of this chapter and, except for the situations provided for in this section, no advertising display shall be placed or maintained within 660 feet from the edge of the right-of-way of, and the copy of which is visible from, any interstate or primary highway, and no advertising display shall be placed or maintained beyond 660 feet from the edge of the right-of-way if the advertising display is designed to be viewed primarily by persons traveling on any interstate or primary highway. Chapter 853 has been enacted to exempt "message center displays" from the above prohibitions.

As used in this section, message center displays are displays which have a changeable message which may be changed by electronic processes or by remote control.

Such message center displays must advertise the business conducted, services rendered, or goods purchased or sold upon the property upon

which the display is placed. No person shall place a message center display until after certification and finding by the Director of Public Works that such display does not appear to constitute a hazard to traffic. Such displays must comply with all other permit requirements of this chapter (Chapter 2, Division 3 of the Business and Professions Code), and all such displays within 660 feet of the right-of-way of a bonus segment (§5204) must comply with the regulations prescribed pursuant to Section 5251 (compliance with a federal agreement), Section 5403 (improper displays), and Section 5415 (regulations governing erection and maintenance of advertising structures).

Environmental Protection; state freeway noise control

Streets and Highways Code §216 (amended).
SB 268 (Song); STATS 1972, Ch 658
(Effective August 10, 1972)
Opposition: Department of Public Works

Section 216 of the Streets and Highways Code provides that the Department of Public Works *may* undertake a noise abatement program in a public or private elementary or secondary school, where the noise level produced from freeway traffic exceeds 50 decibels on the "A" scale in classrooms, libraries, and multipurpose rooms which were constructed prior to the adoption of the freeway route and are used for their intended purpose. If the noise level generated from sources within and without the classrooms, libraries, and multipurpose rooms exceeded 50 decibels on the "A" scale prior to the construction of the freeway and the noise level from the freeway also exceeds 50 decibels on the "A" scale, the department is *required* to undertake such a noise abatement program that will reduce the noise to the preconstruction level.

Priority for noise abatement programs shall be given to those public and private elementary and secondary classrooms, libraries, and multipurpose rooms constructed in conformance with Article 4 (commencing with §15451) of the Education Code.

Prior to the enactment of Chapter 658, Section 216 applied only when the noise level was exceeded within the first two years of operation of a freeway constructed after November 23, 1970. Section 216 now applies to all freeways with noise that exceeds the specified maximum. Section 216 has additionally been expanded to include private, as well as public schools.

See Generally:
1) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK §§9.1-9.20 (1970).
2) HILDEBRAND, NOISE POLLUTION AND THE LAW (1970).

Environmental Protection; water appropriation

Water Code §1243 (amended).
AB 108 (Davis); STATS 1972, Ch 360

Section 1243 of the Water Code declares that when the State Water Resources Control Board is determining the amount of water available for appropriation for beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for the beneficial uses of recreation and the preservation and enhancement of fish and wildlife resources. Chapter 360 amends Section 1243 to require that the board notify the Department of Fish and Game of any application for a permit to appropriate water. The Department of Fish and Game shall recommend the amounts of water, if any, required for the preservation and enhancement of fish and wildlife resources and shall report its findings to the board.

Environmental Protection; stream levels

Fish and Game Code §1505 (amended); STATS 1970, Ch 1357, §7 (amended).
SB 57 (Collier); STATS 1972, Ch 67
SB 1193 (Nejedley); STATS 1972, Ch 1031

Chapter 67 has been enacted to add specified portions of several streams to the list of designated salmon and steelhead spawning areas which may be protected by the Department of Fish and Game. Such streams include, but are not limited to, the Trinity River, Eel River, South Fork Eel River, Middle Fork Smith River, South Fork Smith River, Salmon River, Battle Creek, Consumnes River, Van Duren River, and Mad River.

Chapter 1031 has been enacted to extend for four years, provisions requiring any person or agency to notify the Department of Fish and Game of proposed projects which would alter the flow or bed of any river, stream or lake [CAL. FISH AND GAME CODE §1601 *et seq.*; CAL. GOV'T CODE §§14258, 25452.5 and 37903.5]. Such persons or agency are prohibited from beginning work until the Department's recommendations to protect fish and wildlife, or the decision of an arbitration panel, is incorporated into the project.

Environmental Protection; water pollution requirements and penalties

Water Code §13976 (amended); Chapter 5.5 (commencing with §13370) (new).
AB 740 (Porter); STATS 1972, Ch 1256

The Federal Water Pollution Control Act [33 U.S.C. §1151 *et seq.* (1970)], as amended in 1972, provides for a permit system to regulate the discharge of pollutants into the navigable waters of the United States and provides that permits may be issued by states which are authorized to implement the provisions of such act. Chapter 5.5 (commencing with §13370) has been added to the Water Code in order to authorize the state to implement the provisions of the Federal Water Pollution Control Act.

Section 13377 has been added to require the State Water Resources Control Board and the California regional water quality control boards to issue waste discharge requirements applicable to persons discharging or proposing to discharge pollutants, as required or authorized by the Federal Water Pollution Control Act, which ensure compliance with any applicable effluent limitations, water quality related effluent limitations, national standards of performance, toxic and pretreatment effluent standards, and any ocean discharge criteria. Sections 13379 and 13382 require the adoption of waste discharge requirements to control the disposal of pollutants into wells, discharges from publicly owned treatment works, discharges from point sources other than publicly owned treatment works, and discharges into publicly owned treatment works.

Section 13383 has been amended to permit the state board or regional board to require dischargers of pollutants into navigable waters or into public treatment systems to establish and maintain records, make reports, install, use, and maintain monitoring equipment or methods, and provide other information as may be reasonably required. Section 13383 additionally permits the state board or regional boards to inspect the facilities of any discharger of pollutants pursuant to the procedure set forth in subdivision (c) of Section 13267.

Section 13385 has been added to provide that any person who discharges pollutants, except as permitted by waste discharge requirements, or who violates any cease and desist order, prohibition, waste discharge requirement, effluent limitation, water quality related effluent limitation, national standard of performance, pretreatment or toxicity standard or who refuses to comply with the requirements adopted pursuant to Section 13382 (pollutants in wells), shall be subject to a

civil penalty not to exceed $10,000 for each day in which such discharge, violation or refusal occurs. Section 13386 requires the Attorney General, upon request of a regional board or state board, to petition the appropriate court for the issuance of an injunction to restrain the failure to comply with the requirements specified in Section 13385, or the failure of any discharger into a public treatment system to comply with any cost or charge adopted by any public agency under Section 204(b) of the Federal Water Pollution Control Act.

Section 13387(a) has been added to provide that any person who wilfully or negligently commits a violation specified in Section 13385 shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) nor less than two thousand five hundred dollars ($2,500) for each day in which such violation occurs, or by imprisonment for not more than one year in the county jail, or by both. If the conviction is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than fifty thousand dollars ($50,000) for each day in which such violation occurs, or by imprisonment for not more than two years in the county jail, or both. Section 13387(b) provides that any person who knowingly makes any false statement, representation, record, report, plan or other document filed with a regional board or the state board, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this division shall be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail for not more than six months, or by both.

See Generally:

1) STATE WATER RESOURCES CONTROL BOARD, THE PORTER-COLOGNE WATER QUALITY CONTROL ACT (1969).
2) F. GRAD, ENVIRONMENTAL LAW §2.03 (1971).
3) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK Ch. 7 (1970).

Environmental Protection; water quality

Water Code §§13164, 13303 (amended); §13171 (new); §14027, Art. 2 (commencing with §13120) Ch. 3, Div. 7 (repealed); Government Code §54740 (new); Health and Safety Code §§4766.5, 6523.01 (repealed).
AB 742 (Porter); STATS 1972, Ch 813

Section 54739 of the Government Code provides that any city, county, municipal utility district, public utility district, or any muni-

cipal or public district authorized to acquire, construct, own or operate a sanitation system, a sewer system, or both may require: (a) pretreatment of any industrial waste which would otherwise be detrimental to the treatment works or its proper and efficient operation and maintenance; or (b) the prevention of the entry of such waste into the collection system and treatment works. Section 54740 has been added to provide that any person who intentionally or negligently violates any requirement adopted or ordered by a local agency pursuant to the above provisions of Section 54739 may be civilly liable for not more than six thousand dollars ($6,000) for each day in which a violation occurs. The local agency may petition the superior court to impose, assess, and recover such sums. In determining such amount, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs and corrective action, if any. Prior to the adoption of Section 54740, liability existed only for a violation of a requirement ordered or adopted by a county sanitation district or sanitary district [CAL. HEALTH AND SAFETY CODE §§4766.5 and 6523.01].

Chapter 813 abolishes the *Water Quality Advisory Committee* within the State Water Resources Control Board [CAL. WATER CODE §13364, and article 2(commencing with §13120), Chapter 3, Division 7]. Section 13171 has been enacted to authorize the State Water Resources Control Board to establish a *Water Quality Coordinating Committee*, consisting of at least one member of each of the nine regional water quality control boards, to assist the state board in carrying out its responsibility in water quality control.

Chapter 813 has made further changes in the Water Code regarding the Isla Vista Sanitary District, service of cease and desist orders by personal service as well as by registered mail, and repealing provisions establishing a Liquid Waste Haulers Account.

Environmental Protection; Nejedly-Z'berg-Dills Solid Waste Management and Resource Recovery Act of 1972

Government Code §§66713, 66740, 66750 (repealed); Title 7.3 (commencing with §66700) (new); Health and Safety Code Chapter 5, Part 2, Division 5 (commencing with §4500) (new).

