

2/6/70

Fifth Supplement to Memorandum 69-124

Subject: Function of Law Revision Commission

Attached is a portion of some material that was prepared in 1966 in response to a request from the Department of Finance. The material includes charts which show the flow of work. A general chart is found on page 9. The following pages contain detailed charts which describe particular aspects of the Commission's program. You will discover that the notes to each chart are contained on the page facing that chart. These notes contain much valuable background material and you should read them when you study the charts.

Although this material was prepared in 1966, it is a generally accurate description of the Commission's present operation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Workload Plan

Government Code Sections 10330 and 10331 impose three duties upon the Law Revision Commission:

(1) To determine areas of the law in need of reform and to consider suggestions from various persons and groups as to areas of the law in need of reform. This function occupies little time since the Commission has a substantial agenda of topics and, for a number of years, has not requested the Legislature to authorize the study of any new topics. (In a few cases, the Commission has requested authority to expand the scope of a topic already authorized). Primarily, this function requires advising those persons who make suggestions that the Commission is not in a position to undertake the study of new topics. During recent years, the topics that involved study of new areas of the law were added to the Commission's agenda by a legislative committee that had concluded that a study of the topic was necessary but that a legislative committee would not be in a position to undertake the necessary research and study.

(2) To recommend the express repeal of all statutes repealed by implication or held unconstitutional. Because of the pressure of other work, the Commission has given this directive a narrow construction. One part-time law student can, in about one week of full-time work, do the basic research necessary to comply with this directive. A few hours of staff and Commission time are required to prepare the necessary report to the Legislature. This report averages about one to one and one-half printed pages in length and is contained in the Commission's Annual Report to the Legislature.

(3) To recommend such changes in the law as the Commission concludes are necessary to modify or eliminate antiquated and inequitable rules of

law and to bring the law into harmony with modern conditions. This is the primary function of the Commission and is described in detail on the charts and the accompanying notes which follow.

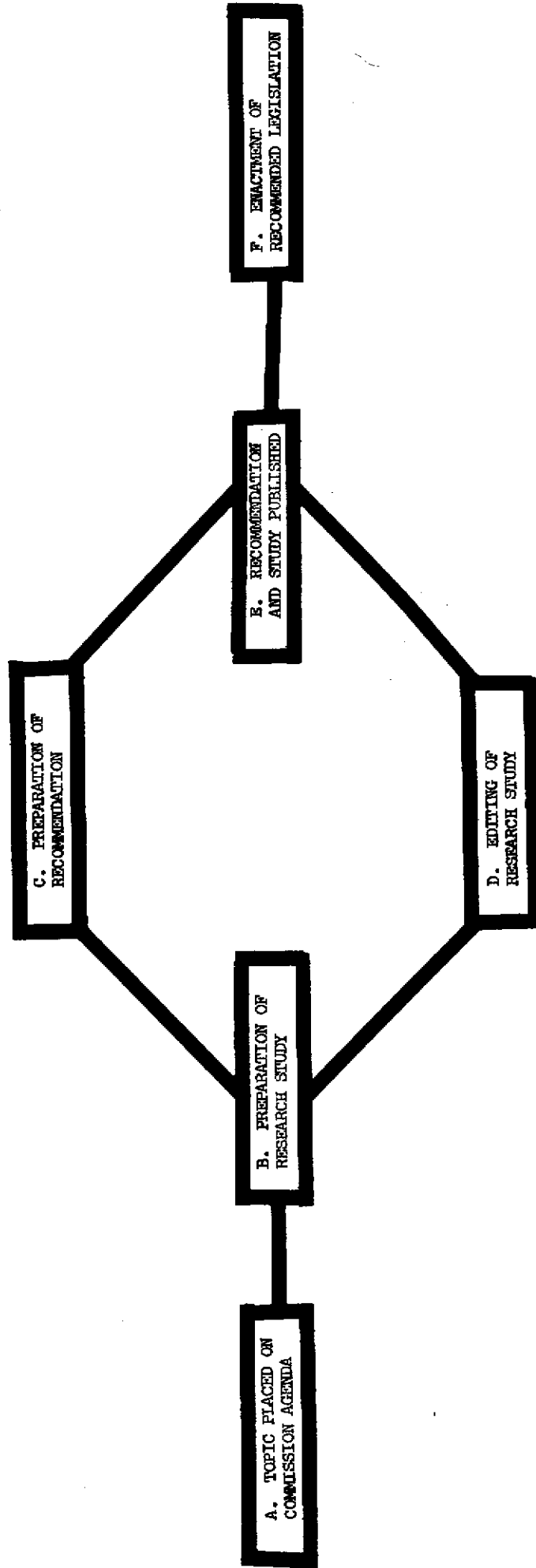
A primary reason for the existence of the Commission appears to be that the Commission is able to study complex and controversial topics that require a substantial period of time, and it can produce high quality legislation that permits the Legislature to deal with problem areas of the law. There is, of course, a direct relationship between the quality of the Commission's work and the amount of legislative time that is required to resolve the problems treated in that work. When the various demands on legislative time are taken into account, it is apparent that the Commission performs an important function; by preparing complex legislation that is basically sound, it minimizes the need for the Legislature to expend its own time and resources in attempting to draft such legislation. Elimination of any of the various steps* that experience has demonstrated are essential to the production of high quality work would result in a decrease in the quality of the Commission's work and in a corresponding increase in the demands on legislative time and resources.

