



# INTERNAL GOVERNMENT REVIEW OF AGENCIES

DCA's purchasing authority.

## LEGISLATION:

**AB 1405 (Frazee)** became law on June 15 (Chapter 173, Statutes of 1988). This law amends section 17538 of the Business and Professions Code relating to consumer affairs. Previous law made it a misdemeanor for anyone conducting sales or leases of goods through the mail or by phone who fails to either deliver the goods, make a refund, or deliver substitute goods or services of equivalent quality.

Further, the law required that upon providing substitute goods, the consumer must be notified of his/her right to reject the substitute goods and to obtain a full refund, and a description of how the substitute goods differ from the original order. The new law provides that a vendor may omit a description of how substitute goods or services differ from the ordered goods in the required notice if certain conditions are met. The bill took effect immediately as an urgency statute.

**AB 4570 (Duplissee)** was also signed by the Governor (Chapter 581, Statutes of 1988). This new law requires service contracts sold on a home appliance or home electronic product to meet the requirements already specified for automobile service contracts in the Song-Beverly Consumer Warranty Act. The purpose of the law is to provide consumers with information so they can make an informed decision before purchasing a service contract, and a means to cancel the service contract after purchase. It requires service contracts to include specific disclosures, permitting cancellation by the consumer; it also requires that a copy of the contract be available for inspection prior to purchase and delivered to the buyer within sixty days after purchase.

**SB 2224 (Beverly)** clarifies the Dispute Resolution Programs Act by specifying that parties to any dispute resolution, arbitration, or conciliation proceeding may assert the privileges offered by Evidence Code section 1152.5. This bill was signed by the Governor (Chapter 188, Statutes of 1988).

**AB 4015 (Connelly)** would have required the DCA to promulgate regulations and certification standards for private conservators. It would also have required the Director of the DCA to appoint a Conservatorship Advisory Task Force. This bill was vetoed by the Governor on September 29.

**SB 2054 (Davis)** requires a security guard or patrolperson to file a written

report with the DCA and local police or sheriff's department within seven days after any incident in which a firearm is discharged while the guard was on duty. This bill was signed by the Governor on September 20 (Chapter 1019, Statutes of 1988).

**ACR 117 (Bane)**, directing the DCA to conduct a public information program regarding existing law requiring physicians to provide written disclosure to their patients of any significant beneficial interest in an organization to which the patient is referred, was approved.

**AB 4007 (Lancaster)**, which revises numerous existing sections of the Business and Professions Code relating to the Bureau of Personnel Services and the Bureau of Home Furnishings and Thermal Insulation, was signed on September 28 (Chapter 1448, Statutes of 1988).

**SB 1157 (Davis)**, which allows the imposition of double the usual civil penalty when acts of unfair competition are perpetrated against senior citizens, was signed by the Governor (Chapter 823, Statutes of 1988).

**AB 1177 (Floyd)**, which would have shifted all line responsibilities and memberships on commissions and boards formally within the state's "Super Agencies" to the respective departments under the Agencies, died after the Assembly refused to concur in Senate amendments.

**AB 1913 (Harris)** became law (Chapter 481, Statutes of 1988). This law raises to \$10,000 the monetary jurisdiction of small claims courts for money damages actions which involve personal injury or property damage. Limits for all other actions are raised from \$1,500 to \$2,500.

## LITIGATION:

*Crouchman v. Santa Cruz County Superior Court.* DCA staff filed an amicus brief with the California Supreme Court in December 1987 in the *Crouchman* case, which challenged the exclusion of jury trials from small claims court appeals. On July 5, the Supreme Court in an unanimous opinion ruled in favor of the Department's position that jury trials are unwarranted. DCA staff argued, among other things, that if a jury trial were available, a losing defendant could use the threat of an appeal to force the plaintiff to abandon a claim or settle for losses. Currently, a winning party could use the threat of a jury trial to prevent an appeal by the losing party.

The DCA won a summary judgment on July 15 in *People v. Dixon*, a mail order fraud case. Defendants, a group

of businesses in Palo Alto purporting to sell computer software, never sent consumers goods that were ordered through the mail. DCA challenged their actions as unfair business practices and alleged over 338 violations of the California and federal mail order rules. The final judgment ordered defendants to pay \$219,000 in civil penalties.

*Board of Cosmetology (BOC) and Denise Ostton v. Michael Kelley*, No. 358630 (Sacramento Superior Court), concerning 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, has been settled. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 40 for more information on this suit.)

## 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:

*"No Such Listing": Consumer Access To The Board of Medical Quality Assurance (July 1988)* is an assessment of the Board's public presence as a consumer protection agency. The study was requested by Assemblymember Jackie Speier.

The Board of Medical Quality Assurance (BMQA), under the Department of Consumer Affairs (DCA), is divided into three autonomous divisions. The Division of Licensing licenses physicians and surgeons; the Division of Allied Health Professions regulates non-physician health professions; and the Division of Medical Quality investigates complaints lodged against physicians and



surgeons and allied health professionals. The three divisions are staffed by civil servants who perform licensing and investigative tasks. Each division is guided by a group of appointed Board members. Collectively, the three divisions constitute BMQA.