SB 5 (Nejedley); STATS 1972, Ch 342

Support: California Refuse Removal Council; Sierra Club; League of California Cities; County Supervisors Association; Conference of

Local Health Officers; California Anti-Litter League; California Manufacturers Association; Glass Container Manufacturers Institute; Carbonated Beverage Container Manufacturers Association

Declares solid waste management and resource recovery policy and intent; creates State Solid Waste Management Board; requires the board to adopt the State Solid Waste Resource Recovery Program; provides for solid waste management plans by local governments; specifies other powers and duties of the board; creates the State Solid Waste Management and Resource Recovery Advisory Council.

Section 66702 of the Government Code declares that it is in the public interest to establish and maintain a comprehensive state solid waste management and resource recovery policy. The objective of such policy will be to manage solid waste in this state to protect the public health, safety, and well-being, to preserve the environment, and to provide for the maximum re-utilization and conversion to other uses of the resources contained therein. State solid waste management and resource recovery policy shall consist of the policies, plans and programs established pursuant to Chapter 2 (commencing with Section 66770) of this title (§66731).

Section 66730 of the Government Code states that it is the intent of the Legislature that the primary responsibility for adequate solid waste management and planning shall rest with local government, with the state bearing the primary responsibility for the development and maintenance of the state policy for solid waste management and the State Solid Waste Resource Recovery Program. Such local solid waste management and planning shall conform to the approved solid waste management plan prepared pursuant to Section 66780. However, Section 66732 states that no provision of this title is a limitation on certain enumerated powers and rights of an individual to dispose of solid waste on his own property, or the power of a city, county or district to adopt and enforce regulations which do not conflict with this title, or to declare, prohibit or abate nuisances.

Section 66740 creates the Solid Waste Management Board within the Resources Agency. Section 66747 empowers the board to appoint such legal counsel, technical personnel and other staff, and to acquire such facilities as may be necessary for the performance of its functions. Section 66748 provides for representation by the Attorney General in litigation. Section 66749 prohibits certain conflicts of interest and provides for the removal of a board member who knowingly violates this section.

Sections 66770-66774 require that the board formulate and adopt a state policy for solid waste management by January 1, 1975. Such policy shall include minimum standards for solid waste handling and disposal for the protection of air, water and land from pollution, and minimum standards for the protection of the public health. Standards included in the state policy for solid waste management may include the location, design, operation, maintenance and ultimate reuse of solid waste processing or disposal facilities. Aspects of solid waste handling or disposal which are solely of local concern and not determined by the board to be of statewide concern may not be included within the minimum standards. Matters of local concern include, but are not limited to, frequency of collections, means of collection and transportation, level of service, charges and fees, designation of territory served through franchises, contracts of governmental employees, and purely aesthetic considerations.

Sections 66772, 66773 and 66774 provide for consultation in formulating state policy, public hearings prior to adopt of such policy and periodic review and revision of the adopted policy when appropriate.

Section 66785 requires that the board adopt the Solid Waste Resource Recovery Program by July 1, 1975. The program shall include guidelines, criteria, procedures and financial participation formulas for the initiation and maintenance of a major state-directed research and development program to be operated jointly with public and private entities and individuals. The program shall develop technologically and economically feasible systems for the collection, reduction, separation, recovery, conversion and recycling of all solid wastes, and the environmentally safe disposal of nonusable residues. The resource recovery program should be so structured as to ensure maximum entitlement by the state of all matching monies available from any federal, state or private source. The program may additionally include among its basic objectives pure research, or the design, construction and testing of pilot equipment and systems for the processing of solid waste.

The State Solid Waste Resource Recovery Program will also include special studies and demonstration projects on the recovery of useful energy and resources from solid wastes. These studies and projects should encompass methods of recovering resources and energy from solid wastes, possible uses of such resources, potential markets for such recovered resources, the impact of the distribution of such resources on existing markets, required changes in current product characteristics and packaging practices, methods of collection, reduction, separation and containerization which would contribute to effective reuse programs,

and the use of state procurement to develop market demand for recovered resources. The program studies and projects should also recommend incentives and disincentives that would be necessary to conserve resources and accelerate the reclamation and recycling of resources from solid waste. State resource recovery pilot projects will be created at state institutions where such projects are deemed most feasible.

Pursuant to the legislative intent that primary responsibility for adequate solid waste management and planning should rest with local government, Sections 66780-66783 require each county to prepare a comprehensive, coordinated solid waste management plan for all waste disposal within the county and for all waste originating therein which is to be disposed of outside the county. Each county's plan must be approved by a majority of the cities that contain a majority of the population of the incorporated area of the county and must be submitted to the board for determination of its compliance with state policy by January 1, 1976.

In addition to the development of state policy, state program and county plans, Sections 66790-66793 empower the board to conduct studies and investigations regarding new or improved methods of solid waste management, coordinate studies by other state agencies, prepare and implement a statewide solid waste management and information storage and retrieval system, implement a public information program, render technical assistance to state and local agencies, and recommend methods of reducing and controlling the statewide litter problem. The board shall also study alternative methods of providing financial assistance to local agencies for the purchase of solid waste disposal facilities. The board is designated as the state solid waste management agency for all purposes stated in the Federal Resource Recovery Act of 1970 and any other federal act.

Section 66750 creates the State Solid Waste Management and Resource Recovery Advisory Council within the State Solid Waste Management Board. The existence of the council shall terminate on July 1, 1976. The council is responsible under Section 66751 for: (1) initial preparation and recommendation to the board of the State Solid Waste Resource Recovery Program; (2) providing advice and assistance to the board in the development of the state policy for solid waste management; (3) reviewing and recommending to the board revisions in the resource recovery program and in state policy after adoption; (4) making recommendations to the board concerning each local solid

waste management plan submitted to the board for approval; (5) providing advice and assistance to citizen groups and to waste producing and collecting industries; and (6) providing advice and assistance to the board in connection with the reduction and control of the statewide litter problem.

Certain sections of the Nejedley-Z'berg-Dills Solid Waste Management and Resource Recovery Act of 1972 shall remain in effect only until the Reorganization Plan No. 1 of 1970 becomes operative and on such date are repealed. Sections 66713, 66740 and 66750 become operative on the same date as Reorganization Plan No. 1 of 1970 becomes operative.

COMMENT

In 1967 the statewide production of all types of solid waste (municipal, agricultural and industrial) was over 70 million tons—a total of over 20 pounds per person per day—which would constitute a mass 100 feet wide by 30 feet high stretching the length of California from Oregon to Mexico. By the year 2000 California must dispose of, or reuse, a total of some 2.5 billion tons of solid waste, which uncompacted would cover a 1,500 square mile area (approximately the size of San Joaquin County) to a depth of 10 feet [*Public Hearing on Solid Waste Management Before the Assembly Committee on Natural Resources and Conservation,* November 20-21, 1969, at 21 (hereinafter referred to as *Natural Resource Hearing*)].

The usual pattern of solid waste disposal is for a community to transport it beyond its immediate confines, and discard it in the least expensive manner the public will tolerate, usually beginning with an open dump, progressing to sanitary landfill, and culminating in incineration. With the growing economic and social limitations on the availability of dumpsites and the increasing constraints on incineration, it is clear that this traditional method of dealing with solid waste must give way to a more rational approach. However, by 1968, only 16 of the 58 counties had initiated solid waste planning efforts, and many of those ignored the needs of incorporated cities and adjacent counties [*Natural Resource Hearing*, at 21]. Because existing state laws governing solid waste management are directed primarily at minimizing air and water pollution, preventing forest fires, protecting fish and wildlife, assuring livestock health, and preserving highway aesthetics, the numerous federal, state and local governmental entities and agencies in California are operating in the absence of comprehensive, common objectives or defined minimum standards for the collection, disposal

and reuse of solid waste [*See* G. MYLROIE, CALIFORNIA ENVIRONMENTAL LAW 67-72 (1972)].

The Nejedley-Z'berg-Dills Solid Waste Management and Resource Recovery Act of 1972 does not provide any present rules or regulations governing solid waste management or resource recovery. No provisions have been enacted which would, at this time, set minimum standards for waste disposal, require recovery or recycling, regulate packaging practices and product characteristics, institute new state procurement of recycled products or create incentives or disincentives necessary to conserve resources. The Act does, however, establish a comprehensive state policy for the management of California's swelling production of solid waste by providing for the adoption of statewide standards and regional disposal plans and a study of methods for reducing and controlling litter.

These long-range solid waste management programs and plans conducted both at the state and local level make this Act an important milestone in state environmental policy. Although generation and management of the gaseous, liquid and solid wastes of a complex industrial society are inextricably interrelated, the tendency of the government to focus on short-term, single-purpose solutions to immediate problems has resulted in major emphasis to date on the development of independently formulated and administered programs for the control of water and air pollution [*Natural Resource Hearing*, at 4]. Often this single purpose emphasis on one phase of the environmental problem has resulted in additional problems in some other area [*See* CAL. HEALTH AND SAFETY CODE §§39295-39296.2]. The comprehensive state policy and implementing programs for the protection of the public health and environment in this Act will be a major step in solving the solid waste problem without detracting from the advances made in other areas of environmental protection.

See Generally:

1) CALIFORNIA DEPARTMENT OF GENERAL SERVICES, LAWS RELATING TO THE PROTECTION OF ENVIRONMENTAL QUALITY 259-304, (1970).
2) OFFICE OF PLANNING AND RESEARCH, GOVERNOR'S OFFICE, STATE OF CALIFORNIA ENVIRONMENTAL GOALS AND POLICY 28, 29 (1972).
3) G. MYLROIE, CALIFORNIA ENVIRONMENTAL LAW 65-72 (1972).
4) *Public Hearing on Solid Waste Management Before the California Assembly Committee on Natural Resources and Conservation,* November 20-21, 1969.