The Legislature has directed the Commission to study a substantial number of topics. It is possible only to consider relatively few of these topics during any two-year period. Priorities must be established; these are based on the wishes of legislative committees, the time that will be required to complete studies of the various topics, and the degree of urgency of particular problems.

*These steps are shown in detail on the program charts included in this material.

Because the members of the Commission cannot devote more than two or three days a month to Commission work and because the Legislature can handle only a limited amount of complex and often controversial legislation at a particular session, it is not anticipated nor does it appear to be desirable to increase the output of the Commission to any substantial extent. At the same time, however, the legislative committees that direct the Commission to study particular topics ordinarily expect such studies to be completed expeditiously.

SIMPLIFIED PROGRAM CHART
(separate charts contain detailed
breakdowns for each of the boxes
shown here)



This chart indicates the relationship between the six basic elements in the Commission's program. A separate, detailed chart has been prepared for each of the individual elements.

NOTES--CHART A. TOPIC PLACED ON COMMISSION AGENDA

Step A-1

Government Code Section 10330 provides that topics may be suggested by a wide range of organizations and interested persons (e.g., the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, learned bodies, judges, public officials, lawyers, and the public generally). The suggestions may be submitted to the Commission or to a legislative committee or may be forwarded to the Commission or a legislative committee by an individual legislator. (See Steps A-2 and A-2*.)

Steps A-2--A-3

During recent years, the Law Revision Commission has advised persons who suggest topics for Commission study that the Commission already has a substantial agenda of topics and that it is not requesting authority to study any additional topics. The person submitting the suggestion is advised to contact an individual member of the Legislature or to contact some other group that is in a position to study the topic.

During recent years, the Commission has generally limited its requests for authority to study new topics to cases where the new topic is so closely related to a topic already under study that the study of both topics is necessary in order to submit a comprehensive recommendation on the subject. The Commission has so limited its consideration of new topics because the Legislature has, on its own initiative, directed the Commission to study a number of new topics that require intensive study over a long period of time.

When the Commission determines to request authority to study a particular topic, the topic and the reasons justifying its study are reported in the Commission's annual report.