Twelve physicians and seven public members serve on the Board. Seventeen of the members are appointed by the Governor, while the Speaker of the Assembly and the Senate Rules Committee each appoint one member. The executive director is selected by Board members.

Previously called the Board of Medical Examiners, BMQA was reorganized in 1975 when the legislature created fourteen regional Medical Quality Review Committees (MQRCs) to assist the Division of Medical Quality in its enforcement and policy workload. The MQRCs, comprised mainly of physicians, bring peer review to the disciplinary arena. Two hundred ten members appointed by the Governor serve on these committees. The Division of Medical Quality has assigned four staff members to provide support services to these peer groups.

The AOR surveyed all telephone books available to the public in the State Capitol and State Library. Of the 63 phone books examined, only 11 contained a BMQA phone number. AOR contacted Pacific Bell, which distributes directories to 90% of California calling areas. As of June 1988, BMQA appeared in only 33 of 172 directories. The current cost of a state government listing entails a one-time charge of \$7 for each phone number per section and a monthly fee of \$1. Moreover, BMQA is not currently listed in any phone book Yellow Pages.

The AOR also made the following findings:

- Information operators are often unable to help confused callers. In areas without a BMQA listing, test calls made to operators seeking a BMQA phone number resulted in the response that no such listing exists even though the callers identified BMQA as a state government agency.

- BMQA's public outreach efforts have been minimal. BMQA's goals to ensure that its phone number is listed in local phone books and that an information message is placed in the Yellow Pages under "Physicians" have not been met.

- Patient complaints are dropping while the number of doctors increases. For a three-year period ending June 30,

1987, the number of licensed physicians and surgeons in California rose 6%, while complaints against them dropped 8%. AOR concludes that the Board's lack of public presence may be influencing the number of patient complaints filed against doctors.

- Complaint data compiled by BMQA is difficult to analyze. Only two of the nine offices keep phone logs of all calls received, making it difficult to analyze the nature of the calls received.

- Patients generate about 55% of all complaints received annually. Each year, approximately 40% of patient complaints involve charges of "gross negligence/incompetence" while "unprofessional behavior" accounts for another 25%. Fee disputes account for approximately 20% of patient calls. Less than 8% of Board disciplinary actions are a result of patient actions, which suggests that the public is unaware of BMQA's scope of authority.

- BMQA is short on critical staff positions, which has created a growing backlog of uninvestigated complaints. The number of permanent field investigators has remained at 42 since 1979.

- None of BMQA's seven field offices have consumer service representatives who speak Spanish. Less than 1% of public contacts by the Board were with the Spanish-speaking population. This contact rate is far below the average of about 4% for all forty board and bureaus in the DCA.

AOR recommends that BMQA develop and implement a public outreach campaign which would clearly define the Board's duties and accurately direct people to the nearest BMQA office. Such a program should include a listing in all Pacific Bell and GTE phone directories and a listing in the Yellow Pages under "Physicians". BMQA should hire a consumer education specialist to implement the public outreach program. Investigations which result in the license suspension, revocation, or conviction of a physician should be sent to the media in the area where the physician practices. A uniform log should be used by BMQA consumer service representatives to identify consumer calls. Furthermore, BMQA should report the status of its public outreach efforts to the appropriate legislative committees by December 31, 1988.

*Restoring Hetch Hetchy (June 1988).* The AOR researched the Hetch Hetchy Valley area to determine whether it should be restored to its natural state. The report contains an informative history and comparison of Hetch Hetchy

and Yosemite National Park, along with an examination of the San Francisco water system and the decision to allow the dam in Hetch Hetchy Valley. The report concludes that the existing Hetch Hetchy system is more valuable to society than a restored Hetch Hetchy.

AOR reports that the issue of restoring Hetch Hetchy involves trade-offs between several important public needs: recreation, aesthetics, high-quality drinking water supplies, hydroelectric energy, and cost. Hetch Hetchy is the best municipal water supply system in the state, providing exceptionally high-quality mountain water. If Hetch Hetchy were restored, San Francisco would initially lose the following: one-half of the high-quality mountain water delivered by gravity without the need for filtering; the sediment settling process which now occurs in the reservoir; one-and-one-third years of drought storage; and 885 MKWH of electrical energy. The value of the loss, expressed as a one-time cost, would be approximately \$825 million.

The AOR report concludes that there are alternatives to replace these losses, but none are attractive because of cost, lower drinking water quality, aesthetic damage, environmental concerns, or adverse impacts on recreation. The best economic and environmental replacement alternative would be to use the existing dams on the Tuolumne River and construct a new dam that would flood the Poopenaut Valley, which is immediately downstream from Hetch Hetchy. This new dam would be only 14% the size of Hetch Hetchy, but could restore much of the divertable flows during normal times, restore the sediment settling, and replace roughly 50% of the lost power. The rest of the power would have to be purchased. The loss of drought storage could be replaced by purchasing water from downstream farmers and then diverting this water through the existing system. To do so would require a reservoir operating agreement between San Francisco, the downstream irrigation districts, and the federal government.

