

August 27, 1974

<u>Time</u>	<u>Place</u>
September 5 - 10:00 a.m. - 5:00 p.m.	San Diego Fed. Savings & Loan
September 6 - 9:00 a.m. - 5:00 p.m.	Community Room, 2nd Floor
September 7 - 9:00 a.m. - 4:00 p.m.	1055 Torrey Pines Road La Jolla 92037

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

La Jolla

September 5-7, 1974

September 5

1. Minutes of July 25-26, 1974, Meeting (sent 8/2/74)
2. Administrative Matters

Consultants

Memorandum 74-49 (enclosed)

Commission Output 1974-77

Memorandum 74-40 (sent 8/2/74)

Budget for 1975-76 Fiscal Year

Memorandum 74-39 (enclosed)

3. Study 63 - Evidence

63.30 - View by Trier of Fact in Civil Cases

Memorandum 74-41 (sent 8/14/74)

Revised Recommendation (attached to Memorandum)

63.50 - Admissibility of Copies of Business Records

Memorandum 74-48 (sent 8/8/74)

Revised Tentative Recommendation (attached to Memorandum)

4. Study 65.90 - Inverse Condemnation (Payment of Judgments Against Local Public Entities)

Memorandum 74-42 (sent 8/2/74)

Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 74-42 (sent 8/23/74)

August 27, 1974

5. Study 47 - Oral Modification of a Written Contract

Commercial Code Section 2209

Memorandum 74-43 (sent 8/2/74)  
Tentative Recommendation (attached to Memorandum)  
First Supplement to Memorandum 74-43 (sent 8/19/74)

Civil Code Section 1698

Memorandum 74-44 (sent 8/19/74)  
Tentative Recommendation (attached to Memorandum)

6. Study 23 - Partition

Memorandum 74-47 (sent 8/12/74)  
Draft of Tentative Recommendation (attached to Memorandum)

September 6 and 7

7. Study 36.300 - Condemnation Law and Procedure

Memorandum 74-45 (sent 8/20/74)  
First Supplement to Memorandum 74-45 (sent 8/23/74)  
Second Supplement to Memorandum 74-45 (to be sent)  
Memorandum 74-46 (sent 8/23/74)  
Memorandum 74-50 (sent 8/23/74)  
Printed Tentative Recommendations Relating to Condemnation Law  
and Procedure:  
    The Eminent Domain Law  
    Conforming Changes in Special District Statutes  
    Condemnation Authority of State Agencies  
(You should have copies of these printed tentative recommenda-  
tions; if you need a copy, please let us know and we will send  
you another.)

Special Order  
of Business--  
Sept. 6 at  
9:00 a.m.

Upon completion of Item 7, the Commission will return to the consideration of the items listed on the agenda for September 5.

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 5, 6, AND 7, 1974

LA JOLLA

A meeting of the California Law Revision Commission was held in La Jolla on September 5, 6, and 7, 1974.

Present: Marc Sandstrom, Chairman  
John N. McLaurin, Vice Chairman  
John D. Miller  
Thomas E. Stanton, Jr.  
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate  
Alistair McAlister, Member of Assembly  
John J. Balluff  
Noble K. Gregory  
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Nathaniel Sterling, and Stan G. Ulrich, members of the Commission's staff, also were present. Professor Arvo Van Alstyne and Mr. Thomas M. Dankert, Commission consultants on condemnation law and procedure, were present on Friday and Saturday, September 6 and 7.

The following persons were present as observers on days indicated:

Friday, September 6

Gavin P. Craig, Dept. of Water Resources, Sacramento  
Norval Fairman, Dept. of Transportation, San Francisco  
William C. George, San Diego County Counsel, San Diego  
John M. Morrison, Office of Attorney General, Sacramento  
James H. Pearson, Los Angeles City Attorney (Dept. of Airports) Los Angeles  
Anthony J. Ruffolo, Dept. of Transportation, Los Angeles  
Roger D. Weisman, Dept. of Water and Power, City of Los Angeles, Los Angeles  
James Wernicke, Office of Attorney General, Sacramento

Saturday, September 7

Gavin P. Craig, Dept. of Water Resources, Sacramento  
William C. George, San Diego County Counsel, San Diego  
James H. Pearson, Los Angeles City Attorney (Dept. of Airports) Los Angeles  
Anthony J. Ruffolo, Dept. of Transportation, Los Angeles  
Carol Ulrich, Palo Alto  
Roger D. Weisman, Dept. of Water and Power, City of Los Angeles, Los Angeles

Minutes  
September 5, 6, and 7, 1974

ADMINISTRATIVE MATTERS

Minutes of July 25 and 26, 1974, Meeting

The Minutes of the July 25 and 26, 1974, Meeting were approved as submitted.