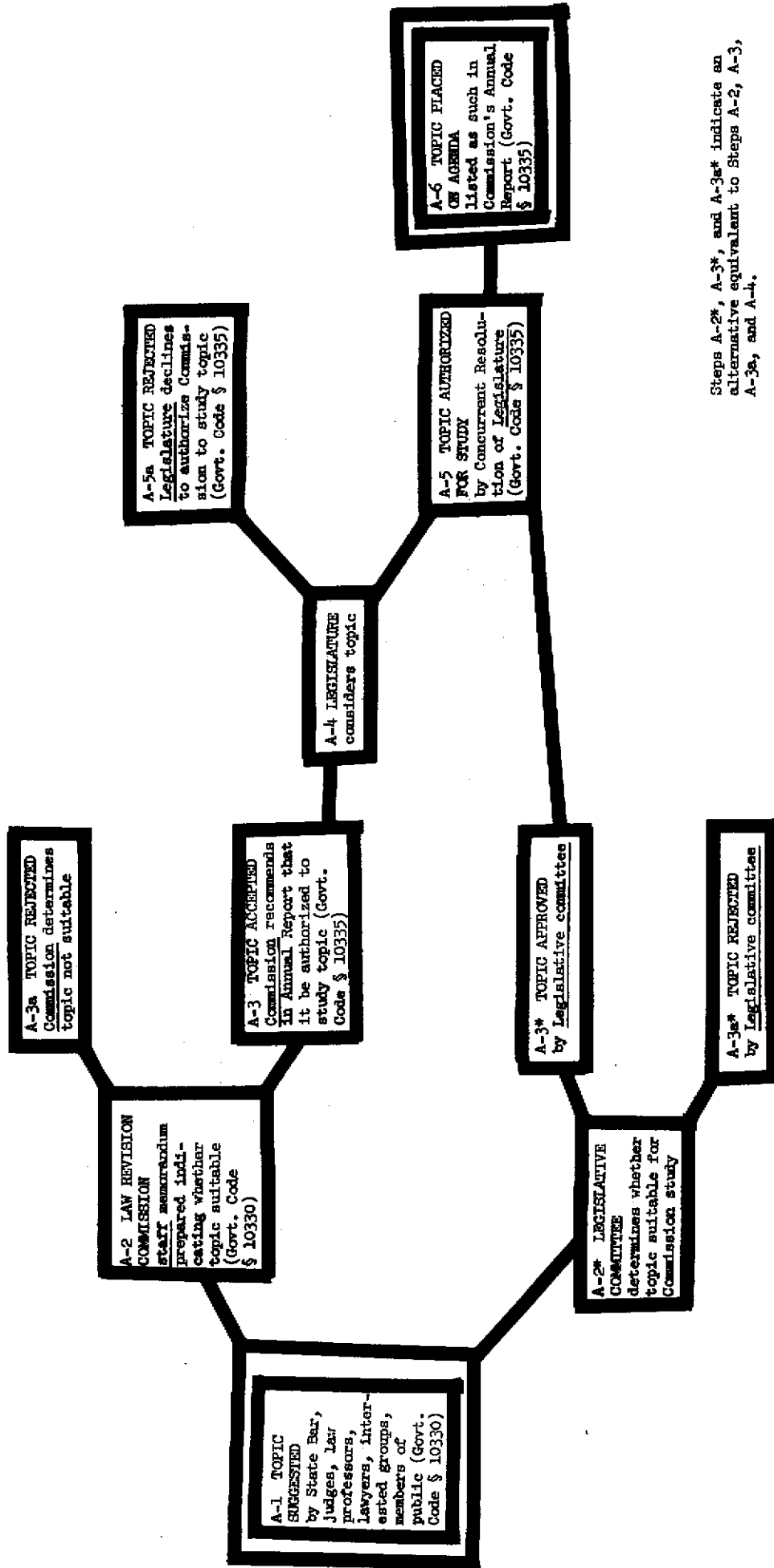
Steps A-4--A-5

The Legislature usually authorizes the Commission to study a topic if the Commission requests authority to do so although the Legislature, during the early years of the Commission, did decline to authorize the study of certain topics requested by the Commission.

Step A-6

The Commission's annual report lists all topics that the Commission is currently authorized to study for the information of interested persons.

A. TOPIC PLACED ON COMMISSION AGENDA



Steps A-2*, A-3*, and A-3a* indicate an alternative equivalent to Steps A-2, A-3, A-3a, and A-4.

NOTES--CHARLES B. PREPARATION OF RESEARCH STUDY

Step B-1 or B-1*

Once a topic is placed on the agenda, the staff begins a preliminary study of the topic. The topic may be deferred if another group (e.g., a State Bar committee, state agency, or special commission) is already studying the topic or if other topics already on the agenda must be given priority.

The Commission gives a high priority to topics that the Legislature has requested it to study, especially where a legislative committee has asked that a particular topic be given priority.