Environmental Protection; hazardous waste materials

Health and Safety Code Chapter 6.5 (commencing with §25100) (new).

AB 598 (Dunlap); STATS 1972, Ch 1236
Support: State Water Resources Control Board; California Teamsters; California Railroad Association; California Manufacturers Association; Dow Chemical Company; State Department of Public Health

Provides for standards and regulations to be adopted by State Department of Public Health governing hazardous waste disposal, processing, and handling; provides for lists prepared by the Department of Public Health of extremely hazardous and hazardous wastes; establishes regulations regarding hazardous waste transportation; provides civil enforcement procedures; creates Hazardous Waste Technical Advisory Committee.

Chapter 6.5 (commencing with §25100) has been added to the Health and Safety Code to establish rules governing hazardous and extremely hazardous waste materials. Article 5 (§§25150-25155) provides that the State Department of Public Health shall adopt, and may revise when appropriate, minimum standards and regulations for the handling, processing, and disposal of hazardous and extremely hazardous wastes to protect against hazards to the public health, to domestic livestock and to wildlife. The department may adopt varying standards for different areas of the state depending on population density, climate, geology and other factors relevant to hazardous waste processing and disposal.

Before adoption of such standards and regulations, the department is required to consult with specified state agencies and to hold at least one public hearing in Sacramento, or in a city within the area of the state to be affected by the proposed regulations.

Article 5 further provides that after the effective date of the regulations adopted by the department pursuant to this article, it shall be unlawful for any person to dispose of any hazardous waste or extremely hazardous waste except as provided for in such regulations. Additionally, any person who is producing a waste material which he may reasonably consider to be an extremely hazardous waste, and which he does not intend to recycle for reuse and intends to dispose of as waste, must notify the department of his intent to dispose of such waste.

Article 4 (§25140) requires the State Department of Public Health to prepare a listing of wastes determined to be *hazardous* and *extremely hazardous*. Section 25155 provides that after July 1, 1974, no *extremely hazardous* waste as listed by the department may be disposed of without prior processing to remove its harmful properties or as specified by the

regulations of the department for the handling and disposal of the particular extremely hazardous waste.

Article 6 (§§25160-25162) requires, after July 1, 1974, any person producing a hazardous waste as listed by the department (§25140) to provide operators of transportation equipment with a list setting forth the hazardous wastes carried and other specified information. The person handling or carrying the waste must have the list in his possession and shall release the list to a person responsible for disposal at the time of delivery. Such list must be shown, upon demand, to any department official, officer of the California Highway Patrol or any local public officer as designated by the Director of Public Health. Section 25171 states that no provision of this chapter shall be construed to require disposal of hazardous waste at the site of production, provided that the transportation of such waste conforms to all applicable regulations.

Section 25174 provides that beginning January 1, 1974, each operator of any site at which hazardous wastes are disposed shall pay a fee to the director for each list or other document which such operator receives pursuant to Article 6 (commencing with §25160). The director shall establish a schedule of the fees to be paid to the director by such operator for each disposal of hazardous waste listed in such a list or document, which shall provide revenues which shall not exceed the amount necessary, but shall be sufficient to cover all costs incurred in the administration of this chapter.

Article 6 further requires the State Department of Public Health to adopt and enforce rules and regulations regarding such lists, and specifies that documents required by other state or federal agencies meeting specified conditions will meet the list requirements of this article.

Article 8 (§§25180-25185) provides that the standards and regulations adopted by the department pursuant to §25150 shall be enforced by the department, or any local health officer, or any local public official as designated by the Director of Public Health. Civil enforcement procedures are prescribed for situations in which any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter.

Section 25185 authorizes the Director of Public Health or any duly authorized representative of the department to, at any reasonable hour of the day, enter a factory, plant, construction site, waste disposal site, establishment or any environment where hazardous wastes are stored, handled, processed or disposed of, in order to carry out the purposes of

this chapter [*See* Vidaurri v. Superior Court, 13 Cal. App. 3d 550, 91 Cal. Rptr. 704 (1970) (warrantless inspection held unconstitutional)]. Section 25172 states that no provision of Chapter 6.5 shall limit the authority of any state or local agency in the enforcement or administration of any provision of law which it is specfically permitted or required to enforce and administer.

Section 25173 provides that the department shall establish procedures to insure that trade secrets used by a person regarding methods of hazardous waste handling and disposal are utilized by the director, the department, or any authorized representative of the department only in connection with the responsibilities of the department and not otherwise disseminated by the director, the department, or any authorized representative of the department without the consent of the person.

Article 3 (Sections 25130-25133) establishes a hazardous waste technical advisory committee to provide consultation to the department concerning hazardous waste control. Duties of the committee, membership, and compensation for members are delineated. Article 7 (Sections 25170-25172) specifies the duties and powers of the department, including the maintenance of a technical reference center of hazardous waste, technical assistance to state and local agencies, coordination of research and development, and surveillance of hazardous waste processing and disposal practices.

Definitions of terms used in Chapter 6.5 are included in Article 2 (§§25110-25121). *Hazardous waste* is defined as any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant, a strong sensitizer, which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to wildlife, during, or as a proximate result of any disposal of such wastes or mixture of wastes. *Extremely hazardous waste* means any hazardous waste or mixture of hazardous wastes which, if human exposure should occur, may likely result in death, disabling personal injury or illness during, or as a proximate result of, any disposal of such wastes or mixture of wastes because of its quantity, concentration, or chemical characteristics.

Section 2 of Chapter 1236 provides that it shall become operative on July 1, 1973.

COMMENT

The United States produces more than 1200 products described by the Department of Transportation as "dangerous articles" [49 C.F.R.

§172.5 (1972)], of which more than 300 are considered extra-hazardous commodities by the Interstate Commerce Commission because they could destroy life or property in catastrophic proportion [A. REITZE, ENVIRONMENTAL LAW 4-83 (1972)].

Many state agencies now regulate various aspects of hazardous waste disposal [*See* CAL. FISH AND GAME CODE §§5650-5655; CAL. GOV'T CODE §54739; CAL. HEALTH AND SAFETY CODE §§25601, 25602, 25605, 25812; CAL. WATER CODE §§13260-13269, 13300-13305, 14000-14100]; for example, the Department of Public Health which has a broad general authority to protect the public health [*See* CAL. HEALTH AND SAFETY CODE §200 *et seq.*], but there seems to be no agency which sets specific regulations for the handling, disposal and transportation of all hazardous wastes.

The Legislature declared in Section 25100 of the Health and Safety Code that increasing quantities of hazardous wastes are being generated in the state and without adequate safeguards for handling and disposal, such wastes can create conditions which threaten the public health and safety and create hazards to wildlife. It is clear that hazardous waste enforcement will be a greater and more difficult problem in the future due to the much greater volume of waste that will be generated, the greater scope and variety of corrective actions required, the magnitude of costs involved, and the far more complicated interrelationships between the many kinds of waste discharges, and between water users and dischargers [*Recommended Changes in Water Quality Control, Final Report of the Study Panel to the California State Water Resources Control Board* 5 (March 1969)]. The addition of Chapter 6.5 to Division 20 of the Health and Safety Code should be a major step in defining the problem of hazardous waste in explicit and significant terms, and establishing and enforcing the regulations necessary to deal with the handling, transportation and disposal of hazardous wastes.

See Generally:

1) Vidaurri v. Superior Court, 13 Cal. App. 3d. 550, 91 Cal. Rptr. 704 (1970) (warrantless inspection held unconstitutional).
2) *Recommended Changes in Water Quality Control, Final Report of the Study Panel to the California State Water Resources Control Board* (March 1969).
3) COUNCIL OF STATE GOVERNMENTS, ENVIRONMENTAL QUALITY AND STATE GOVERNMENT 4-18 (1970).
4) A. REITZE, ENVIRONMENTAL LAW ch. 4 (1972).

Environmental Protection; temporary forest practice rules

Public Resources Code §4580.5 (repealed); §4580.5 (new).

SB 183 (Marler); STATS 1972, Ch 202
(Effective June 30, 1972)

Bayside Timber Co. v. Supervisors of San Mateo County [20 Cal. App. 3d 1, 97 Cal. Rptr. 431 (1971) (hereinafter cited as *Bayside*)] held that the provisions for the establishment of forest practice rules regulating timber operations (Public Resources Code §§4571-4582 and 4611-4618) were unconstitutional and void because such rules were required to be adopted and enforced by industry-dominated groups rather than the public. Chapter 202 repeals §4580.5 of the Public Resources Code and reinstates the section to provide for emergency state forest practice rules. The State Board of Forestry, upon a finding of an emergency, may on its own motion adopt temporary forest practice rules necessary to protect the public interest and carry out the policy of the state as specified in Chapter 8 (commencing with §4521), Part 2, Division 4 of the Public Resources Code. Such rules shall be effective for a period not to exceed 180 days.

COMMENT

The State Board of Forestry, which may now adopt emergency rules, consists of eight members [CAL. PUB. RESOURCES CODE §§630, 631]. Two members are appointed from the general public. In addition, each of the following fields are represented by a member: (1) pine producing industry; (2) redwood producing industry; (3) forest land ownership; (4) range livestock industry; (5) agriculture; and (6) beneficial use of water. The State Board of Forestry is charged with the protection of the state's interests in forest resources on private lands, and is responsible for the determination, establishment and maintenance of an adequate forest policy (Section 639).

Bayside dealt with the Forest Practice Act (§§4521-4618). The court, in discussing the significant provisions of the Act, stated:

> The content of the rules under which private logging operations are conducted is decreed exclusively by persons pecuniarily interested in the timber industry; i.e., timber owners and operators. The ultimate basis of this exclusive control rests in the hands of the "private timber ownership," two-thirds of which must agree before *any* proposed rule may be adopted. The rules are submitted to the State Board of Forestry which may approve or disapprove them. It is noteworthy that the board is powerless to promulgate any forest practice rules. It may only approve or disapprove those which are submitted.