Legislative Program

The Executive Secretary reported on the 1974 legislative program, summarized below, as of September 5, 1974:

Measures Approved

- Res. Ch. 45, Stats. 1974 (Continues Authority to Study Topics)
- Chapter 211, Stats. 1974 (Enforcement of Sister State Judgments)
- Chapter 227, Stats. 1974 (Erroneously Compelled Disclosure of Privileged Information)
- Chapter 331, Stats. 1974 (Disposition of Abandoned Personal Property)
- Chapter 332, Stats. 1974 (Abandonment of Leased Real Property)
- Chapter 425, Stats. 1974 (Nonresident Aliens)
- Chapter 426, Stats. 1974 (Improvement Acts)

Measure Sent to Governor

- AB 2948 (Prejudgment Attachment)

Dead

- AB 101 (Wage Garnishment)(died in Senate Finance Committee)
- AB 102 (Discharge From Employment Because of Wage Garnishment)  
(died in Senate Judiciary Committee)
- SB 1532 (Liquidated Damages)(recommendation withdrawn for further study)
- SB 1534 (Physician-Patient Privilege)(recommendation withdrawn for further study)

Consultants

The Commission considered Memorandum 74-49 relating to research consultants.

Contract with Professor Kanner. The Commission directed the Executive Secretary to execute a contract with Professor Gideon Kanner to provide for his attending meetings of the Commission and legislative hearings when requested to do so by the Commission through its Executive Secretary in connection with the eminent domain and inverse condemnation studies. Compensation is to be \$20 per day attending Commission meetings or legislative hearings plus necessary travel expenses subject to the same regulations that apply to Commissioners. The total payable under the contract for compensation and travel expenses is to be limited to \$500.

Contract with G. Gervaise Davis III. The Commission directed the Executive Secretary to execute a contract with G. Gervaise Davis III to provide for his attending meetings of the Commission and legislative hearings when requested to do so by the Commission through its Executive Secretary in connection with the Commission's study of nonprofit corporation law. In addition, the contract shall require the consultant to prepare written comments on staff prepared material prior to the meeting at which the material is to be considered if the material is made available to the consultant a sufficient time prior to the meeting to permit him to prepare the comments. The compensation is to be \$100 per day for attending Commission meetings and preparing written comments (if required) in advance of the meeting or for attending legislative hearings, when requested by the Commission through its Executive Secretary, plus necessary travel expenses subject to the same regulations that apply to Commissioners. The total payable under the contract for compensation and travel expenses is to be limited to \$1,000.

Commission Output for 1974-1977

The Commission considered Memorandum 74-40 and adopted the following tentative schedule for the 1975-76 and 1977-78 legislative programs.

1975-76 Legislative Program

1. Recommendations Relating to Eminent Domain  
The Eminent Domain Law  
Conforming Changes in Special District Laws  
Condemnation Authority of State Agencies
2. Recommendation Relating to Partition Procedure
3. Recommendations Relating to Oral Modification of Written Contracts  
Commercial Code Section 2209  
Civil Code Section 1698
4. Evidence Code Recommendations  
Physician-Patient Privilege  
Business Records
5. Recommendation Relating to View by Trier of Fact in Civil Cases
6. Recommendation Relating to Inverse Condemnation (Payment of  
Judgments by Local Public Entities)
7. Recommendation Relating to Escheat of Amounts Payable on  
Travelers Checks, Money Orders, and Similar Instruments
8. Recommendation Relating to Wage Garnishment
9. Recommendation Relating to Possessory Liens
10. Recommendation Relating to Prejudgment Attachment (if needed)