Moreover, the AOR report concludes that if \$825 million is available to restore Hetch Hetchy, it is quite clear that substantially more recreational benefits could be obtained if the money were spent on other recreational projects. Suggestions include reduction of traffic and air pollution in Yosemite National Park through the construction of parking lots outside the valley and an expansion of shuttle bus service into the valley.

*Supplement—Integrated Solid Waste*



*Management: Putting A Lid On Garbage Overload (April 1988).* The supplement to this report is an Assessment Report on Selected Landfill Sites prepared by the Toxic Assessment Group For the Assembly Office of Research and the Assembly Committee on Natural Resources. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 41 for a summary of the initial report.)

The supplement provides detailed information on site description, site history, disposal practices, geology, ground and surface water, landfill gas, and citizen complaints of selected landfills. The following landfills were assessed by AOR: the Mission Canyon Landfill, NuWay Landfill, Puente Hills Landfill, Sheldon-Arleta Landfill, and Sunshine Canyon Landfill in Los Angeles County; the Altamont Landfill in Alameda County; the Sacramento City Landfill in Sacramento County; and the Ox Mountain Landfill in San Mateo County.

## 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:

*Class Size: When Less Can Be More (February 1988).* In a recent report on class size and its impact on education, the SOR noted that "[p]ublic school [K-12] classrooms in California are among the largest in the nation—California is currently ranked 49th among the 50 states and the District of Columbia in the number of pupils enrolled per teacher." The ratio of pupils to teachers is 22.8 to 1 in California, while the national average is 17.8 to 1. Only Utah (23.9 to 1) and Arizona (22.9 to 1) have a worse ratio. Generally, and for all states, "pupil-teacher ratios are higher in elementary schools than in junior high/intermediate schools and high schools."

California's school-age population—4.3 million students—is the largest in the nation and comprises more than 10% of the national K-12 enrollment. California's enrollment growth, now at 100,000 per year, is also increasing faster than any other state except Utah. In addition, California has the most diverse population: of K-12 students, 48% are ethnic or racial minorities; 16.6% are immigrants; 25% have first languages other than English (approximately one-half of those are "limited-English proficient"); and the number of students from poverty backgrounds is increasing. (The study does not provide statistics on numbers of handicapped or gifted children who also have special needs.) This diversity, plus large class size, limits California's ability "to meet the educational needs of the state's fast growing and diverse student population," and thus, a "significant number of children ...are educationally 'at risk.'"

The average class size for all California public school classrooms is 28.1 students. If special education, vocational education, and other special teaching classes are excluded, however, the average class size for regular classes is 29.3. Under this measure, junior high and intermediate schools are more crowded than the lower or higher grades, as are certain selected subjects (e.g., mathematics, science, social sciences, and foreign language) in junior high and high school.

Education Code sections 41376 and 41378 currently cap class size at 33 students for kindergarten and 32 students for grades 1-3. California's limits exceed both the "mandated" and "recommended" maximums of other states. School districts with higher-than-statutorily-allowed enrollments must pay a penalty, and in 1986-87, 86 California school districts were so penalized. "Reportedly, some districts choose to pay a penalty rather than remedy their class size excesses by paying for additional teachers, classrooms, etc." A school district may apply for a waiver from the State Board of Education to exempt themselves from class size penalties. Approximately 50 school districts have done so.

The SOR Issue Brief summarizes the major research on class size. Among the findings are the following:

-As class size decreases, student achievement increases (for all school subjects, IQ levels, demographic differences); and smaller classes are especially important for ethnic minority and economically disadvantaged students at all levels and for "achievement in reading

and math in the early primary grades."  
-The correlative effect decreases as grade level increases.

-Teachers feel better and perform better in small classes.

-Class size has a greater effect on teacher satisfaction, pupil attitudes, and instructional environments and processes than on achievement.

-"Optimum" class size varies with grade level, subject, and personal and academic development.

More specifically, smaller class size—especially below 20 students—brings about greater achievement because:

-Students receive more individual attention.

-Students are more attentive to their work, learn the basic skills better, and master more subject matter.

-Students engage in more creative and divergent thinking processes.

-Students develop better human relations with and have greater interpersonal regard for other students and teachers, and learn how to function more effectively as members and leaders of groups.

-Teacher attitude and morale is more positive (thus, student attitudes and perceptions are more positive).

-Changes in curriculum occur in the form of more enrichment activities and greater depth of lesson development.

-Classroom management is both easier and more effective because less time is spent on discipline and less time is lost to absences.

The studies warn, however, that "[c]lass size alone does not influence learning, rather it is one of several important factors that influences teaching and learning in the classroom." Therefore, to gain the optimal effect on student achievement, reductions in class size must be accompanied by changes in instructional methods.

SOR's specific recommendations for improvement include:

-"[T]he most important policy goal for California schools is to introduce one-to-one or small group instruction to more students more of the time."

-"[T]he Legislature should create a new state fund to finance local projects designed to reduce the number of students in the teacher's classroom."

-Class sizes should be limited to a maximum of 22 children, and each group should be supervised by a credentialed teacher and a trained aide.

-Teachers should provide quick and direct feedback on student work, including homework.

-Teachers should ask questions which