[*Bayside* at 10, 97 Cal. Rptr. at 436].

The court held the Forest Practice Act unconstitutional because "the Legislature has delegated to timber owners and operators the exclusive power to formulate forest practice rules which, when adopted, have the force and effect of law" [*Bayside* at 10, 97 Cal. Rptr. at 436]. Any grant of legislative authority must be accompanied by safeguards adequate to prevent its abuse. "Lacking the required safeguards, such a grant of authority is an unconstitutional delegation of legislative power" [*Bayside* at 11, 97 Cal. Rptr. at 437].

Although Chapter 202 provides that the State Board of Forestry, which contains three members of the timber industry, will establish the emergency rules, such rules will probably be upheld because the provisions of the Public Resources Code establishing the State Board of Forestry were not held unconstitutional by *Bayside*, the forest practice committees will not participate in the formulation of such rules, the board may act on its own motion, and approval of members of the forest industry is not required.

The emergency provisions provided for in Chapter 202 are necessary because timber operators are presently not subject to any state forest practice rules on private lands and can cut any and all timber of any size without restriction [S.B. 183, §3, 1972 Regular Session, *as amended*, May 26, 1972].

See Generally:
1) 54 OPS. ATT'Y GEN. 189-192 (1971).

Environmental Protection; sawmill waste disposal

Public Resources Code §§4437, 4438 (amended).
SB 524 (Marler); STATS 1972, Ch 129
(Effective June 7, 1972)

Section 4437 of the Public Resources Code requires that processors of forest products exercise due diligence in the disposal of flammable material incident to such processing. Prior to the enactment of Chapter 129, if such flammable material was not to be used as fuel, or as a by-product of the operation, the only authorized method of disposal was burning pursuant to the specifications in Sections 4438, 4439 and 4400. Chapter 129 has been enacted to prevent serious air pollution which results from the burning of such waste products [S.B. 524, CAL. STATS. 1972, c. 129, §3]. As amended, Sections 4437 and 4438 now allow disposal by landfill or other methods which effectively prevent the flammable material from constituting a fire hazard and meet applicable

state and local fire, safety, air, and water standards. The disposal must also be done in compliance with regulations established by the Director of Conservation in accordance with the provisions of Chapter 4.5 (commencing with §11371) of the Government Code for the purpose of eliminating the potential of fire or other safety hazards resulting from spontaneous combustion or other ignition sources. Chapter 129 further amends Section 4438 to permit disposal off the sawmill or plant premises.

Environmental Protection; motorboat noise

Harbors and Navigation Code §§654, 668 (amended); §§654.05, 654.06 (new).
AB 26 (Chappie); STATS 1972, Ch 1121
Support: Boat Owners Associated Together

Prior to the enactment of Chapter 1121, Section 654 of the Harbors and Navigation Code required the exhaust of every internal combustion engine used on any motorboat to be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner. The use of cutouts was prohibited except for boats being used in specified competitions or regattas. Section 654 has been amended to require that motorboats be effectively muffled to prevent any excessive or unusual noise. Exceptions for specified regattas and competitions have been retained.

Section 654.05 has been added to the Harbors and Navigation Code to provide that no person may operate any motorboat in or upon the inland waters of this state in such a manner as to exceed a noise level of 86 dbA measured at a distance of 50 feet from the motorboat. The provision is applicable to engines manufactured between January 1, 1974 and January 1, 1976. Engines manufactured between January 1, 1976 and January 1, 1978 may not exceed 84 dbA measured at a distance of 50 feet from the boat, and engines manufactured after January 1, 1978 must not exceed a noise level of 82 dbA measured at a distance of 50 feet from the motorboat. The provisions of this section do not apply to specified competitions and regattas. Section 654.06 has been added to prohibit any person from selling or offering to sell at retail any internal combustion engine for use on any motorboat which, when operated, exceeds specified noise levels. Such noise levels are the same as those prescribed in Section 654.05, but no exceptions for competitions or regattas are included in Section 654.06.

Section 668 provides misdemeanor penalties of a fine not to exceed $50 or imprisonment in the county jail not to exceed five days, or both, for each violation of the provisions of Sections 654, 654.05 and 654.06.

COMMENT

Most states have statutes relating to muffler noise on motor vehicles, but the laws usually fail to spell out maximum noise levels. Hence, these regulations are almost impossible to enforce [I. SLOAN, ENVIRONMENT AND THE LAW 23 (1971)]. California's anti-noise statutes specify permissible decibel levels for passenger cars, trucks, buses, motorcycles, off-highway vehicles and snowmobiles, and prescribe levels and test procedures as a requisite for new vehicle sales [*See* CAL. VEHICLE CODE §§23130-23130.5, 27150-27160, 27502-27503]. Prior to the enactment of Chapter 1121, the provisions of Section 654 of the Harbors and Navigation Code requiring exhaust noise in a reasonable manner and prohibiting the use of cutout devices to bypass the muffler were the only statutory regulations on motorboat noise. Changing California's motorboat noise laws from the general reasonable manner standard, to specific maximum decibel level regulations should aid in the enforcement and eventual reduction of motorboat noise.

See Generally:

1) I. SLOAN, ENVIRONMENT AND THE LAW 20-28 (1971).
2) F. GRAD, ENVIRONMENTAL LAW ch. 6 (1971).
3) J. HILDEBRAND, NOISE POLLUTION AND THE LAW (1970).

Environmental Protection; state oil spill contingency plan

Government Code Article 3.5 (commencing with §8574.1) (new).
AB 2341 (MacGillivray); STATS 1972, Ch 1325
Support: Department of Conservation

Article 3.5 (commencing with §8574.1) has been added to the Government Code to authorize the Governor to adopt a state oil spill contingency plan. Such plan shall provide for an integrated and effective state procedure to combat the results of major oil spills within the state, and shall provide for specified state agencies to implement the plan.

Section 8574.3 has been added to authorize the use of volunteer workers in the implementation of such plan, and provides that such volunteers shall be deemed employees of the state for purposes of workmen's compensation under Article 2 (§3550 *et seq.*) of the Labor Code.

Section 8574.4 provides that those state agencies designated to implement the plan must account for all state expenditures made under the plan with respect to each oil spill. These expenditures shall be paid for by the party responsible for the spill, if he is known. In addition, the responsible party may be subjected to other liability in actions brought by the Attorney General. The proceeds from such actions shall be paid to the State Water Pollution Cleanup and Abatement Account of the State Water Quality Control Fund, which is used to pay for the expenditures when the responsible party is unknown.

Environmental Protection; pesticide spray reports

Health and Safety Code §458.5 (new).
SB 99 (Petris); STATS 1972, Ch 1231

Section 458.5 has been added to the Health and Safety Code to require a person with an agricultural pest control license to file a spray report by the 10th of each month with the county agricultural commissioner of each county in which such person has treated property during the previous month. Section 458.5 specifies information which must be included in such report, including any information which the State Department of Public Health may deem necessary in view of conditions which may constitute a menace to life, health, or safety of individuals living or working in areas where pesticides are applied.

Spray reports filed pursuant to this section are public records which shall be made available by the county agricultural commissioners for public inspection.

COMMENT

Chapter 1231 was drafted by the Attorney General's Office to codify the holding in *Uribe v. Howie*, 19 Cal. App. 3d 194, 96 Cal. Rptr. 493 (1971). In *Uribe*, a Riverside agricultural commissioner refused to disclose spray report information to an injured farm worker. The court held that the pesticide applicator's spray reports are not exempt from public disclosure.

Environmental Protection; abandonment of vehicles in state waters

Fish and Game Code §5652 (amended).
AB 578 (Ray E. Johnson); STATS 1972, Ch 403

Section 5652 of the Fish and Game Code, which makes it unlawful to deposit specified litter into state waters, or within 150 feet of the

high-water mark of state waters, was amended by Chapter 403 to include motor vehicles or parts thereof. The abandonment of a motor vehicle in violation of this section now constitutes a rebuttable presumption that the last registered owner of record, not having complied with §5900 of the Vehicle Code (requiring notice of transfer by registered owner), is responsible for such abandonment and is thereby liable for the cost of removal and disposition of the vehicle.

Section 5652 does not apply to authorized refuse disposal sites, nor does it prohibit the placement of a vehicle body on privately owned property by the property owner or tenant for the purpose of preventing erosion of the streambank.

Environmental Protection; whales, dolphins, porpoises

Fish and Game Code §3002 (amended); Penal Code §653o (amended).
AB 346 (Ryan); STATS 1972, Ch 119

Section 3002 of the Fish and Game Code has been amended to prohibit the shooting of whales from a powerboat, sailboat, motor vehicle or airplane. Section 653o of the Penal Code has been amended to make it a misdemeanor, with prescribed penalties, to import into California for commercial purposes, to possess with intent to sell or to sell within the state, the dead body or any part or product of any dolphin or porpoise.

Chapter 119 does not prohibit such sale or possession when the seller can demonstrate that such part or product was imported into this state prior to the effective date of this act.

Environmental Protection; airport expansion

Public Utilities Code §§21662, 21665, 21666 (amended); §21664.5 (new).
AB 1122 (Badham); STATS 1972, Ch 1309

Section 21664.5 has been added to the Public Utilities Code and Section 21662 amended, to require an amended airport permit from the Department of Aeronautics for every expansion of an existing airport. An applicant for an amended airport permit is required by Section 21664.5 to comply with each requirement of Article 3 (commencing with §21650) pertaining to permits for new airports.