Steps B-2--B-5

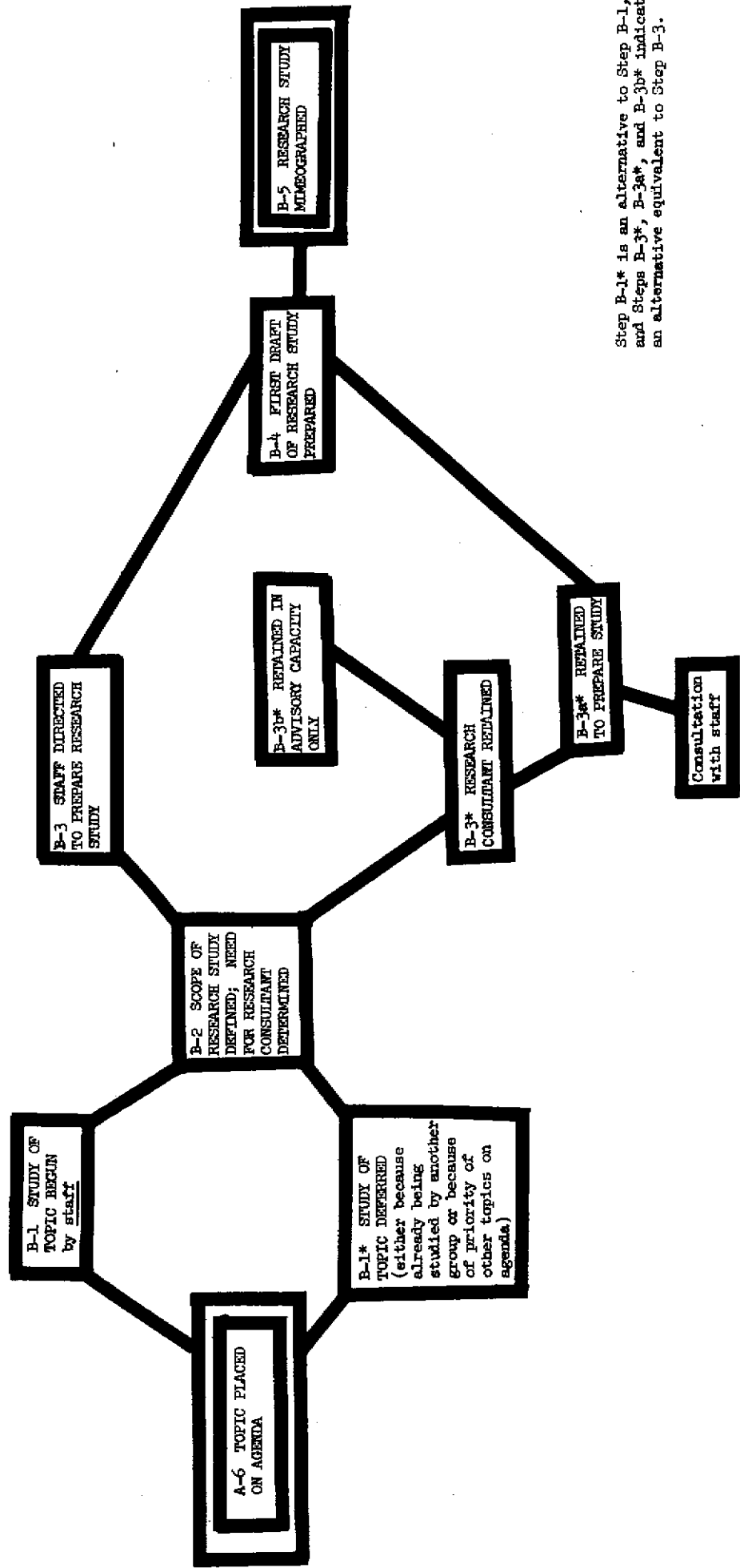
Upon completion of a preliminary staff study and recommendation, the Commission determines the scope of the topic and the necessary background research study and decides whether or not a special consultant is needed. The special consultant may be retained either to prepare a research study or to serve only in an advisory capacity by providing expert advice at Commission meetings. During recent years, the staff has undertaken to prepare most of the research studies that provide background information on the existing law, the problems in the existing law, and the alternative methods that the Commission might adopt to solve those problems.

The use of special consultants in appropriate cases not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background knowledge necessary to understand the specific problems under consideration. A fruitful interchange of ideas often takes place between the consultant, the staff, and the Commission.

Whether the research study is produced by the staff or by a special consultant, it is initially typed on stencils and reproduced so that it is available to the Commission and interested persons when the Commission begins its consideration of the topic.

Because of the time needed to prepare research studies, there is ordinarily a considerable period of time between the commencement of work on the study and the completion of the initial draft.

E. PREPARATION OF RESEARCH STUDY



Step B-1* is an alternative to Step B-1, and Steps B-3*, B-3a*, and B-3b* indicate an alternative equivalent to Step B-3.

C. PREPARATION OF RECOMMENDATION

NOTES--CHART

D. EDITING OF RESEARCH STUDY

Step C-1

The mimeographed research study is distributed to the Commission and is accompanied by memoranda, prepared by the staff, indicating the matters of policy that must be determined by the Commission. Often interested persons who are present at the meeting as observers contribute expert advice upon request. If a special consultant has been retained, he usually attends the meetings to provide expert advice.

After considering the research study, staff recommendations, and the comments of interested persons present at the meeting (or meetings), the Commission makes its initial decision on policy questions that must be determined before legislation can be drafted.

The Commission may determine that no legislation is needed (Step C-2*).

Step C-2--C-4

The staff drafts legislation to effectuate the policy decisions made by the Commission. The draft is reviewed and revised at meetings of the Commission and ultimately a draft of the necessary legislation is approved by the Commission. Interested persons ordinarily are present at Commission meetings to provide expert advice during the period that the draft statute is being prepared.

As an alternative, the Commission may conclude after further study that no legislation is needed (Step C-2*).

Step C-5

When the statute has been drafted, a tentative recommendation is prepared that contains a statement of the problems in the existing law, the changes recommended by the Commission and the reasons justifying those changes, the draft of the proposed legislation, and comments that explain the details of the legislation.

