

INTERNAL GOVERNMENT REVIEW OF AGENCIES

Additionally, staff members have developed a training program for those attorneys wanting to act as temporary judges. The program attempts to ensure consistency within the system and improve the quality of small claims court judgments. Unit personnel have already presented the program in several counties.

The DCA is currently developing several publications designed specifically for consumers. Soon to be released are the "Small Claims Court Plaintiff's Brochure," the "Small Claims Court Defendant's Brochure," and "How to Enforce Your Small Claims Judgment."

LEGISLATION:

ACR 117 (Bane) would direct DCA to conduct a public information program regarding existing law requiring physicians to provide written disclosure to their patients that they have a significant beneficial interest in an organization to which the patient is referred. The bill passed the Assembly Health Committee on May 3 and, at this writing, is awaiting hearing in the Assembly Ways and Means Committee.

AB 4007 (Lancaster) is DCA's omnibus bill and would clarify, amend, or delete existing sections of the Business and Professions Code relating to the Bureau of Personnel Services and the Bureau of Home Furnishings and Thermal Insulation.

The following bills were previously discussed in CRLR Vol. 8, No. 2 (Spring 1988) at p. 34 and Vol. 7, No. 3 (Summer 1987) at pp. 51-52:

AB 2862 (O'Connell) would have prohibited the production or packaging of any consumer product which contains a hazardous waste, a hazardous waste constituent, or a concentration level of a hazardous substance which cannot be recycled, treated, destroyed, or disposed of in compliance with the hazardous waste control law.

The bill was dropped by its author in April while it was awaiting hearing in the Assembly Environmental Safety and Toxic Materials Committee.

AB 1177 (Floyd) would shift all line responsibilities and memberships on commissions and boards formally within the state's "Super Agencies" to the respective departments under the Agencies. The bill passed the Senate Governmental Organization Committee on May 19, and is pending on the Senate floor at this writing.

AB 1913 (Harris) would raise to \$10,000 the monetary jurisdiction of small claims courts for money damages actions which involve personal injury or property damage, or both. Limits for all

other actions in small claims court would be raised from \$1,500 to \$2,500. At this writing, the bill is scheduled for hearing in the Senate Judiciary Committee on June 14.

SB 1157 (Davis) would allow the imposition of double the usual civil penalty when acts of unfair competition are perpetrated against senior citizens. The bill passed the Assembly Judiciary Committee on May 18 and is presently awaiting hearing in the Assembly Ways and Means Committee.

LITIGATION:

Board of Cosmetology (BOC) and Denise Ostton v. Michael Kelley, No. 358630 (Sacramento Superior Court) concerns DCA Director Michael Kelley's failure to either approve or disapprove BOC's August 1987 appointment of Denise Ostton as the Board's Executive Officer (EO). Ostton has served as BOC's interim EO since July 1987. The controversy underlying this litigation stems in part from Kelley's attempt to force the Board to employ a recruitment process not of its choosing in hiring a permanent EO. Kelley's efforts to impose departmental procedural guidelines on the Board's appointment process were resisted by BOC—partly because the guidelines were reportedly imposed after Board members had already voted to appoint Ostton to the EO position.

The Board also believed that Kelley was overstepping his authority, as set out in Business and Professions Code section 7305. That section provides in part that "...subject to the approval of the director, the board may appoint an executive officer, who shall not be a member of the board."

Specifically, Ostton and BOC petitioned the court for a writ of mandate commanding Kelley to (1) exercise his discretion to either approve or disapprove the appointment of Ostton as BOC executive officer "without consideration of the selection process sought to be imposed by the Director upon the [BOC] for recruitment of an executive officer;" (2) state his reasons if he elected to disapprove Ostton's appointment; and (3) take all steps necessary to ensure Ostton receives compensation commensurate with her duties as BOC's acting EO for the entire period she served in that capacity.

Kelley moved for dismissal of Ostton's and BOC's cause of action relating to out-of-class compensation, contending, *inter alia*, that petitioners failed to plead and exhaust available administrative remedies and failed to comply with claims presentation requirements con-

tained in Government Code section 945.4. Kelley also answered that he approved Ostton's appointment on May 23, 1988, thus rendering petitioners' writ to compel action moot.

As of June 8, Ostton had not yet received her appointment papers and had not received an out-of-class compensation differential for recent months in which she has served as interim EO while being compensated at the assistant EO level. Thus, petitioners had not elected to drop the suit, notwithstanding Kelley's approval of Ostton as BOC's executive officer.

A hearing on these matters was scheduled for July 16 in Sacramento Superior Court.

ASSEMBLY OFFICE OF RESEARCH

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Established in 1966, the Assembly Office of Research (AOR) brings together legislators, scholars, research experts and interested parties from within and outside the legislature to conduct extensive studies regarding problems facing the state.

Under the direction of the Assembly's bipartisan Committee on Policy Research, AOR investigates current state issues and publishes reports which include long-term policy recommendations. Such investigative projects often result in legislative action, usually in the form of bills.

AOR also processes research requests from Assemblymembers. Results of these short-term research projects are confidential unless the requesting legislators authorize their release.

MAJOR PROJECTS:

The Invisible Diet: Gaps in California's Pesticide Residue Detection Program (April 1988) was prepared in response to a request by Assemblymember Lloyd Connelly for an examination of the state's ability to monitor California's food supply for the presence of pesticide residues. Health risks associated with such residues are at the center of a growing controversy in the legislature (see *infra* report on the DEPARTMENT OF FOOD AND AGRICULTURE).

