

# LOCAL & STATE

WEATHER ♦ DEATHS ♦ BAY AREA NEWS ♦ EDITORIALS ♦ COMMENTARY  
6B F

INSIDE  
**State News**  
Legislators are edging closer to agreement on a spending plan./3B

## Water board appointee doomed?

BY SCOTT THURM  
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The president of Silicon Valley's largest trade group should not be allowed to serve on a regional water-pollution board, lawyers for the state Legislature have concluded in an opinion that appears to doom Gary Burke's chance to remain on the board.

In an opinion publicly released Tuesday, the Legislative Counsel found that Burke's appointment to the San Francisco Regional Water Quality Control Board violates federal conflict-of-interest rules because the board regulates com-

**If the Senate does not confirm Burke by September, he will automatically be removed from the board.**

panies that effectively pay Burke's salary. In response, Senate President Pro Tem Bill Lockyer said Tuesday night that the Senate should resolve legal disputes about

Burke's appointment by "err(ing) on the side of caution" and not confirming him.

If the Senate does not confirm Burke by September, he will automatically be removed from the board, which regulates how much pollution can be discharged to the bay and oversees the cleanup of old hazardous-waste sites. Gov. Pete Wilson appointed Burke to the board in September.

Burke, the president of the Santa Clara County Manufacturing Group, said Tuesday he would

See WATER, Page 6B

## Opinion goes against water board appointee

■ WATER  
from Page 1B

continue to fight for confirmation, but it's unclear how he or aides to Wilson can overcome Lockyer's doubts. The manufacturing group is a 115-company trade association that lobbies local, state and federal governments on housing, transportation, environment and tax policies.

Before Burke's appointment, a state lawyer concluded that he would not have a conflict of interest because none of the manufacturing group members pays him directly. Since his appointment, Burke has not voted on any matter involving IBM, where he used to work, or on which the manufacturing group had taken a stand.

But environmental groups challenged the appointment on the grounds that Burke is paid indirectly by companies like Lockheed Missiles and Space Co., Intel and the San Jose Mercury News, which are members of the manufacturing group and hold permits issued by the board. In her opinion, deputy legislative counsel Ellen Sward essentially agreed.

The lawyer who initially gave Burke the OK called Sward's opinion "one of the shoddiest and most self-serving opinions" he had seen. William Attwater, chief counsel for the state Water Resources Control Board, said a

1973 opinion concluded that the conflict-of-interest rule would not apply to trade-group officials who are paid salaries, like Burke.

But it's unclear if anyone will try to change Lockyer's mind. Burke said he wouldn't hire a lawyer to press the case; Attwater said he had already supplied the 1973 opinion to the Legislative Counsel and wasn't planning additional action.

The Senate Rules Committee, which Lockyer chairs, postponed a hearing on Burke's nomination until July 5. Lockyer said he's still waiting for a response from aides to Wilson, but added, "If there's some serious ambiguity or doubt, I would prefer to err on the side of caution."

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