1977-78 Legislative Program

1. Recommendation Relating to Liquidated Damages
2. Recommendation Relating to Nonprofit Corporations Law
3. Recommendation Relating to Enforcement of Judgments (including  
foreign country judgments)
4. Recommendations Relating to Child Custody, Adoption, and Related  
Matters
5. Recommendation Relating to Inverse Condemnation Procedure

Budget for 1975-76 Fiscal Year

The Commission considered Memorandum 74-39 and the attached draft of a proposed budget for 1975-76 fiscal year. The proposed budget was approved as recommended by the staff with the Commission recommendation that the proposed budget for 1975-76 be increased to reflect any increase in the salary for the position of Executive Secretary.

STUDY 23 - PARTITION PROCEDURE

The Commission considered Memorandum 74-47 and the attached draft of the partition statute. The Commission reviewed Sections 873.710 through 873.730 of the draft, making the following determinations:

§ 873.720. Motion to confirm report. Because the referee has an interest in the sale, he, as well as the parties to the action, should be permitted to move to confirm his report of sale.

§ 873.730. Confirmation hearing. After considerable discussion of the authority of the court to confirm a sale that differs in terms from the published conditions of sale, the Commission requested the staff to devote further study to this matter. The study should include an analysis of the differences between the published terms of public and private sales as well as an analysis of the policies and practical problems involved in permitting a variance.

STUDY 36.300 - CONDEMNATION LAW AND PROCEDURE

The Commission continued its review of the comments received on its tentative recommendation of the Eminent Domain Law and commenced a comparison of the tentative recommendation with the Uniform Eminent Domain Code. To this end, the Commission considered Memorandum 74-45 and the First and Second Supplements thereto and Memorandum 74-46 and the attached draft of the Uniform Eminent Domain Code. The Commission completed review of the draft through Section 1255.480 of the Eminent Domain Law, making the following decisions:

§ 1230.025. Inverse condemnation actions not affected (new). The Commission determined not to include a proposed section to make clear that the eminent domain title does not affect inverse condemnation actions. The Commission will rely instead on disclaimers in the Comments to key sections and on the following sentence added to footnote 2 on page 24 of the preliminary portion of the recommendation:

Although the Commission has been authorized to study the subject of inverse condemnation, it has not yet completed its study nor has it formulated recommendations with respect to the subject.

§ 1230.045. Agreement on compensation and other relief (new). The Commission rejected a staff recommendation to incorporate a section authorizing a public entity to compromise any matter involved in the litigation.

§ 1230.065. Operative date (new). The Commission adopted the following provision relating to the operative date of the Eminent Domain Law:

§ 1230.065. Operative date

1230.065. This title becomes operative July 1, 1977.

Comment. Section 1230.065 delays the operative date of this title until July 1, 1977, to allow sufficient time for interested persons to become familiar with the new law.

The Comment should be expanded to refer to the California law relating to application of new laws to pending proceedings and to retrial of proceedings concluded before the operative date. The staff should bring back to the Commission a proposal to make portions of the Eminent Domain Law applicable to such proceedings. Section 1230.070 should be revised in accordance with Section 1230.065.

§ 1235.015. Uniformity of application and construction (new). The Commission rejected the staff's proposal to incorporate a section requiring uniform construction of sections that are the same as provisions of the Uniform Eminent Domain Code.

§ 1235.070. Constitutionality. The Commission rewroded this section so as to read the same as Uniform Eminent Domain Code Section 1604. The section as revised provides:

§ 1235.070. Constitutionality

1235.070. If any provision of this title or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the title that can be given effect without the invalid provision or application and, to this end, the provisions of this title are severable.

Comment. Section 1235.070 is comparable to Evidence Code Section 3 and Commercial Code Section 1108.

§ 1235.115. "Business" defined (new). The Commission determined not to incorporate a definition of "business" in the Eminent Domain Law.

§ 1235.125. "Interest" defined. The Commission adopted the following definition of "interest," with the intent to substitute the term "interest" for the phrase "right, title, or interest," and the like where appropriate:

§ 1235.125. Interest

1235.125. When used with reference to property, "interest" includes any right, title, or estate in property.

The Comment should indicate that the term "interest" is defined broadly to include all interests in property and that the introductory phrase limits the definition so that it does not apply to "interest" as a rate of return on money.