Airport expansion is defined in Section 21664.5 as including, but

not limited to, construction of a new runway, acquisition of clear zones, extension or realignment of an existing runway, or any other related expansion of the airport's physical facilities.

The Department of Aeronautics may by regulation provide for exemptions from this requirement, except that no exemption shall be made limiting the applicability of subdivision (e) of Section 21616, pertaining to environmental considerations, including the requirement for public hearings in connection therewith. Section 21666(e) requires that the department be satisfied that the advantages to the public in the selection of the site outweigh the disadvantages to the environment.

Section 21664.5 additionally provides that the requirement of an amended airport permit for every expansion of an existing airport shall not apply if the expansion commenced on or before the effective date of this section and the expansion met the approval on or before such effective date of each governmental agency which by law required such approval.

Section 21665 requires the Department of Aeronautics to notify specified persons, public service corporations and broadcasting facilities before a permit can be issued. Section 21665 has been amended to provide that such notice shall not be required when an airport permit is issued pursuant to a prior airport site approval permit.

See Generally:

1) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK §§9.1-9.20 (1970).
2) F. GRAD, ENVIRONMENTAL LAW §9.02, ch. 6 (1971).
3) J. HILDEBRAND, NOISE POLLUTION AND THE LAW (1970).

Environmental Protection; San Francisco Bay Conservation and Development Commission

Government Code §§66611, 66652 (amended).
SB 34 (Nejedley); STATS 1972, Ch 373

Title 7.2 (commencing with Section 66600) of the Government Code provides for regulation by the San Francisco Bay Conservation and Development Commission of projects that involve placing fill, extracting materials, or making any substantial change in the use of any water, land or structure within the San Francisco Bay and a 100 foot shoreline band, as well as certain saltponds, managed wetlands and tributaries [G. MYLROIE, CALIFORNIA ENVIRONMENTAL LAW 55 (1972)].

Section 66602 contains the legislative finding that certain water-oriented land uses along the Bay shoreline, including ports, water-related industries, airports, wildlife refuges, water-oriented recreation and public assembly, desalinization plants and power plants, are essential to the public welfare of the Bay Area. Section 66611 provided for the commission to adopt and file with the Governor and the Legislature a resolution establishing, within the jurisdiction of the commission, the boundaries of the water-oriented priority land uses referred to in Section 66602. After such filing, which was required by December 1, 1971, no further changes could be made in such boundaries without the approval of the Legislature.

Section 66611 has been amended to allow changes in such boundaries to be made by the commission. Such changes shall be in the manner provided by Section 66652 for San Francisco Bay Plan maps. Section 66652 has been amended to require that the proposed change shall not be voted on by the commission in less than 90 days following adequate descriptive notice of the meeting. Section 66611 further provides that such change will become effective only if authorized by an affirmative vote of two-thirds of the commission's members. Where the change involves a reduction or elimination of a priority use area which has been so designated because of contemplated acquisition necessary to implement the priority use, such change may be made only if there is a finding that there is no substantial probability that a public agency will be committed to acquiring the area within the period prescribed by Section 66632.3. No other changes shall be made in the boundaries of the water-oriented priority land uses unless approved by the Legislature.

See Generally:

1) Comment, *Saving San Francisco Bay: A Case Study in Environmental Legislation*, 23 STAN. L. REV. 349 (1971).
2) Comment, *San Francisco Bay: Regional Regulation for its Protection and Development*, 55 CALIF. L. REV. 728 (1967).

Environmental Protection; public access to rivers

Streets and Highways Code §§84.5, 991, 1809 (new).
AB 320 (LaCoste); STATS 1972, Ch 972
Support: Department of Public Works

Section 84.5 has been added to the Streets and Highways Code to provide that during the design hearing process related to *state highway projects* that include the construction by the Division of Highways of

a new bridge across a navigable river, there shall be included full consideration of, and a report on, the feasibility of providing a means of public access to the navigable river for public recreational purposes. Sections 991 and 1809 have also been added to the Streets and Highways Code and similarly provide that before any bridge on a *county highway* or *city street* is constructed over any navigable river, the board of supervisors or legislative body of the city, after a study and public hearing on the question, shall determine and shall prepare a report on the feasibility of providing public access to the river for recreational purposes and a determination as to whether such public access shall be provided.

COMMENT

Provisions for maintaining or creating public access to navigable rivers after bridge construction are an important aspect in maintaining and increasing California's recreational facilities [*See* CAL. PUB. RESOURCES CODE §10001]. However, there is no certainty that Chapter 972 will result in any additional public easements or opportunities for recreation on navigable rivers. Chapter 972 merely requires that consideration of providing access be given and a report be submitted; it does not require that in the construction of a new bridge, the constructing authority actually provide such access. Chapter 972 is also limited in its applicability. The provisions only apply to the construction of a new bridge, and not to the repair of an existing bridge or its removal.

See Generally:

1) Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971).
2) Pennsylvania Environmental Council, Inc. v. Bartlett, 315 F. Supp. 238 (M.D. Penn. 1970).
3) STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES, LAWS RELATED TO CONSERVATION AND PLANNING 255-258 (1969).
4) CONTINUING EDUCATION OF THE BAR, ENVIRONMETAL LAW HADBOOK §§9.21-9.26 (1970).

Environmental Protection; open-space plans

Government Code §65560 (repealed); §65560 (new); §§65302, 65563, 65700, 65910 (amended).
AB 966 (Dunlap); STATS 1972, Ch 251
(Effective June 30, 1972)

Article 10.5 (commencing with §65560), and Article 4 (commencing with §65910), of the Government Code provide for the preservation of open-space land. Section 65560 of the Government

Code has been repealed, and a new §65560 added, to redefine open-space land as any parcel or area of land or water which is essentially unimproved, and which is designated on a local, regional or state open-space plan as being devoted to an open-space use for the preservation of natural resources, managed production of natural resources, outdoor recreation or public health.

Sections 65563, 65700 and 65302 require every city and county to prepare, adopt and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long range preservation and conservation of open-space land within its jurisdiction. Chapter 251 has amended Section 65563 to require that such report be submitted by June 30, 1973, rather than June 30, 1972. Section 65563 additionally requires every city and county to prepare, submit and adopt an interim open-space plan which shall be in effect until June 30, 1973. Such plan shall contain: (1) the officially adopted goals and policies which will guide the preparation and implementation of the open-space plan; and (2) a program for the orderly completion and adoption of the open-space plan by June 30, 1973.

Section 65910 requires every city and county to prepare and adopt an open-space zoning ordinance consistent with the local open-space plan. Chapter 251 has amended Section 65910 to require the preparation and adoption of such open-space zoning ordinances by June 30, 1973, rather than by January 1, 1973.

Chapter 251 was an urgency statute enacted in response to the legislative finding that a postponement of the required date of submission of open-space and conservation plans was necessary in order to allow cities and counties adequate time for the study and preparation of such plans [A.B. 966, CAL. STATS. 1972, c. 251, §6].

See Generally:

1) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK Ch. 8 (1970).
2) F. GRAD, ENVIRONMENTAL LAW ch. 8 (1971).
3) I. SLOAN, ENVIRONMENT AND THE LAW ch. 6 (1971).
4) Bowden, *Open Space and the Police Power in California*, 1 PAC. L.J. 461 (1970).

Environmental Protection; conservation of recreation land

Government Code §§51238, 65302 (amended); §51238.5 (new). AB 2139 (Dunlap); STATS 1972, Ch 1353

Section 51238 of the Government Code has been amended to authorize a board of supervisors to impose conditions on land to be placed

within agricultural preserves, pursuant to article 2.5 (commencing with §51230) of the Government Code, and to permit and encourage compatible uses of land under the California Land Conservation Act of 1965 [CAL. GOV'T CODE §51200 *et seq.*], particularly with respect to public outdoor recreational uses.

Section 51238.5 has been added to the Government Code to provide that if an owner of land agrees to permit the use of his land for free public recreation, the board of supervisors is authorized to indemnify such owner against all claims arising from such public use. The owner's agreement that his land be used for free public recreation shall not be construed as an implied dedication to such use.

Section 65302 of the Government Code delineates what must be included in a general plan for the physical development of charter cities. The plan must include elements concerning land-use, transportation circulation, housing, conservation, open-space, noise, scenic highways, and seismic safety. Section 65302 has been amended to require that the conservation element of the general plan be prepared and adopted no later than June 30, 1973.

See Generally:

1) Gion v. City of Santa Cruz, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970).
2) 3 PAC. L.J., REVIEW OF SELECTED 1971 CALIFORNIA LEGISLATION 381 (1972).

Environmental Protection; seismic safety planning

Government Code §65302 (amended).
SB 591 (Behr); STATS 1972, Ch 348

Section 65302 of the Government Code requires cities and counties to prepare a general plan which consists of development policies, objectives, principles, standards and proposals. The plan must include elements concerning land-use, transportation circulation, housing, conservation, open-space, noise, scenic highways and seismic safety.

The seismic safety element in Section 65302 has been amended to include an appraisal of mudslides, landslides and slope stability as necessary geologic hazards that must be considered simultaneously with other seismic hazards such as possible surface rupture from faulting, ground shaking, ground failure and seismially induced waves.

See Generally:

1) Mills v. San Francisco Bay Area Rapid Transit District, 261 Cal. App. 2d 666, 68 Cal. Rptr. 317 (1968).
2) County of Santa Clara v. Curtner, 245 Cal. App. 2d 730, 54 Cal. Rptr. 257 (1966).

