

these counties will begin receiving funds by June.

## LEGISLATION:

*AB 2862 (O'Connell)* would prohibit any person from producing or packaging a consumer product intended for use by the general public 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 at a permitted hazardous waste facility in the state. Existing law already prohibits the manufacture, production, packaging, or sale within the state, or the introduction into the state, of any package of a misbranded or banned hazardous substance.

If passed, this bill would require the state Department of Health Services to publish a list of the prohibited hazardous wastes and substances annually, beginning September 1, 1988. The prohibition would begin on January 1, 1989. Violators could be subject to civil penalties up to \$50,000, and possible criminal penalties for knowingly violating the requirements.

The bill was scheduled for hearing on April 5 in the Assembly Environmental Safety and Toxic Materials Committee.

*AB 1177 (Floyd)*, as introduced, would have abolished several of the state's "Super Agencies" which report directly to the Governor. The bill was amended in January to retain the agencies but cut back their responsibilities to their original coordinating functions. The amendment followed a bipartisan legislative committee report on the Super Agencies, which recommended their retention. (See *infra* agency report on SENATE OFFICE OF RESEARCH.) The bill would still shift all line responsibilities and memberships on commissions and boards formally within the Super Agencies to the respective departments under the agencies. (See CRLR Vol. 8, No. 1 (Winter 1988 p. 39 for background information.)

At this writing, the bill is awaiting hearing in the Senate Governmental Organization Committee.

*AB 301 (Bader, Harris)* would have increased the damages limit for small claims court cases from \$1,500 to \$2,500. (See CRLR Vol. 7, No. 4 (Fall 1987) p. 33.) The authors have indicated that they will no longer pursue the bill. However, Assemblymember Harris has revitalized *AB 1913*, a similar bill introduced last session but not pursued. *AB*

*1913* would raise to \$10,000 the monetary jurisdiction of small claims court 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 to \$2,500. *AB 1913* is pending in the Senate Judiciary Committee.

The bills updated below were previously discussed in CRLR Vol. 7, No. 3 (Summer 1987) at pp. 51-52:

*AB 124 (Peace)* provides for the licensure of barter exchanges and is currently awaiting hearing in the Senate Business and Professions Committee.

*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 was scheduled for hearing on April 6 in the Assembly Judiciary Committee.

*SB 1653 (Seymour)* would have made significant changes to procedures governing the conduct of state administrative hearings. This bill was dropped by its author after last session.

## LITIGATION:

*Omari v. National Security Financial Services*. DCA's intervention in this suit challenging the business practices of automobile subleasing firms has proven successful. In January, the court granted the Department's motion for summary judgment against the most active defendant, E.T. Strickland. The court ruled that Strickland's business practices were unlawful, unfair, fraudulent, and in violation of Business and Professions Code section 17200 *et seq.*

On April 20, the court was scheduled to hear the Department's motions for summary judgment against the remaining four defendants. Additionally, the Department plans to seek a default judgment against another defendant who did not respond to the original charges, according to John Lamb, the DCA attorney assigned to the case.

With the success of the Department's motions, plaintiffs plan similar summary judgment motions against the defendants. (For more information on the lawsuit, see CRLR Vol. 7, No. 1 (Winter 1987) p. 30.)

## 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:

*Will We Lose the War Against Asbestos in Buildings? (February 1988)* examines the economic impact of asbestos removal programs, concluding that asbestos-laden buildings "are significantly more hazardous to our economy than they are to our health."

AOR reports that state government and other California building owners will spend at least \$1 billion this year to eliminate asbestos from their properties. In the years to follow, expenditures could exceed \$20 billion "despite the fact that medical research has yet to provide a strong link between occupational exposure conditions which have killed thousands of asbestos workers and the nonoccupational exposure risks inherent with [sic] living and working in a building [containing] asbestos materials."

The U.S. Environmental Protection Agency (EPA) believes that there is no safe level of exposure to asbestos. The AOR study concludes that EPA's "no threshold theory," coupled with new air monitoring capabilities that enable detection of minute levels of asbestos which previously would have escaped notice, have triggered "what many perceive as a highly emotional, almost panicked, thinking that permeates asbestos policy-making." Thus, not surprisingly, the study found that the driving force behind asbestos removal in the private sector is "liability fears and uncertainty over future abatement costs which serve to devalue buildings as much as 25%." Lenders are refusing to finance the purchase of buildings with potential asbestos liabilities, forcing owners to remove the hazard in order to make the buildings marketable.

Citing health risks associated with the removal and storage of asbestos, the study concludes that because there are no reports of death caused by low-level

exposure to undisturbed asbestos materials in buildings, a wide variety of control responses should be implemented depending upon building use and the material's condition. Removal is not the only answer. The report lists less expensive, effective alternatives, including repairing damaged spots, encapsulating material with a sealant, constructing barriers to prevent release into other building areas, and closing contaminated areas down to building use. Unfortunately, professionals with the skills needed to evaluate the best control response are in short supply.