§ 1235.155. "Larger parcel" defined (new). The Commission declined to adopt a definition of larger parcel. The Commission directed the staff to prepare for the next meeting a Comment to be inserted in Section 1263.410 that explains that the concept of larger parcel is undefined so as to leave the matter to continuing judicial development.

§ 1235.160. "Person" defined. The Commission declined to alter the definition of "person." However, where it is appropriate and when it is convenient, the article "a" or "an" should be substituted for "any."

§ 1235.165. "Proceeding" defined. The Commission adopted the following definition of "proceeding," with the object to substitute the term "proceeding" for the phrase "eminent domain proceeding" where it would be convenient to do so:

§ 1235.165. Proceeding.

1235.165. "Proceeding" means an eminent domain proceeding under this title.

The Comment should indicate that the definition is limited to proceedings under the eminent domain title to distinguish them from proceedings before the Public Utilities Commission.

§ 1235.170. "Property" defined. The definition of property was revised to read as follows:

§ 1235.170. Property

1235.170. "Property" includes real and personal property and any interest therein.

Comment. [Add to end of Comment the following sentence:] For the authority of any authorized condemnor to acquire property of any type necessary for public use, see Section 1240.110 (right to acquire any necessary interest in property).

The Comment should also refer to the definition of "interest" (right, title, or estate in property).

§ 1235.205. "Resolution" defined (new). The Commission approved inclusion of the following section:

§ 1235.205. Resolution

1235.205. "Resolution" includes ordinance.

§ 1240.110. Right to acquire any necessary interest in property. The Commission amended Section 1240.110 to read:

§ 1240.110. Right to acquire any necessary interest in property

1240.110. (a) Except to the extent limited by statute, any person authorized to acquire property for a particular use by eminent domain may exercise the power of eminent domain to acquire any interest in property necessary for that use, including by way of illustration and not by way of limitation, submerged lands, rights of any nature in water, subsurface rights, airspace rights, flowage or flooding easements, aircraft noise or operation easements, right of temporary occupancy, public utility facilities and franchises, and franchises to collect tolls on a bridge or highway.

(b) Where a statute authorizes the acquisition by eminent domain only of specified interests in or types of property, this section does not expand the scope of the authority so granted.

Comment. [Add to end of Comment the following paragraph:]

It should be noted that the listing of types of property or property interests in this section is intended for the sole purpose of illustrating the breadth of scope of a condemnor's acquisition authority. The illustrative listing is not intended as complete; a condemnor may acquire, if necessary, rights to limit the use or development of property, for example, in order to preserve land in an open or natural condition. Nor is the listing intended to create compensable interests in inverse condemnation actions that are not otherwise compensable under Article I, Section 14 of the Constitution.

§§ 1245.010-1245.070. Preliminary location, survey, and tests. The Commission declined to substitute the Uniform Eminent Domain Code provisions on entry for survey for the existing California law as recodified in Sections 1245.010-1245.070. The Commission authorized the Executive Secretary to prepare for the next meeting a list of particular reforms required in the existing statute. In this connection, the Commission revised Section 1245.060 to read:

§ 1245.060. Management of amount deposited

1245.060. The court shall retain the amount deposited under this article for a period of six months following the termination of the entry. Such amount shall be deposited in the State Treasury or, upon written request of the plaintiff filed with the deposit, in the county treasury. If money is deposited in the State Treasury pursuant to this section, it shall be held, invested, deposited, and disbursed in accordance with Article 10 (commencing with Section 16429.1) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

§ 1245.210. "Governing body" defined. The definition of governing body as applied to local public entities was revised to refer to the "legislative body" of the local public entity.

§ 1245.230. Contents of resolution. The Commission substituted Uniform Code Section 310, subdivisions (a)(1) and (a)(2) for Eminent Domain Law Section 1245.230, subdivisions (a) and (b). Using the terminology employed by the Eminent Domain Law, Section 1245.230 reads:

§ 1245.230. Contents of resolution

1245.230. In addition to other requirements imposed by law, the resolution of necessity shall contain all of the following:

(a) A general statement of the public use for which the property is to be taken and a reference to the statute that authorizes the public entity to acquire the property by eminent domain.