Environmental Protection; biological control of pests

Agricultural Code §11501 (amended).
AB 1008 (Fong); STATS 1972, Ch 735

Section 11501 of the Agricultural Code prescribes the purposes for various pest control provisions contained in Division 6 and Division 7 of the Agricultural Code. The purposes stated in Section 11501 include protection of the environment from harmful pesticides, proper, safe and efficient use of pesticides essential for production of food and fiber, protection of agricultural and pest control workers, assurance of competent pest control licensees and proper labelling of economic poisons. Chapter 735 declares that an additional purpose of these sections of the Agricultural Code is to encourage the development and implementation of pest management systems, stressing application of biological and cultural pest control techniques with selective pesticides when necessary to achieve acceptable levels of control with the least possible harm to nontarget organisms and the envirionment.

Implicit in this broadening of purpose appears to be a recognition that consideration of the total ecology of a crop area may warrant the use of non-chemical control techniques, rather than exclusive reliance on chemicals for pest control purposes.

See Generally:

1) G. MYLROIE, CALIFORNIA ENVIRONMENTAL LAW 79-83 (1972).
2) CONTINUING EDUCATION OF THE BAR, ENVIRONMENTAL LAW HANDBOOK §7.10 (1970).
3) *Office of Planning and Research, Governor's Office, Environmental Goals and Policies* at 22-25, March 1, 1972.
4) I. SLOAN, ENVIRONMENT AND THE LAW 25-28 (1971).

Environmental Protection; California Wild and Scenic Rivers Act

Public Resources Code Chapter 1.4 (commencing with §5093.50) (new).
SB 107 (Behr); STATS 1972, Ch 1259

Chapter 1259 has been enacted to establish the California Wild and Scenic Rivers System. The components of the system include designated rivers or segments of rivers within the Klamath, Trinity, Smith, Eel and American river systems. The Secretary of the Resources Agency may recommend to the Legislature that other rivers be included within the system. However, Section 5093.54 provides that it is the intent of the Legislature, with respect to the Eel River and its tributaries, that after an initial period of 12 years, the Department of Water Resources shall

report to the Legislature as to the need for water supply and flood control projects, and the Legislature shall hold public hearings to determine whether legislation should be enacted to delete all or any segment of the river from the system.

Section 5093.55 provides that no dam, reservoir or other water impoundment facility, other than temporary flood storage facilities on tributaries of the Eel River, shall be constructed on or directly affecting any river within the system. In addition, water diversion facilities cannot be constructed on any river within the system unless and until the Secretary of the Resources Agency determines that: (a) such facility is needed to supply domestic water to the residents of the county or counties through which the river flows; and (b) the facility will not adversely affect the free-flowing condition or natural character of the river.

Section 5093.56 provides that no department or agency of the state shall assist or cooperate, whether by loan, grant, license or otherwise, with any department or agency of the federal, state or local government, in the planning or construction of any project that could have an adverse effect on the free-flowing, natural condition of the rivers included in the system. Section 5093.56 does not apply to geologic, hydrologic, economic, or other technical studies deemed necessary or desirable by the Department of Water Resources in order to determine the feasibility of alternate sites for dams on the Eel River and its tributaries.

Section 5093.58 requires the Secretary of the Resources Agency to classify each river included in the system as wild, scenic or recreational, to prepare a management plan to administer the rivers and their adjacent land areas in accordance with such classification, and to submit such plans to the Legislature for its approval.

Insurance

Insurance; ten percent shareholders

Insurance Code §1656.1 (new).
AB 992 (Moorehead); STATS 1972, Ch 283

Chapter 283 adds §1656.1 to the Insurance Code to require every application for any production agency license [*See* CAL. INS. CODE §1651 *et seq.*] filed by a corporation to contain the names and addresses of all officers, directors, and stockholders owning 10 percent or more of the corporation's stock. If there is any change other than an address change, every such licensed corporation must file a written notice of the change with the Insurance Commissioner.

Prior to the enactment of Chapter 283, it was only required under §1656 that license applications filed by an organization (which is defined in §1628 to include corporations) contain: (1) the names of the members, officers, or employees of the applicant who may exercise the powers and perform the duties authorized by the license, and (2) an agreement of an officer empowered to bind the corporation that, in the event the license is granted, only those persons named will transact the insurance business authorized under the license.

COMMENT

Insurance Code §1666 gives the Insurance Commissioner broad investigative authority in relation to license applications and empowers him to require the filing of such supplementary documents, affidavits and statements as may be necessary to aid him in determining if the license should be granted. Section 1668 sets forth the grounds for which license applications may be denied, among which are the following:

(1) The granting of the license would be against public interest.

(2) The applicant does not intend actively and in good faith to carry on, as a business, the transactions which would be permitted by the issuance of the license.

(3) The applicant is not of good business reputation or lacks integrity.

(4) The applicant seeks the license to avoid or prevent the operation or enforcement of the insurance laws of this state.

Chapter 283 increases the effectiveness of the investigative powers granted in §1666 in the case of corporate applications; *i.e.*, Chapter 283 should have the effect of putting the Insurance Commissioner on notice of who is in a position of control in a corporation applying for a license, so that those who have already been denied a license or who know that a license would be denied to them, would not be as able to obtain a license through the formation of a corporation. For example, in *Newport v. Caminetti*, it was held that the commissioner did not abuse his discretion in denying a license as a bail permittee and bail agent to one who was acting as a "dummy" for others whose several applications for licenses had been denied [56 Cal. App. 2d 557, 132 P.2d 897 (1943)].

Insurance; contingent compensation to directors

Insurance Code §10434 (amended).
AB 777 (Foran); STATS 1972, Ch 264

Prior to amendment, Insurance Code §10434 provided that a domestic insurer shall not pay nor contract to pay, directly or indirectly, to specifically enumerated persons, including its directors, any compensation which is contingent upon:

(1) The writing or procuring of any policy of life, disability or both classes of insurance in such insurer.

(2) Procuring an application therefore by any person.

(3) The payment of any renewal premium or the assumption of any life, disability or both of these classes of insurance by such insurer.

Chapter 264 adds an exception to this prohibition against payment of contingent compensation to directors, provided:

(1) The compensation is less than the lesser of 1 percent of the insurer's statutory net gain from operations or 1 percent of commissions on premiums and annuity considerations for the preceeding calendar year;

(2) Such compensation is paid to not more than two directors if the total number of board members is 10 or more, and to not more than 1 director if the total number is less than 10; and

(3) Such compensation is not to be paid to any director who has served more than two years as a director.

It is also provided by Chapter 264 that any director receiving such contingent compensation may not vote or be counted for purposes of a quorum on all matters directly relating to such compensation.

Engaging in any of the practices prohibited above is grounds for revocation of the insurer's certificate of authority [CAL. INS. CODE §10435].

COMMENT

The payment of commissions by the insurer to an underwriting agent on policies for which the agent has assumed the risk is standard practice in the insurance business [*See* 9 OPS. ATT'Y GEN. 42 (1947)]. Prior to the enactment of Chapter 264, it was the opinion of the Attorney General that §10434 prohibited the payment of such commissions to a corporate underwriting agent if any of the agent's principal shareholders or officers act as members of the board of directors of the insurer [9 OPS. ATT'Y GEN. 42 (1947)].

Chapter 264 would allow payment of such commissions under the limited conditions set forth above, which seem to be designed to provide adequate safeguards against endangering the solvency of the insurer [*See* CAL. INS. CODE §10434(d)]. The provision in Chapter 264 which prohibits such directors receiving contingent compensation from voting or being counted for a quorum on all matters directly relating to such compensation seems intended to prevent the development of a conflict of interest.

See Generally:
1) 4 COUCH ON INSURANCE 2d §26:378 (1960).

Insurance; disposition of fiduciary funds

Insurance Code §§1734, 1735 (amended).
SB 1205 (Bradley); STATS 1972, Ch 353
Support: State Department of Finance

Insurance Code §1733 provides that all funds received as premiums on or under any policy of insurance or undertaking of bail, by any person acting as an insurance agent, broker or solicitor, life agent, life analyst, suplus line broker, special line broker, motor club agent, or bail agent or solicitor, are received and held by such person in his fiduciary capacity.

Section 1734 provides that any person licensed under a permanent, temporary or restricted license, or under a certificate of convenience, to act in any capacity mentioned in §1733, who receives funds as defined in §1733 held for one or more principals, must either remit such funds, less commissions, to the insurance company within 15 days

after receipt, or maintain the funds as a fiduciary in a segregated bank account.

Prior to Chapter 353 such fiduciary funds could be commingled with the fiduciary's own funds to an unlimited extent provided the principal (insurance company) waived the segregation requirement in writing. Chapter 353 deletes this exception to the segregation requirement and provides that if such funds are retained, they must be held in a *trustee* bank account or depository. Chapter 353 also modifies §1735 dealing with the disposition of fiduciary funds held by a managing general agent to provide that if he holds such funds in a commingled manner pursuant to a written waiver by his principal, they must be maintained in a trustee bank account or depository.

COMMENT

Any fiduciary of the type discussed above acts as a fiduciary both as to the insured and the insurer [*See* Ins. Agency v. Surper Timber Co., 250 Cal. App. 2d 99, 58 Cal. Rptr. 143 (1967)]. Such funds in his hands are both in law and fact "trust funds" [*See* Mid-States Ins. Co. v. American Fidelity and Casualty Co., 234 F.2d 721 (9th Cir. 1956)]. Chapter 353 makes it clear that if these funds are deposited, they must be deposited in a *trustee* bank account or depository.

There is no prohibition against an agent owning the insurance company. In such a situation, a conflict of interest would arise if the principal waived the segregation requirement [*See* RESTATEMENT (SECOND) OF AGENCY §§313, 391, 592 (1957)]. Apparently Chapter 353 is intended to correct this situation, since under the above circumstances, it is conceivable that the insurer's solvency could be jeopardized.