The research study may be expanded to include a discussion of additional matters that have arisen in the course of the Commission's consideration of the topic (Step D-1).

Step C-6--C-8

The tentative recommendation is distributed to various interested persons and is sent to legal newspapers and periodicals which often print or summarize them. This step is designed to acquaint a large segment of the interested public with the Commission's tentative conclusions. Comments are invited and are carefully considered before the Commission prepares a final recommendation on the topic.

The Commission's success in having its proposals enacted into law can be attributed to a considerable extent to this procedure which makes it possible to benefit from the experience of many knowledgeable persons and to eliminate defects in the statute.

Occasionally, the Commission concludes at this stage that the existing law is satisfactory or that any problems that do exist can best be resolved by the courts rather than by legislation (Step C-2*).

The comments on a tentative recommendation may also reveal that additional research is necessary on particular aspects of the topic and the research study will be supplemented to include such research.

Steps D-1 and D-2

The research study is revised and supplemented by the staff as the need becomes apparent during the course of the Commission's consideration of the particular topic. Before the study is printed, it is edited and checked by the Commission's staff. However, where different conclusions on policy questions are reached by the author of the study and the Commission, no attempt is made to impose the Commission's decisions on the author. The Commission believes that the Legislature should have access to the consultant's suggestions when it considers the Commission's recommendation.

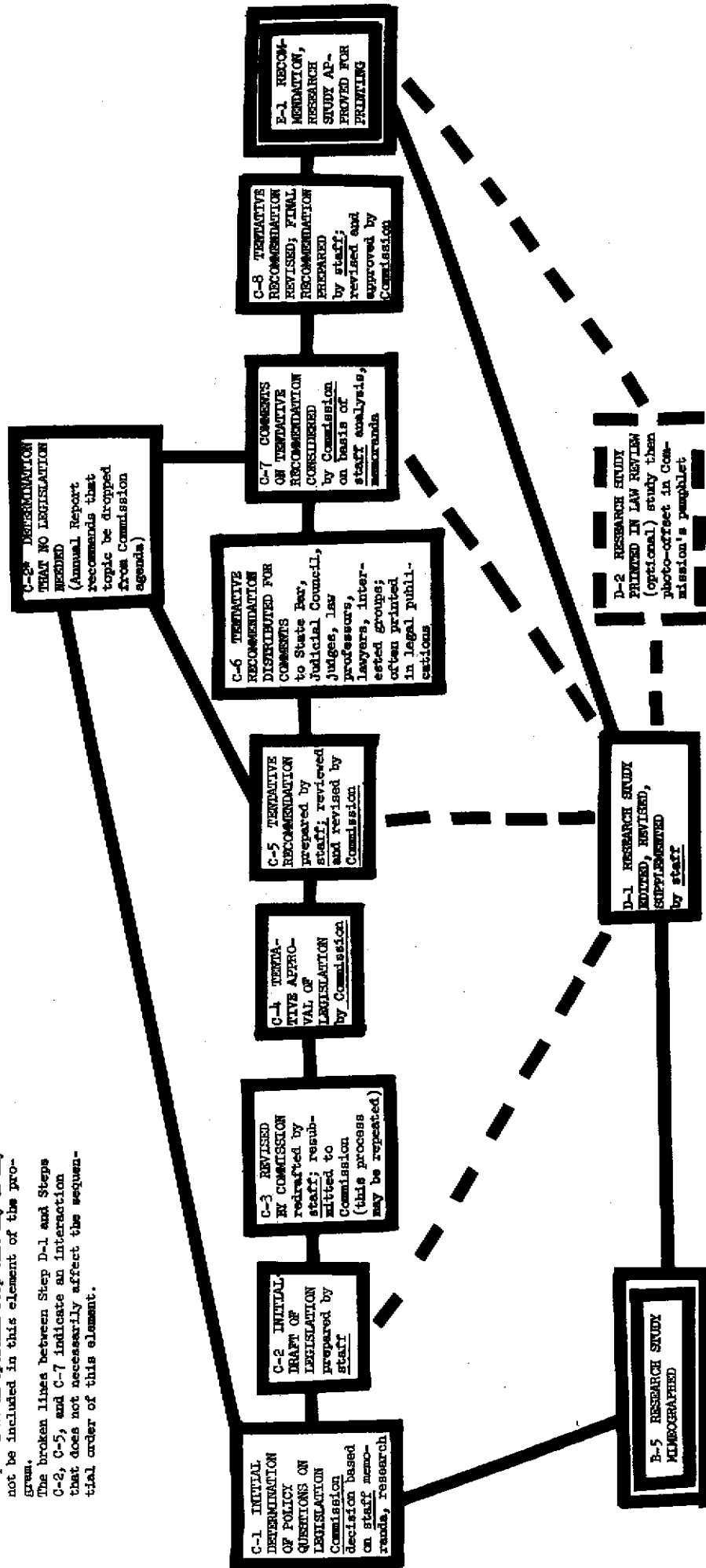
For the first time, during 1965-66, the Commission authorized the printing of several of its studies as articles in law reviews. This accomplishes three purposes: (1) Consistently better quality of the studies should be achieved. (2) Wide circulation is assured. (3) A substantial reduction in printing costs should result because the study can be photo-offset for inclusion in the Commission's report. The only type that will have to be set will be the line containing the running head and the page number on each page; the major portion of printing costs--the charge for setting the type--is carried by the law review. Occasionally, tentative recommendations are also published as a part of a law review article. Thus, the tentative recommendation is widely circulated and this provides another means of obtaining comments from interested persons on the tentative recommendation. These comments are considered before the final report to the Legislature is prepared.

