



The politics of regulation: individual rights v. public good

By BRUCE E. JONES

Not since the "Dow delirium" of 1976 and 1977 have governmental regulations in California been so battered and abused. The current "Sohio sojourn" has resurrected all the negative buzz words: red tape, bureaucracy, permit delays and bad business climate. But this time the complaints carry with them the sting of Proposition 13, with its implied criticism of everything governmental. Ranking just behind over-taxation and wasteful government spending as popular targets is over-regulation, and the criticism is coming from all directions.

President Carter has bemoaned the nation's "regulatory burden." Governor Brown opened his second term with a call for a reduction in state regulation, and he backed that up with specific proposals. Bill Press, head of Brown's Office of Planning and Research (OPR), says he is trying to cope with "the shark-infested waters of the state regulatory process." The California building industry issued a report charging that lack of housing is largely due to "proliferating involvement of government at all levels." Added Californians for Environment, Employment, Economy and Development (CEEED): "Government must stop taking actions that directly raise the cost of housing."

Pressure points

Regulation takes three basic forms — legislative, judicial and administrative. It is the latter that seems to be most frustrating to the business world. Administrative regulations are executed by faceless bureaucrats and low-level civil servants in a complex structure of agencies unfamiliar to most citizens. And regulate they do. In 1978 the 27,400-page California Administrative Code (which is in 36 volumes) underwent changes on 12,000 of its pages. In Califor-

nia about 150 separate agencies, boards and commissions are able to create regulations which have the force of law but which undergo no coordinated or central review.

The backlash against administrative regulation is growing. Feeling the most pressure are these state laws, agencies and processes:

- **California Environmental Quality Act (CEQA).** Since at least 1974 CEQA has been criticized as spawning long and expensive environmental impact reports (EIRs). In the current legislative session, Senator Alan Robbins has sponsored a bill calling for a study to "evaluate all possible negative effects" of CEQA, especially on the economy. (Robbins also asked for an estimate of the number of trees destroyed to provide all the paper for the EIR reports.) Because of recent changes in the law, the likelihood of massive revisions has been reduced, but pressure is sure to continue for more concise and useful EIR documents.

- **Coastal Commission.** The continuing attack on this commission has been a favorite pastime of some legislators and many coastal residents since Proposition 20 was passed in 1972 to protect the state's shoreline. This year even the Sierra Club and the commission itself support reduction of its permit powers. A bill by Assemblyman Victor Calvo (AB 834) would remove most single-family homes from commission review and would reduce staff workload by about 30 percent, freeing it for more important planning functions. The bill also has provided a defense against more than 40 other bills introduced this session to reduce the commission's powers more drastically. Of these, only two have survived legislative hearings, but Mike Fischer, the commission's executive director, recognizes them as a sign of the public's "vastly reduced patience for regulation." Fischer feels the Calvo bill is a balanced response toward removing unnecessary controls.

- **Energy Commission.** Almost since its inception in

1974, the state Energy Commission has been criticized by both the environmental and pro-development communities. Its opposition to nuclear power plant construction, strengthened by Governor Brown's recent appointees, has resulted in efforts to abolish the commission. Many of the agency's problems can be traced to poor public relations, but the politics of its survival may now depend on how public opinion responds to the Three Mile Island nuclear accident. It may be that the Energy Commission will outlast its critics because of the near-disaster in Pennsylvania.

• **The permit process.** While the details of Dow and Sohio are still disputed, the two projects have come to symbolize governmental interference in industrial progress. The Dow proposal was for a petrochemical complex near Collinsville, on the Montezuma Hills along the Sacramento River. It was announced in February 1975, with an estimate that construction could begin by May 1976, after the "normal course of meeting legal obligations." When Dow Chemical Company abandoned the effort in January 1977, it had secured only four of the required 65 agreements from 19 governmental agencies.