(b) A description of the general location and extent of the property to be taken, with sufficient detail for reasonable identification.

(c) A declaration that the governing body of the public entity has found and determined each of the following:

(1) The public interest and necessity require the proposed project.

(2) The proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.

(3) The property described in the resolution is necessary for the proposed project.

§ 1245.240. Adoption of resolution. The Commission amended Section 1245.240 to read:

§ 1245.240. Adoption of resolution

1245.240. Except as otherwise provided by statute, the resolution shall be adopted by a vote of a majority of all the members of the governing body of the public entity.

§ 1245.250. Effect of resolution. The Commission considered adoption of a "fraud exception" to the resolution of necessity. The Commission reaffirmed its previous decisions not to include such a fraud exception. Commissioner Miller dissented from the Commission's action.

§ 1245.255. Amendment or rescission of resolution (new). The Commission declined to incorporate a section making clear the authority of a public entity to rescind or amend its resolution of necessity.

§ 1245.260. Failure to initiate eminent domain proceeding within six months from adoption of resolution. The staff should present the Commission with a redrafted version of this section that includes the following features:

(1) The leadline should indicate that the action may be for damages as well as to compel a taking.

(2) The statute should make clear that the property owner may seek a taking alone, damages alone, or a taking plus damages.

(3) The statute should make clear that rescission of a resolution after commencement of an action is subject to damages on abandonment.

(4) The statute should provide that, if the resolution is rescinded or an eminent domain proceeding is commenced before an action is brought, the action may not be brought. The Comment should make clear that this does not affect the right of the property owner to recover damages on a constitutional theory of relief (e.g., Klopping) either by an inverse action following rescission or by a cross-complaint following commencement of an eminent domain proceeding.

(5) A limitations period of one year and six months after adoption of the resolution of necessity should be included in the statute, and the statute should waive the claims filing requirement.

(6) Provision for a writ of mandate to rescind the resolution of necessity should be drafted as a possible alternative remedy.

(7) The Comment should detail the clarifying changes made in existing law.

§ 1250.125. Publication as to certain defendants. The Commission decided to include the following section in the Eminent Domain Law:

§ 1250.125. Publication as to certain defendants

1250.125. (a) Where summons is served by publication, the publication may:

(1) Name only the defendants to be served thereby.

(2) Describe only the property in which the defendants to be served thereby have or claim interests.

(b) Judgment based on failure to appear and answer following service under this section shall be conclusive against the defendants named in respect only to property described in the publication.

Comment. Section 1250.125 continues the substance of former Section 1245.2.

The Comment to Section 1245.2 should be adjusted accordingly.

§ 1250.210. Identification of parties. The Commission revised Section 1250.210 to read:

§ 1250.210. Naming plaintiffs .

1250.210. Each person seeking to take property by eminent domain shall be named as a plaintiff.

Comment. Section 1250.210 requires that each condemnor be named as a plaintiff. This information may be relevant to the issue of the right to exercise the power of eminent domain. For example, if a joint and cooperative eminent domain proceeding is brought by agreement between different agencies (see Section 1240.140), each condemnor must be named as a plaintiff unless the proceeding is brought by a separate legal entity created pursuant to a joint powers agreement. See Govt. Code § 6508.

The plaintiff must be a person authorized by statute to exercise the power of eminent domain to acquire the property sought for the purpose listed in the complaint. See Section 1240.020. A proceeding may not be maintained in the name of any other person. See People v. Superior Court, 10 Cal.2d 288, 73 P.2d 1221 (1937); City of Sierra Madre v. Superior Court, 191 Cal. App.2d 587, 12 Cal. Rptr. 836 (1961); Black Rock etc. Dist. v. Summit etc. Co., 56 Cal. App.2d 513, 133 P.2d 58 (1943). Cf. City of Oakland v. Parker, 70 Cal. App. 295, 233 P. 68 (1924) (objection that real party in interest was a private person rejected). As to joinder of the owner of "necessary property" in a proceeding to acquire "substitute property," see Section 1240.340.