C. PREPARATION OF RECOMMENDATION

D. EDITING OF RESEARCH STUDY

Step C-2* is an alternative that can stop the sequential flow in this element at any point between Steps C-1 and C-7.
 Step D-2 is an optional step that may or may not be included in this element of the program.

The broken lines between Step D-1 and Steps C-2, C-5, and C-7 indicate an interaction that does not necessarily affect the sequential order of this element.



NOTES--CHART E. RECOMMENDATION AND STUDY PUBLISHED

Steps E-1--E-11

The Commission publishes a pamphlet on each subject; each pamphlet contains the Commission's recommendation and the pertinent research study if the research study has not been previously published by the Commission.

Normally, the copy, as approved by the Commission, is sent to the state printer who sets the type and prepares galleys. These galleys are proofread and checked by the administrative assistant of the Commission's staff and, when necessary, by student legal assistants. The galleys are then reviewed by the legal staff to insure that the substance is correct and returned to the printer for paging. When the page proofs have been checked, they are approved for publication and returned to the printer. As soon as the pamphlet is printed, bound, and delivered to the staff's offices at Stanford, they are distributed to interested groups and persons.

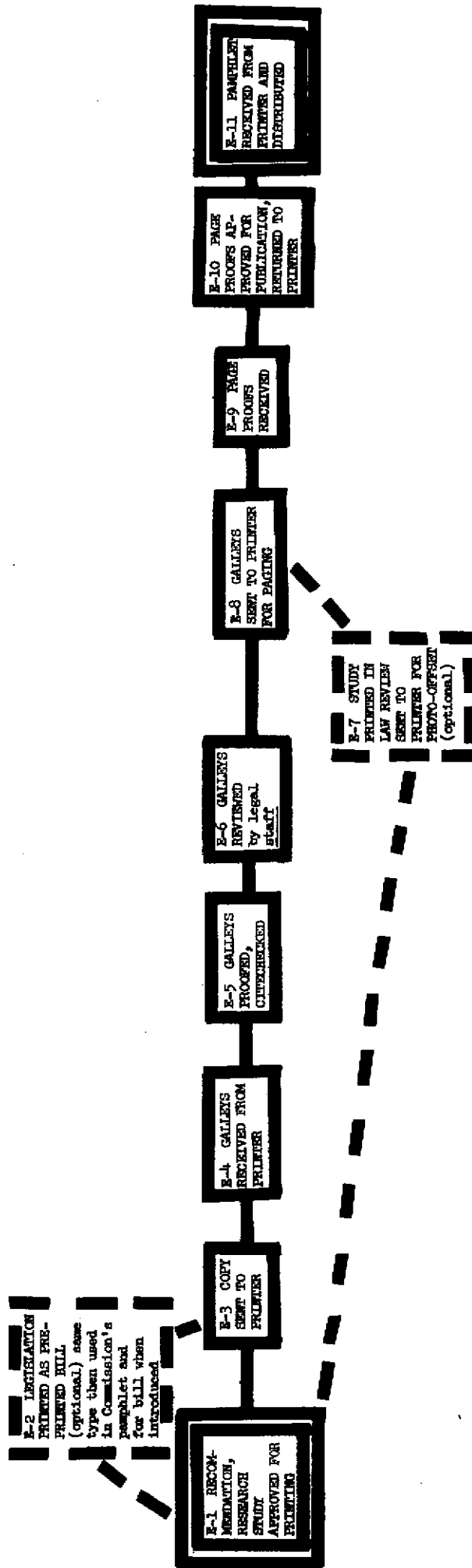
Steps E-2 and E-7

Two variations on this procedure are employed where feasible because both help reduce printing costs.

