

April 23, 1957

Memorandum No. 1

Subject: Status of Law Revision Commission
Bills as of April 22, 1957

ASSEMBLY BILLS

A.C.R. 22 (Agenda)	Amended and approved Sen. Jud. Comm. 4/22
A.B. 246 (Venue)	Sent back Sen. Jud. Committee 4/2
247 (Dead Man)	Tabled Sen. Jud. Comm. 4/15
248 (Mar. Priv.)	Sen. Jud. Com. Set 4/29
249 (Suspension)	Lost Senate 4/12; motion reconsid. carried 4/15; on inactive file 4/16
250 (201.5)	Sen. Jud. Com. Set 4/29
251 (Jud. Notice)	To Gov. 4/17

SENATE BILLS

S.B. 29 (Atty. fees)	Inactive file Assemb.
30 (19a)	To Gov. 4/10
33 (Jury Instr.)	Senate Jud. Com. - Set 5/6
34 (Parties)	Senate Jud. Com. Set 4/29
35 (1377-78)	Signed Gov. 4/16. Ch. 102
36 (660)	Senate Jud. Com. Set 4/29

PRESENT SETTINGS

Senate Judiciary Committee

April 29

A.B. 248 (Mar. Priv.)
250 (201.5)
S.B. 34 (Parties)
36 (660)

May 6

S.B. 33 (Jury Instr.)

Senate Fish & Game Committee

April 24

A.B. 616 (F & G Code)

Assembly Fish & Game Committee

April 23

A.B. 617 (Trailer bill on F & G Code)

EXPLANATION OF A.B. 249 (Suspension of
Alienation)

This is a bill recommended by the California Law Revision Commission. The purpose of the bill is to simplify the California law relating to the creation of future interests in property.

It has long been the policy of our law to preserve the saleability of property and to limit the power of an owner of property to tie it up as to future generations. In England and most of the United States this control is achieved through a law known as the Rule Against Perpetuities which provides that an interest in property must come into existence within lives in being at the time of transaction creating the interest plus 21 years. In California, however, control of future interests was achieved prior to 1951 through certain sections of the Civil Code creating a law known as the Rule Against Suspension of the Absolute Power of Alienation.

In 1951 the Legislature enacted the Rule Against Perpetuities in California. This Rule and other constitutional and statutory provisions in our law make the Rule Against Suspension of the Absolute Power of Alienation superfluous and unnecessary. In order to simplify the law of future interests in this State, which at best is highly technical and complex, A.B. 249 repeals the Rule Suspending the Absolute Power of Alienation. It also repeals three other Civil Code sections which make invalid interests which would be good under the Rule Against Perpetuities.

The effect of the bill is to establish the Rule Against Perpetuities as the basic method of controlling future interests in California, as it is in most other States. It thus accomplishes a desirable simplification of this part of our law.

When this bill was considered by the Senate at an earlier time, a question was raised concerning its effect on the duration of trusts. The Suspension Rule, which the bill repeals, makes void any interest under a trust which will last longer than lives in being plus 21 years. The bill would not make such interests void but would permit the beneficiaries under the trust to terminate the trust and take the property free of the trust after the period of lives in being plus 21 years. This would conform our law in this respect to the law of other states having the Rule Against Perpetuities and to the views of text writers and other authorities who have given long years of study to this subject. The present Suspension rule, which is more restrictive than the statute recommended by the Commission, puts California at a disadvantage as a State in which to create trusts.

As long as the beneficiaries of a trust can terminate it after the period of lives in being plus 21 years, the property cannot be effectively tied up by the person creating the trust for a longer period. If the trust does last longer, it is by the decision of the living persons affected that it shall do so. Moreover, the Rule Against Perpetuities itself affords substantial protection against tying up property in trust by requiring that all beneficial interests under a trust vest within the period of lives in being plus 21 years.

Thus, while the bill does relax the restrictions on duration of trusts to some extent, it does not do so to a degree which is either substantial or undesirable. And by bringing our law into conformity with the law of other states in this regard, it puts California on a parity with those states as a jurisdiction in which to create trusts.