See Generally:

1) G. COUCH, CYCLOPEDIA OF INSURANCE LAW §§26:1-26:479 (1971).

Insurance; unfair claims settlement practices

Insurance Code §790.03 (amended).
AB 459 (Pierson); STATS 1972, Ch 725

Section 790.03 of the Insurance Code lists unfair methods of competition and deceptive practices in the business of insurance. Section 790.03 has been amended to add to this list the following unfair claims settlement practices, when they are knowingly committed or performed with such frequency as to indicate a general business practice: (1) misrepresentation of pertinent facts or policy provisions to claimants;

(2) failure to act promptly on communications with respect to claims; (3) slow processing and investigation of claims; (4) failure to affirm or deny coverage within a reasonable time; (5) bad faith in settlement of claims in which liability is reasonably clear; (6) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered; (7) attempting to settle a claim for less than a reasonable man would have believed he was entitled, by reference to written or printed advertising material accompanying or made part of an application; (8) attempting to settle claims on the basis of an application which was altered without the insured's knowledge; (9) failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made; (10) making known to claimants a practice of appealing arbitration awards for the purpose of compelling settlements below the amount awarded in arbitration; (11) delaying claim payment by requiring preliminary and formal claim reports which contain the same information; (12) failing to settle claims promptly, where liability has become apparent under one portion of the insurance policy in order to influence settlements under other portions of the policy; and (13) failing to promptly explain denial of a claim or offer of a compromise settlement.

Article 6.5 (commencing with §790) of the Insurance Code specifies the actions which the Insurance Commissioner may take to restrain the continuation of such practices. Section 790.05 provides for the issuance of a cease and desist order by the Insurance Commissioner, and §790.07 provides penalties for the violation of such order. A first violation subjects the licensee to a fine, and subsequent violations may result in a license suspension or revocation.

Insurance; Mexican brokers

Insurance Code §767 (new).
AB 48 (Deddeh); STATS 1972, Ch 191

Insurance Code §767 has been added to provide that it shall not be unlawful for any licensed insurance broker to pay a commission to an agent or broker licensed under the laws of Mexico when such agent or broker in Mexico refers to the insurance broker licensed in California, a resident of Mexico who wishes to obtain a policy of automobile liability insurance which will be effective in California, and such

broker negotiates and effects such a policy for the Mexican resident. This section is to be given effect notwithstanding any contrary provision in article 5, relating to unlawful rebates.

COMMENT

Under the provisions of Insurance Code §755, the paying or allowing of any commission on insurance business in this state to other than an admitted insurer or licensed agent, broker or solicitor is an unlawful rebate. Section 708 specifies the necessary documents that a foreign insurer must file before admittance in this state.

Prior to the enactment of §767, a licensed California broker could not pay a referral commission to an agent or broker licensed in Mexico unless the Mexican broker was also admitted in California pursuant to §708.

See Generally:
1) 12 OPS. ATT'Y GEN. 63 (1948).
2) 1 OPS. ATT'Y GEN. 519 (1943).

Insurance; California FAIR Plan Association

Insurance Code §10095 (amended).
AB 1369 (Brathwaite); STATS 1972, Ch 743

Insurance Code §10090 *et seq.* provides an assigned risk system (California FAIR Plan Association) to assure the availability, to residential property owners in all parts of the state, of "basic property insurance" covering hazards of fire, vandalism and other perils [CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION 180]. All insurers writing residential property insurance are required to participate in the placement facility and joint reinsurance association (§10095).

Chapter 743 amends §10095 of the Insurance Code to require that the plan of operation of California FAIR ("fair access to insurance requirements") Plan Association also provide for a plan to encourage persons to secure basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker by informing such persons what steps they must take in order to secure such insurance through normal channels.

See Generally:
1) CAL. INS. CODE §10090 *et seq.*
2) CONTINUING EDUCATION OF THE BAR, REVIEW OF SELECTED 1968 CODE LEGISLATION 180.

Insurance; group disability insurance—public agencies

Insurance Code §10270.55 (amended).
AB 693 (Maddy); STATS 1972, Ch 420

Insurance Code §10270.55 specifies the employees included in group disability insurance policies under §10270.5. Section 10270.55 (g) provides that no employee may be insured under a group policy unless he is an officer, manager or employee *for compensation* of the employer to whom a group policy is issued or of one or more of the individuals, firms, corporations, associations or trustees specified elsewhere in the section. Prior to Chapter 420 it was nowhere specified in §10270.55 that the officers, managers and employees of a public agency, *who receive no compensation*, may be insured under a group policy. Yet, Government Code chapter 2, article 1 (commencing with §53200) sets forth the conditions under which governmental officers, managers and employees may secure group insurance.

Chapter 420 adds subsection (h) to Insurance Code §10270.55 to resolve this ambiguity by specifically providing that the officers, managers and employees of public agencies who receive no compensation may be insured under a group policy purchased pursuant to the provisions of Government Code §53200 *et seq.* It is expressly stated in Chapter 420 that this does not constitute a change in, but is declaratory of, existing law [CAL. STATS. 1972, c. 420, §2].

See Generally:
1) 40 OPS. ATT'Y GEN. 193 (1962).

Insurance; tax sheltered annuities—life or disability insurance

Insurance Code §770.3 (amended).
AB 1802 (Knox); STATS 1972, Ch 423

Section 770.3 of the Insurance Code has been amended to provide that "no state department or agency shall negotiate any life or disability insurance or require the placing of such insurance through particular agents, brokers, or companies, except to the extent that the state has a direct financial interest in the subject of the insurance." Previously this section only prevented the state or agency from negotiating or requiring the placement of such life insurance or annuities through "a particular agent, broker, or company." Therefore, it would appear that prior to amendment the state department or agency could have required the employee to select one agent, broker or company from a group of

selected agencies, brokers or companies. Now the employee has complete discretion to determine with whom he wishes to do business. This is further clarified by an addition to Section 770.3 which provides:

> Notwithstanding anything in this section to the contrary, in any case in which a tax sheltered annuity . . . is to be placed or purchased for an employee, the employee shall have the right to designate the licensed agent, broker, or company through whom the employee's employer shall arrange for the placement or purchase of the tax-sheltered annuity. In any case in which the employee has designated such an agent, broker, or company, the employer shall comply with such designation.

Insurance; incontestability of life insurance

Insurance Code §10113.5 (new).
SB 844 (Bradley); STATS 1972, Ch 182
(Effective January 1, 1974)

Pursuant to Insurance Code §10113.5, an *individual* life insurance policy delivered or issued for delivery in this state must contain a provision that it is incontestable after it has been in force, during the lifetime of the insured, for a period of not more than two years after its date of issuance, except for nonpayment of premiums and except for any of the supplemental benefits described in Section 10271, to the extent that the contestability of such benefits is otherwise set forth in the policy or contract supplemental thereto. The supplemental benefits referred to in §10271 are: additional benefits in case of death, disability, dismemberment or loss of sight by accident; and provisions operating to safeguard against lapse, to give a special surrender value or special benefits or an annuity in the event the insured becomes permanently and totally disabled.

Section 10113.5 also provides that an individual life insurance policy, upon reinstatement, may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement, and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

This section shall not be construed to preclude at any time the assertion of defenses based upon policy provisions which exclude or restrict coverage. This section does not apply to individual life insurance policies delivered or issued for delivery in this state on or before December 31, 1973.

COMMENT

Since 1934, California has required incontestability clauses with a period of not more than two years for group life policies (CAL. INS. CODE §10206). The addition of Insurance Code §10113.5 brings California in line with 47 other states which statutorily require incontestability clauses in policies of individual life insurance [*See* 1 APPLEMAN, INSURANCE LAW AND PRACTICE §311 (2d ed. 1965)].

The purpose of an incontestability clause is generally to protect the insured and the beneficiary from contests arising out of the policy after the expiration of the statutory period of time, thereby providing an assurance of payment after the insured's death [*In re* Kear's Will, 3 N.Y.2d 959, 146 N.E.2d 789 (1957)].

Some difficulty has arisen in the construction of incontestability clauses where a policy has lapsed and been reinstated. When certain representations are required to secure the original policy and an insured applies for reinstatement after the policy lapses, he must make new representations as to the state of his health. Questions then arise as to whether the old period of contestability may bar setting up defenses to the new representations, whether a new contestability period is created, or whether defenses may be set up without time limitation. The majority view is that reinstatement does not create a new policy. Therefore, old defenses are not automatically revived, and new representations which are false are subject to a new contestability period [1 APPLEMAN, INSURANCE LAW AND PRACTICE §320 (2d ed. 1965)]. Section 10113.5 appears to codify the majority view.

See Generally:

1) 1 APPLEMAN, INSURANCE LAW AND PRACTICE §§311-334 (2d ed. 1965).

Insurance; hospital service contracts—sterilization

Insurance Code §11512 (amended).
SB 1403 (Bradley); STATS 1972, Ch 388
Support: State Department of Insurance

Insurance Code §11512 provides that no hospital service contract shall be entered into unless certain enumerated conditions are met. Chapter 388 adds to this section a provision that if such a contract contains coverage for sterilization operations or procedures, it may not impose any disclaimer, restriction, or limitation on such coverage because of the insured's reason for sterilization. All such contracts

entered after the effective date of this amendment are to be construed to be in compliance with this section, and any provision in any such contract which is in conflict with this section shall be of no force or effect.

Prior to Chapter 388, disclaimers, restrictions, or limitations on sterilization coverage because of the insured's reason for sterilization were prohibited only in *family* hospital service contracts [CAL. INS. CODE §11512.1], disability insurance contracts [CAL. INS. CODE §10120] and self-insured employee welfare benefit plans [CAL. INS. CODE §10121]. Chapter 388 has the effect of extending this prohibition to individual hospital service contracts.