The first paragraph of the existing Comment to Section 1250.210 should be made a Comment to Article 3.

§ 1250.240. Joinder of property. The Commission considered reincorporation of the language "the court may consolidate or separate them to suit the convenience of the parties" in this section. The Commission declined to reincorporate the language since the general provisions of Section 1048(b) are adequate.

§§ 1250.310-1250.370. Pleadings. The staff should review the logic and order of the pleading provisions in light of the Uniform Eminent Domain

Code provisions on pleading. The staff should incorporate a cross-reference to the general section making clear that the general rules of pleading control absent express provisions in this article. The staff should include a disclaimer section along the lines of that in the Uniform Eminent Domain Code.

§ 1250.310. Contents of complaint. The Commission made the following changes in this section:

(1) The Comment to subdivision (b) should make clear that the description of the property taken includes the interest the plaintiff seeks to acquire.

(2) The second sentence of subdivision (b) should be made a separate subdivision.

(3) Subdivision (c) should be conformed with the language of the resolution of necessity provision.

(4) Subdivision (d) was revised to read:

(d) A map or diagram portraying as far as practicable the property sought to be taken and showing its location in relation to the project for which the property is to be taken.

§ 1250.320. Contents of answer. This section was revised to read:

§ 1250.320. Answer to state defendant's interest in property

1250.320. The answer shall include a statement of the nature and the extent of the interest the defendant claims in the property described in the complaint.

§ 1250.330. Signing of pleadings by attorney. This section was revised to read:

§ 1250.330. Signing of pleadings by attorney

1250.330. Where a party is represented by an attorney, his pleading need not be verified but shall be signed by the attorney for the party. The signature of the attorney constitutes a certificate that he has read the pleading and that, to the best of his knowledge, information, and belief, there is ground to support it. If the pleading is not signed or is signed with intent to defeat the purposes of this section, it may be stricken.

§ 1250.345. Waiver of objections to complaint (new). The Commission added the following section to the Eminent Domain Law:

§ 1250.345. Waiver of objections to complaint

1250.345. Subject to the power of the court to permit an amendment of the answer, if the defendant fails to object to the complaint, either by demurrer or answer, he is deemed to have waived the objection.

§ 1255.010. Deposit of amount of appraised value of property. The Commission revised subdivisions (a) and (c) to incorporate language from comparable provisions of the Uniform Eminent Domain Code. In addition, the Commission substituted the requirement of Government Code Section 7267.2 ("summary" of appraisal data) for the requirement of subdivision (b)(all data required to be included in a statement of valuation data under the exchange provisions). The Commission requested that the section as revised be brought back to it at the next meeting for further review.

In this section and the following sections, the phrase "reasonably estimated compensation for the taking of the property" should be substituted for the phrase "probable amount of compensation that will be awarded for the taking of the property."

§ 1255.020. Service of notice of deposit. The Commission determined that service under subdivision (a) be conformed to the comparable requirement of the Uniform Code and that service be required only on parties who have appeared in the proceeding, that a provision be added to Section 1255.020 to permit a party appearing later to obtain the information referred to in subdivision (b), and that a copy of all affidavits upon which an order for deposit under Section 1255.010(c) was based be given with the notice of deposit as in Uniform Code Section 602.

§ 1255.030. Increase or decrease in amount of deposit. Subdivision (b) of this section was revised to allow 30 days to increase the deposit or such longer time as the court may allow at the time of the hearing on the increase. In addition, subdivisions (b) and (e) of Section 603 should be incorporated in Section 1255.030 to make explicit provisions that are now implicit.

§ 1255.040. Deposit for relocation purposes on motion of certain defendants. This section was revised to provide that the amount of the deposit is determined in the same manner as any other prejudgment deposit and to eliminate the requirement that the deposit be used for relocation purposes.

§ 1255.050. Deposit on motion of owner of rental property. The Commission revised the sanction for failure to make a deposit under this section to one of interest less net rental profits.

§ 1255.060. Limitation on use of evidence submitted in connection with deposit. This section should be revised to provide that the prejudgment deposit data cannot be used in any manner at the valuation trial, including impeachment of the testimony of a witness.