AOR's report examines existing state and federal food testing programs, focusing on the capability of the state program to detect pesticides already identified as presenting the greatest risks to public health. AOR also reviewed possible tech-

nological advances for improving pesticide detection. In addition, the report identifies several weaknesses in the food tolerance system, which establishes the maximum legal limits of pesticide residue which may be present in raw and processed foods.

The report reveals that the state's detection capability is seriously limited. Testing methods currently in use cannot detect two-thirds of the pesticides registered for use on food by the federal Environmental Protection Agency (EPA). Existing methods also fail to detect two-thirds of the pesticides identified by EPA for their oncogenic (tumor-causing) potential, although these compounds "are the mainstays of agriculture's chemical arsenal."

Additional findings reported by AOR include the following:

- The existence of new detection technologies and improved analytical methods which could expand the state's detection capabilities;

- The failure of existing law to provide incentives for pesticide registrants to "develop practical analytical methods for their products," especially when many existing methods are expensive, complex, and often out-of-date;

- The failure of the Department of Health Services to develop and implement a program for routine testing of processed foods, despite statutory responsibility and the finding by its staff that such a program is needed because of the propensity for pesticides to concentrate in processed foods; and

- The flawed nature of the food tolerance system, in that it "may underestimate dietary risk" because tolerances are based on inadequate health data; the consumption data used are outdated; the effects of inert ingredients and synergism are ignored; and tolerance levels are set for cancer-causing pesticides, meaning that a determination is made that some risk of cancer is acceptable—despite a "long-standing" tenet that "there is no exposure level so low it is known to be safe."

AOR makes specific recommendations to the legislature in its report, including the following actions:

- Identification of priority pesticides which pose health risks;

- A requirement that priority pesticide registrants submit practical analytical methods to enable state laboratories to detect pesticide residues in food;

- Implementation of a routine monitoring program for pesticide residues in processed foods;

- Enactment of requirements that farm-

ers maintain records of pesticide applications on food crops;

- Legislation to direct the Department of Food and Agriculture to review existing testing methods for workability and effectiveness;

- Prohibition of the use in pesticide formulations of inert ingredients known to cause cancer and other chronic adverse health effects; and

- Adoption of an annual pesticide residue reporting system which would identify multiple residues detected on raw or processed food samples and the individual pesticides found.

Integrated Solid Waste Management: Putting A Lid On Garbage Overload (April 1988), prepared jointly with the Assembly Natural Resources Committee, concerns the "increasingly ineffective" management of California's solid waste. The problems resulting from the state's management policy are recognized as potentially harmful to public health and the environment.

The study reveals that in responding to disposal needs, state policy—as expounded by the California Waste Management Board (CWMB)—has placed "primary emphasis" on landfills and waste-to-energy projects. If the state continues to rely exclusively on these disposal methods, it will face a "serious statewide garbage crisis by or before the mid-1990s" because stiff public opposition has made waste-to-energy plants and landfills difficult to site. Public opposition to waste-to-energy projects centers on concerns over air pollution and litter. Presently, only one small waste-to-energy plant is operating in the state.

CWMB continues to view landfills as the "cornerstone" of the Board's solid waste management policy. However, AOR's study concludes that this continued emphasis is likely to yield decreasing success because of the increasing costs of operating landfills and public opposition to siting based on legitimate health concerns.

While providing case studies of problems at selected landfills, the study identifies health risks common to all such sites. Hazardous substances may leach from landfills to contaminate surrounding soil and nearby groundwater and surface water. Gas migration from landfills is known to create toxic air contaminants. Additionally, AOR staff found that many landfills were operating in violation of state and federal public health and environmental standards. Some of the most frequently found violations—inadequate leachate control barriers, inadequate drainage devices, lack

of proper cover, and inadequate groundwater monitoring—may cause serious contamination of surrounding areas.

AOR's report concludes that California's current solid waste management policy should be replaced with a multifaceted approach to solving the state's garbage disposal problems. Such an approach would allow for a limited reliance on landfills and waste-to-energy projects while giving "equal if not greater weight" to recycling, source reduction, and composting methods. The report includes the following specific recommendations:

- Enactment of legislation to provide for "rigorous but realistic development and implementation of local waste reduction and recycling plans" to supplement and enhance current recycling markets;

- Enhancement of existing foreign and domestic markets for recyclable materials through legislation which would, at minimum, strengthen state and local government procurement policies for those materials;

- Establishment of comprehensive air, soil, and water protection requirements for existing and future landfills, with authority given to responsible state agencies to ensure that environmental protection standards are met at such sites;

- Enactment of tax credits and other financial incentives to encourage development of a strong state market for recyclables; and

- Establishment of clear definitions of authority and guidelines for solid waste management responsibilities for state agencies implementing the policy.

SENATE OFFICE OF RESEARCH

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Established and directed by the Senate Committee on Rules, the Senate Office of Research (SOR) serves as the bipartisan, strategic research and planning unit for the Senate. SOR produces major policy reports, issue briefs, background information on legislation and, occasionally, sponsors symposia and conferences.

Any Senator or Senate committee may request SOR's research, briefing and consulting services. Resulting reports are not always released to the public.

MAJOR PROJECTS:

Pesticides at Home: Uncertain Risks