See Generally:

1) Vickowich, *The Dawning of the Brave New World—Legal, Ethical and Social Issues of Eugenics*, 1971 U. ILL. L.F. 189.
2) Tierney, *Voluntary Sterilization—A Necessary Alternative*, 4 FAMILY L.Q. 313 (1970).
3) Forbes, *Voluntary Sterilization of Women as a Right*, 18 DEPAUL L. REV. 560 (1969).
4) *California Assembly Interim Committee on Judiciary, Legal Aspects of Sterilization, Abortion and Family Planning*, Oct. 22, 1970.

Insurance; certificates of ability to respond in damages

Insurance Code §655 (new).
SB 1402 (Bradley); STATS 1972, Ch 356
Support: State Department of Insurance

Vehicle Code §§16430-16480 require persons involved in an automobile accident to provide the Department of Motor Vehicles with proof of ability to respond in damages. Such proof may be in the form of a certificate prepared by the individual's insurer (§16431), by bond (§16434), or by the deposit of $35,000 with the department (§16435). Prior to Chapter 356, an insurer was not required to complete a certificate for proof of ability to respond in damages. Chapter 356 adds Section 655 to the Insurance Code to require every insurer issuing policies of motor vehicle liability insurance to complete and file the certificate or certificates provided for under Vehicle Code §§16431 and 16432. This Chapter also provides the Insurance Commissioner with authority to enforce filing under these sections.

See Generally:

1) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* §364 (7th ed. 1960).
2) Comment, *Constitutionality of the California Financial Responsibility Law*, 4 CAL. WEST. L. REV. 89 (1968).

Insurance; renewal notices

Insurance Code §500 (new).
SB 1404 (Bradley); STATS 1972, Ch 357
Support: State Department of Insurance

Chapter 357 adds §500 to the Insurance Code to require any insurer which has, as a regular course of conduct, sent renewal premium notices to an insured and which intends to discontinue that practice to notify such insured of its intention not to send such notices.

COMMENT

"Regular" means a systematic or periodic use, not mere occasional or incidental use [Fitzpatrick v. Metropolitan Life Ins. Co., 15 Cal. App. 155, 160, 59 P.2d 199 (1936)]. Prior to the enactment of Chapter 357 an insurer could regularly send renewal premium notices to an insured under a noncancellable policy [*See, e.g.*, 17 COUCH ON INSURANCE 2d §67:29 (1967)], thereby creating an expectancy that such notice would be sent in the future and a reliance thereon by the insured. The insurer could then usually accomplish a termination of the policy for nonpayment of premiums by not sending a renewal premium notice [*See* Methvin v. Fidelity Life Ins. Co., 129 Cal. 251, 61 P. 1112 (1900); Morris v. New York Life Ins. Co., 6 Cal. App. 2d 30, 43 P.2d 572 (1935)].

Although there is no specific provision as to what the consequence might be if an insurer fails to comply with §500, it appears that such noncompliance could be held an unfair or deceptive act or practice under §790.02. The Insurance Commission could then issue a cease and desist order under §790.06, violation of which would subject the insurer to a penalty of up to $500 and possible suspension or revocation of his license under §790.07.

See Generally:
1) 17 COUCH ON INSURANCE 2d §67:29 (1967).

Insurance; fraternal benefit societies

Insurance Code §10970 (amended).
SB 1401 (Bradley); STATS 1972, Ch 355
Support: State Department of Insurance

Insurance Code §10970 provides that fraternal benefit societies shall be governed by the provisions of Insurance Code Chapter 10

(commencing with §10970), and shall be exempt from all other provisions of the Insurance Code except those specifically enumerated.

Chapter 355 adds the following four sections to those previously enumerated:

(1) Section 10117, which prohibits a policy of disability insurance from making exceptions for Medi-Cal benefits.

(2) Section 10118, which requires a policy of disability insurance to continue coverage for mentally retarded or physically handicapped children beyond any limiting age so long as the child is incapable of self-sustaining employment and chiefly dependent upon the insured for support and maintenance.

(3) Section 10119, which requires a policy of disability insurance containing coverage for members of an insured's immediate family to provide immediate coverage for newborn infants.

(4) Section 10120, which prohibits a policy of disability insurance containing coverage for sterilization operations or procedures from excluding, reducing or limiting such benefits because of the reason for sterilization.

COMMENT

A fraternal benefit society is defined in §10990 as any incorporated society, order or supreme lodge without capital stock, which is conducted solely for the benefit of its members and their beneficiaries on a nonprofit basis, which operates on a lodge system with ritualistic form of work, and which has a representative form of government and makes payment of benefits. The "lodge system" and "representative form of government" are defined in Sections 10991 and 10992, respectively.

Section 11041 authorizes an admitted society to provde all forms of life insurance, with the exception of group and funeral life insurance, and all forms of disability insurance, with the exception of group insurance and disease time loss benefits to members over 65.

However, although fraternal benefit societies may engage in a general insurance business [State *ex rel.* Biel v. Royal Neighbors of America, 44 N.M. 8, 96 P.2d 705 (1939)], it is the legislative policy in many states not to subject them to the strict control and regulation imposed on ordinary insurance companies, but to allow them greater freedom in conducting their own affairs by exempting them from the operation of statutes regulating insurance companies generally [Vigil v. American Ins. Union, 37 N.M. 44, 17 P.2d 936 (1932) (hereinafter cited as

Vigil)]. Chapter 355 apparently expresses a legislative feeling that controls represented by the four code sections above (all of which were enacted since 1968) outweigh a traditional legislative deference to the mutually benevolent character of these societies [*Vigil*].

See Generally:

1) 2 G. COUCH, CYCLOPEDIA OF INSURANCE LAW §§20:10, 20:12-20:14 (1959), (Supp. 1972).
2) 18 J. APPLEMAN, INSURANCE LAW AND PRACTICE §10143 (1945), (Supp. 1972).

Insurance; uninsured motorist insurance

Insurance Code §11580.2 (amended).
SB 66 (Grunsky); STATS 1972, Ch 952
(Effective January 1, 1973)

Section 11580.2 of the Insurance Code requires all auto liability insurance policies sold in California to provide financial protection to the insured against bodily injury caused by an uninsured motorist [34 CAL. S.B.J., REVIEW OF SELECTED 1959 CODE LEGISLATION 704 (1959)].

Chapter 952 amends §11580.2 to require that in the event an insured agrees with his insurer to *delete* such uninsured motorist coverage from the policy (at a time prior to or subsequent to the issuance or renewal of the policy), such "agreement" shall be in writing and substantially comply with the form established by §11580.2(a)(2). Section 11580.2(a)(2) specifies a form of agreement designed to explain, in laymen's terms, the statutory requirements relating to uninsured motorist coverage. Presumably, the required form of the agreement will better enable the insured to understand the uninsured motorist coverage which he has elected to delete from the terms of his policy.

Section 11580.2 has also been amended to provide that if an insured has or may have rights to benefits, other than non-occupational disability benefits, under any workmen's compensation law, the arbitrator shall not proceed with the arbitration until the insured's physical condition is stationary and ratable. If those cases in which the insured claims a permanent disability, such claims shall, unless good cause is shown, be adjudicated by award or settled by compromise and release before the arbitration may proceed.

Thus, any demand or petition for arbitration, by a claimant for uninsured motorist insurance benefits, shall contain a declaration, under penalty of perjury, stating whether:

(1) The insured has a workmen's compensation claim;

(2) Such claim has proceeded to findings and award or settlement

on all issues reasonably contemplated to be determined in that claim; and

(3) If not, what reasons amounting to good cause are grounds for the arbitration to proceed immediately.

Further, as amended by Chapter 952 the uninsured motorist coverage provided by Section 11580.2 does not apply in any instance where it would inure directly to benefit the United States or any state or political subdivision thereof.

COMMENT

Under §11580.2(h) of the Insurance Code, the uninsured motorist coverage or award may be reduced by the amount paid or the present amount payable to an injured person under workmen's compensation. This reduction for "present amounts payable" under workmen's compensation has caused some difficulty, because it is almost impossible to arrive at an accurate amount payable at a time when the insured is still under medical treatment or his condition is not yet stationary, permanent and ratable [EISLER, CALIFORNIA UNINSURED MOTORIST LAW HANDBOOK §11.5 (1969)]. Prior law, however, did not preclude proceeding with arbitration under uninsured motorist coverage before the insured's condition was stationary and ratable.

In *Waggaman v. Northwestern Security Insurance Co.* [16 Cal. App. 3d 571, 94 Cal. Rptr. 170 (1971)] it was held that the language reducing the loss payable under the terms of the uninsured motorist policy by "the amount paid and the present value of all amounts payable" under workmen's compensation law referred to amounts which have been paid or fixed at the time of the arbitration hearing. Testimony as to the amount of future compensation benefits which the claimant would be eligible to receive was found by the court to be inadmissible.

Thus, the apparent intent behind the amendment to §11580.2 is to clarify the fiscal relationship between the uninsured motorist carrier and the workmen's compensation insurer by requiring that the workmen's compensation claim be determined prior to the arbitration of the uninsured motorist claim unless good cause to proceed with the arbitration under the uninsured motorist coverage is shown.

See Generally:

1) WIDISS, A GUIDE TO UNINSURED MOTORIST COVERAGE §§2.64, 2.65 (1970).
2) EISLER, CALIFORNIA UNINSURED MOTORIST LAW HANDBOOK §11.5 (1969).
3) 34 CAL. S.B.J., REVIEW OF SELECTED 1959 CODE LEGISLATION 704 (1959).