When possible, the Commission's proposed legislation is printed as a preprinted bill. This has several advantages: (1) The printer can set the bill in the relatively slack period before the session begins. (2) The bill is available in printed form for interim hearings. (3) The cost of setting the bill is carried by the Senate or Assembly which would have to pay the cost of printing the bill anyway. The type is used for the preprinted bill, then inserted in the Commission's recommendation (the Commission is charged only for the type set for the introductory material and the comments and a very modest amount for handling the type), then removed and used further for printing the bill and any amendments.

The advantages of having research studies printed as law review articles was explained in connection with Steps D-1 and D-2 on the preceding chart. A further advantage to this method is apparent on this chart since the considerable amount of work involved in Steps E-4, E-5, and E-6 is eliminated.

E. RECOMMENDATION AND STUDY PUBLISHED



Steps E-2 and E-7 are optional steps that may or may not be included in this element of the program.

Step F-1

Generally, the interim committees on Judiciary of one or both houses holds a hearing on the Commission's legislative program in September, October, or December preceding the general session of the Legislature. For example, the Senate Fact Finding Committee on Judiciary is planning to hold a hearing in September on the Commission's 1967 legislative program.

These interim hearings acquaint the legislative committees with the nature of the Commission's proposals and with background information on the problem. This tends to save time during the session. In some cases, suggestions from members of the interim committees are incorporated in the Commission's recommendations before they are published. The interim hearings also are another means of informing interested persons of the Commission's conclusions on particular topics.

The proposed legislation is often made available in the form of a preprinted bill for the interim hearings and the members of the legislative committees are able to go through the bill in some detail.

During recent sessions, the legislative fact finding committees have also held extensive hearings on Commission proposals during January. This permits the committees to go through the proposals in detail before the committee holds a formal hearing on the bill as introduced in the session. Thus, the Legislature obtains the information needed so that it can act on many of the Commission's proposals early in the session. In the case of complex proposals, it is possible for the Legislature to enact such proposals during the first session they are introduced rather than having to refer them to interim study.

The Commission's staff represents the Commission at interim hearings.

Step F-2

The Senate or Assembly member of the Commission introduces the bills recommended by the Commission. Every effort is made to have the bills ready for introduction during the first two weeks of the session.

When a bill has been preprinted, galley proofs of the bill are introduced; since the bill is already set in type, it can be printed in a minimum of time. In the case of lengthy bills, this avoids a delay that might otherwise result.

Step F-3

Despite the efforts of the Commission to obtain the views of all interested persons before the report to the Legislature is published, interested persons often come forward with inquiries or objections as soon as the bill has been introduced and printed. The Commission's staff and the Commission itself often discuss the recommended legislation with these persons in an effort to eliminate technical defects in the bill or to prepare amendments that are needed to take care of problems of which the Commission was unaware. This step is repeated at every stage of the legislative process.

Step F-4--F-9

The Commission is represented at legislative hearings by its staff. Sometimes the research consultant attends legislative hearings to provide the committee with expert advice. The published research study is of great assistance to the committee when it considers the recommended legislation.

Some of the complex legislation of the Commission is accompanied by sectional comments that are adopted by the legislative committees as evidence of legislative intent. In such cases, the comments must be revised to reflect legislative action on the bill or to supplement them in light of matters brought out at the hearing.

The staff of the Commission is available to answer any questions that the committee or an individual legislator may raise. In this connection, the staff restricts its efforts to the hearings of the legislative committees; individual members of the Legislature are only contacted when they request a meeting with the staff.

The staff prepares all amendments to the recommended bills in accordance with the decisions of the committees. The amendments are then checked by the Legislative Counsel for form. The staff also revises the sectional comments in accordance with the instructions of the legislative committees.

Steps F-9, F-10, F-10*

When the bill has been enacted by the Legislature, the staff prepares a letter to the Governor for the legislative member who authored the measure. In some cases, the Governor may hold a hearing before he determines to sign or veto the measure. The Commission is represented at such hearings by the staff and, in some cases, by members of the Commission.

Steps F-11* and F-12*

If the bill is defeated in the Legislature or is vetoed by the Governor, the Commission must determine whether to drop the topic or to submit the measure at a future session. This decision depends on the reason why the measure was not enacted and on the probability of preparing a measure that would meet approval at a future session.