The most severe problem discovered by the study relates to abatement in public and private school buildings. According to the report, new EPA mandates place "unrealistic" deadlines for instituting comprehensive asbestos management controls in schools. The AOR report concludes that "[w]ithout funding and technical assistance, some schools may be victimized by inexperienced inspectors, planners and abatement contractors." Since the release of the AOR study, Controller Gray Davis has issued a report finding that state funding for the programs mandated by EPA is inadequate. Thus, Davis reports, some school districts have been forced to use general funds for asbestos removal, taking money away from educational or building programs.

In light of estimates that overall asbestos removal efforts cost \$10 million per life saved, AOR's report makes several major recommendations to the legislature in addressing the significant economic impact of asbestos removal programs:

- The state's regulatory network should be strengthened before programs and regulations are developed which will increase the amount of asbestos abatement work now under way in the state. Specifically, if Cal-OSHA's jurisdiction is restored, no abatement project over a specified size should begin until a Cal-OSHA inspector has personally visited the removal site to approve the work plan. Also, more investigations of unregistered removal contractors should be conducted. If Cal-OSHA's jurisdiction is not restored, the state should establish an asbestos enforcement unit within the Contractors State License Board to pursue unlicensed or unregistered contractors who perform asbestos removal work.

- Conflict-of-interest statutes governing relationships between asbestos consultants and abatement contractors, and project monitors and abatement contractors should be enacted.

- The state's program to control as-

bestos in its buildings should be reorganized to centralize enforcement powers in one state agency, thus developing in-house expertise in hazard assessment to lessen dependency on vendors.

- Technical assistance should be immediately provided to public and private schools attempting to comply with EPA asbestos regulations, and \$40 million should be appropriated during 1988 to public schools to help meet inspection and management plan requirements.

*Used Tires: Health Hazard or Economic Opportunity (January 1988)* examines environmental concerns over the disposal of 240 million used tires discarded yearly. Currently in the United States, two billion used tires occupy space in landfills, exclusive tire disposal sites, and alongside the nation's roadways. The study found that Californians alone discard 23 million tires annually.

AOR reports some significant findings as a result of its study of the issue, including the following:

- "Tires make lousy waste." The storage of tires at landfills presents many problems. Because of their cylindrical shape, whole tires which are not compacted at the bottom of a landfill will invariably rise to the surface. Tires take up a disproportionate amount of landfill space, and because they collect water, serve as ideal breeding grounds for rats, mosquitoes, and disease.

- "Tires make great fires." Due to their high rubber and petroleum content, tires which are piled together constitute an especially hazardous threat of fire. Tire fires have had devastating effects on the surrounding environment; one such fire in Virginia took nine months to extinguish.

- There is a limited market for recycled tires and reclaimed tire by-products.

- Although there are currently projects under construction in California and other states which plan to burn whole tires for the production of electricity, many questions have been raised as to the pollution generated by the incineration process.

- Regulation of tire stockpiling is weak because such regulation does not fall under the jurisdiction of any one agency. There are significant gaps in the enforcement of health and safety standards.

- Due to the problems associated with whole tire disposal, landfills are charging extremely high rates for disposal. These high costs encourage illegal dumping.

- One answer to the problems of whole tire disposal is shredding; however, tire shredding is not readily available.

- State agencies are becoming increas-

ingly concerned with the health, safety, and environmental effects of poor tire disposal practices.

The report recommends specific actions the state should undertake to address the used tire disposal problem, including the following:

- The legislature should declare that used tires should be shredded and stored at landfills. The legislature should consider using a portion of a suggested surcharge on the sale of new tires to offset the cost of shredding at landfills.

- Statutes authorizing the imposition of criminal and civil penalties for illegal dumping or dangerous storage of used tires should be enacted.

- Funds derived from a suggested surcharge on the sale of new tires should be appropriated to the California Waste Management Board (CWMB) to develop and promote secondary markets for used tires. Also, the legislature should consider providing tax incentives to companies which make use of recycled tire products, and mandating recycled tire programs for state agencies.

- If stockpiling of used tires outside landfills is allowed to continue, the CWMB, the State Fire Marshal, and the Department of Health Services should be directed to work together to develop regulations aimed at preventing fires, the spread of disease, and uncompensated clean-up costs for state and local agencies.

- Incineration proposals should be required to include evidence of the project's ability to meet California Environmental Quality Act (CEQA) requirements without exception, and should not require excessive stockpiling of tires.

- The Air Resources Board and the Energy Commission should be directed to jointly conduct a study which examines the air pollution effects of tire-burning energy plants, the costs and benefits of generating electricity in this manner, and the future need for energy produced through tire incineration.

- A surcharge should be levied on the retail sale of new tires to ensure that the full cost of tire disposal is captured. A surcharge would also ensure that the cost of regulation, clean-up, and recycling of used tires would be "borne by those ultimately accountable for these activities—the tire consumer."

*1987 Activities.* During calendar year 1987, AOR staff responded to 355 research requests from Assemblymembers which resulted in short-term projects. Nine major research projects were completed during the year, resulting in the public release of reports on those projects.