The complex scenario resulted in a general concern about regulatory overkill. Editorial reactions included the *LA Times'* observation about California's "posterous system of implementing (environmental) controls," and the *Sacramento Bee's* call for restraint in making regulations. Governor Brown labeled Dow's decision "premature" and "unfortunate," but the president of Dow insisted that after more than two years, "we simply saw no light at the end of the tunnel in the regulatory maze."

The unbuilt pipeline

The conflicts were repeated in the recent controversy over the Sohio terminal in Long Beach and the oil pipeline to Texas. This project was even more complex than Dow; OPR says a total of 112 agreements and permits were needed for the project in California, from nine state and 29 local agencies. But for both Dow and Sohio, it was the air quality permits that created the big crunch. The Brown Administration insists that Sohio made an economic decision to pull out, but Sohio, like Dow, chose to make government — especially the Brown Administration — the scapegoat.

Ironically, Brown and his legislative leadership have made substantial progress in streamlining permit processes, with major reforms beginning as early as the mid-'70s. One of the most dramatic and complex of the new permit shortcuts is the concept of air pollution tradeoffs. This process — also described as the "emission offset policy" — is critical to the future regulation of industrial growth in California. It requires any industry wishing to build or expand in an air-quality "nonattainment area" (below federal clean-air standards) to install the best available emission control equipment and also to find another source of pollutants which it can clean up, to the point that there is a net improvement in air quality. While the "emission credits" tradeoff is not without controversy and is certainly not a

simple process, it does seek to balance economic and environmental requirements within the permit process.

Even as Dow was going through its trials, the first streamlining legislation passed the Legislature. In September 1976 Governor Brown signed a bill to permit "focused" impact reports in order to reduce the bulk and scope of these documents by addressing only truly "significant" impacts.

As a direct result of Dow, Speaker Leo McCarthy rushed through a complex bill with major reforms in both CEQA and state and local permit processes. Agencies now are required to state what data they need to evaluate a project, and they are prohibited from demanding more after the permit process has begun. The new law created higher levels of interaction between regulatory agencies and, most important, set a year-and-a-half time limit for all actions, including the EIR, on a permit request after it had been accepted as complete. (However, there is no limit to the number of times a request can be found to be incomplete.)

The permit evaluation and environmental review processes now run concurrently, not consecutively. If an agency fails to act in time, the permit is automatically approved. While developers gain from the clarity of time frames and procedures, they will also come under heavier pressure to supply all the information needed by governmental reviewers. This was a major issue with the Dow proposal.

McCarthy's bill also requires OPR to help all agencies and applicants comply with the law through a new Office of Permit Assistance, created to help with procedural questions and dispute mediation. OPR must also, "to the maximum extent feasible," consolidate the various required hearings, as was done with Dow. An OPR brochure declares that this effort "should go a long way toward eliminating much of the confusion and delay Californians have faced in dealing with the state's complex system to manage the environment. By taking the mystery out of the permit process and serving in its role as coordinator, the office hopes to build a better working relationship between business and government in California." An OPR permit handbook should be ready this summer.

Another OPR innovation is the California Environmental Data Center which is cataloging available information on natural resources, land cover and agriculture. The data bank is designed to expedite the permit process by providing necessary background information. Ideally EIR and plan writers will not have to spend as much time and money on research.

The "clearinghouse" approach is also the key to another McCarthy bill creating an office of administrative law under the governor. Presently a hearings unit in the Department of General Services merely processes administrative regulations without the authority to amend or reject them. The speaker's bill would require review of adopted regulations within 30 days and permit the administrative law office to consolidate and modify regulations.

Beginning attack

Even with such progress, Bill Press admits, "we have just begun to attack the insidiousness and inequities of over-regulation. Courts are a brake on our ability to streamline the permit process, and rightfully so. The independent judiciary and the citizen plaintiff are venerable American institutions." At their best, administrative law and the permit process are intended to balance conflicts and protect the public health, safety and welfare. But sometimes the public interest is overlooked, especially if it has been poorly defined. Because the politics of regulation pit individual rights against the public good, the task ahead will be a delicate and thankless mission. 