Steps F-11, F-12, F-12a

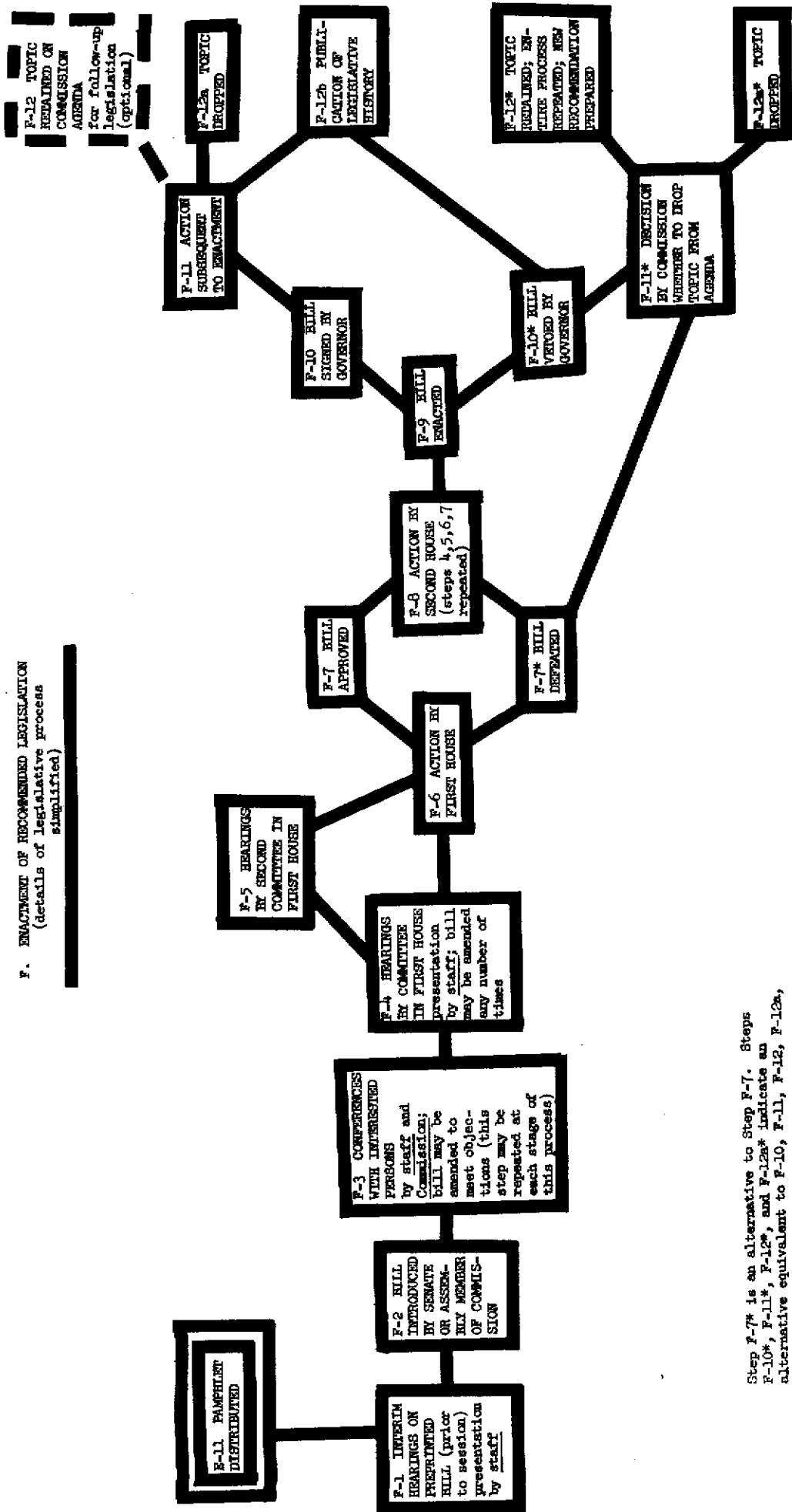
When a recommended bill becomes law, the Commission must decide whether to retain the topic on its agenda. The complex topics treated in recent years have generally been retained because the practical effects of legislative reform can seldom be completely foreseen. For example, the Commission introduced a bill in 1965 to make clarifying changes in the governmental liability legislation enacted in 1963. The Commission plans to introduce legislation in 1967 to make a number of changes in various codes to conform them to the statutory scheme of the Evidence Code which was enacted in 1965.

In some cases, the Commission determines that work on a particular topic is finished and that topic is dropped from the Commission's agenda.

Step F-12b

The action of the Legislature on each recommended measure and the principal amendments made to bills that were enacted is reported in the Commission's next annual report. Where the legislative committees have adopted reports revising comments in the Commission's recommendation, the revised comments also are published, either as part of the Commission's next annual report or as a separate publication. The type used to print such comments in the legislative journals is used to print the comments in the Commission's publication.

F. ENACTMENT OF RECOMMENDED LEGISLATION
(details of legislative process simplified)



Step F-7* is an alternative to Step F-7. Steps F-10*, F-11*, F-12*, and F-12a* indicate an alternative equivalent to F-10, F-11, F-12, F-12a, and F-12b.