An easy way to order subscriptions and books



Master Charge, Visa and BankAmericard cards may be used to purchase subscriptions and books from the *California Journal*. When ordering, send just the card number — not the card itself — and we'll take care of the rest of the paperwork. Send your orders to the *Journal* at 1617 10th St., Sacramento 95814.

Rebirth of the radicals in the politics of Berkeley

By ROBERT FEINBAUM

Those obituaries for the political organization of Congressman Ron Dellums and the Berkeley radical movement may have been a bit premature. Radicals — now called “progressives” — backed by Dellums captured nearly every office up for grabs in Berkeley’s municipal election this spring. Dellums’ main political foe, Mayor Warren Widener, was defeated by a 43-year-old newcomer both to Berkeley and to elective politics, Eugene (Gus) Newport, a job-development specialist for the United States Department of Labor. Widener’s defeat ended speculation that he would challenge either Dellums or the congressman’s ally, Assemblyman Tom Bates, in 1980.

The progressive Berkeley Citizens Action (BCA) also elected three city council members: incumbent John Denton, former city auditor Florence McDonald and Planning Commissioner Veronika Fukson. Only one member of the rival moderate slate of the Berkeley Democratic Club, incumbent Shirley Dean, managed to survive the onslaught. Not since 1971, when BCA’s predecessor, the April Coalition, elected three members to the council along with a supposedly sympathetic mayor (Widener), have the progressives been so well represented at city hall. In fact, the Dellums organization had suffered a series of defeats in recent elections, leading to speculation that Widener would attempt to deliver the *coup de grâce* in 1980 by running against Dellums himself.

Battling factions

For the past quarter of a century, organized factions have battled for control of city government in Berkeley. During the '50s and the early '60s liberal Democratic clubs challenged the downtown Republican business interests. In 1961 the Democratic Caucus finally succeeded in electing a majority of the council, including its first black, and started to push for liberal programs. The Democratic Caucus held a majority on the city council throughout the tumultuous '60s. However, the Vietnam War split Democratic ranks so badly that by the end of the decade “new politics” activists were battling traditional Democrats more ferociously than the caucus ever battled local Republicans.

Berkeley’s bitter election of 1971 brought out 80 percent of the registered voters. An initiative for “community control” of the police was soundly defeated, but the radical April Coalition slate, which supported the initiative, was unified while liberals who opposed the “police partition” measure scattered their votes among a dozen candidates. This led to the election of three Coalition council members. In the next election, the liberals ran a tight slate and suc-

Robert Feinbaum is a Berkeley social scientist and a frequent contributor to the Journal.



Newport

ceeded in electing three of four to the council. Republicans, whose influence was on the wane in Berkeley, threw in with the liberal Democrats in an effort to keep the radicals out of office. Since then no Republican has even come close to being elected to the council.

In 1975, Widener, with support from moderate Democrats and Republicans, was narrowly re-elected mayor. Three of the five council members chosen in that election were sponsored by the Democratic Club. Moderates maintained control of the council. Then in the 1977 city election, the BDC swept all four council seats, giving the moderates their greatest margin on the council since the late '60s.

No burning issue

This year’s election produced no burning issue of the kind that has inflamed local Berkeley politics over the past decade. Two initiatives were on the ballot. Both would have been controversial elsewhere, but in Berkeley neither provoked much disagreement. One measure directed the city to take its money out of banks that directly or indirectly made loans to South Africa. The other initiative proposed that the police department give “lowest priority to the enforcement of marijuana laws” by making no arrests for violations, and by spending no money for enforcement of state laws. Both initiatives passed by nearly 2 to 1.

Lack of an overriding emotional issue may actually have helped the BCA this time. In past elections the progressive slate has been tied to losing issues such as rent control. The