§ 1255.070. Deposit in State Treasury unless otherwise required. The Commission directed the staff to attempt to draw a provision allowing a party, on motion to the court, to have the prejudgment deposit invested in secure interest-bearing accounts. The draft should make clear that the investment may be in an institution whose accounts are insured even though the amount invested may exceed the insurance on particular accounts. The draft should also specify that the investment is at the risk of the person requesting it and should indicate rules on right to interest and possession.

§ 1255.280. Repayment of amount of excess withdrawal. Subdivision (d) of this section was revised to read:

(d) The court may, in its discretion and with such security if any as it deems appropriate, grant a party obligated to pay under this section a stay of execution for any amount to be paid to a plaintiff. Such stay of execution shall not exceed one year following entry of judgment under this section.

The Comment should indicate that the security allowed might simply be recordation of an abstract of judgment.

§ 1255.420. Stay or order for hardship. The first sentence of Section 1255.420 was revised to read:

1255.420. Not later than 30 days after service of an order authorizing the plaintiff to take possession of property under Section 1255.410, any defendant or occupant of the property may move for relief from the order on the basis that the hardship to him of having possession taken at the time specified in the order is substantial.

§ 1255.450. Service of order. The Commission directed the staff to attempt to draft a provision permitting a plaintiff to take possession of unoccupied property on a three-days notice in cases where there is acute need for such prompt possession, and prompt possession would not be available under emergency police power authority. The staff should give consideration also to incorporating a provision for such prompt possession in cases involving a partial taking of an unoccupied portion of otherwise occupied property.

STUDY 47 - ORAL MODIFICATION OF WRITTEN CONTRACTS

Commercial Code Section 2209

The Commission considered Memorandum 74-43 and the First Supplement thereto concerning comments received on the Tentative Recommendation Relating to Oral Modification of a Written Contract--Commercial Code Section 2209. The Commission decided that the statement in the preliminary part of the recommendation that other states have had no difficulty with the Uniform Commercial Code provision concerning oral modification should be deleted. Subject to this and any editorial changes, the recommendation was approved for printing.

Civil Code Section 1698

The Commission considered Memorandum 74-44 concerning comments received on the Tentative Recommendation Relating to Civil Code Section 1698--Oral Modification of a Written Contract. The Commission made the following decisions:

1. On page 2 of the preliminary part, the first sentence of the seventh paragraph should read as follows:

The Law Revision Commission accordingly recommends that Section 1698 be replaced by a new section that is consistent with the court-developed rules governing modification of written contracts.

2. Subdivision (b) of Section 1698 should read as follows:

(b) A contract in writing may be modified by an oral agreement to the extent that the oral agreement is executed by ~~both~~ the parties.

3. Subdivision (c) of Section 1698 should read as follows:

(c) A contract in writing may be modified by an oral agreement supported by new consideration to the extent that the oral agreement is executed by the party seeking enforcement of the modification.

4. Subdivision (d) of Section 1698 should read as follows:

(d) Nothing in this section precludes in an appropriate case the application of rules of law concerning estoppel, oral novation and substitution of a new agreement, rescission of a written contract by an oral agreement, waiver of a condition of a written contract, or oral independent collateral contract.

The Comment will have to be conformed.

5. The recommendation should not attempt to deal specifically with any problems arising from the attempted oral modification of written contracts involving public entities.

6. The staff was directed to research the effect of a provision in the contract that the contract may not be modified except in writing and to report the results of the research at the next meeting.

STUDY 63.30 - EVIDENCE (VIEWS BY TRIERS OF FACT  
IN CIVIL CASES)

The Commission considered Memorandum 74-41 and the attached Tentative Recommendation Relating to Evidence--Views By Triers of Fact in Civil Cases. The Commission directed the staff to redraft the recommendation with the following features:

1. The title of the recommendation should be changed to Recommendation Relating to View By Trier of Fact in Civil Case. The letter of transmittal should refer to the Commission's authority to study evidence as the basis of the recommendation.

2. Subdivision (a) of Section 651 should read substantially as follows:

651. (a) On its own motion or on the motion of a party, where the court finds that a view would be proper and would aid the trier of fact in its determination of the case, the court may order a view of any of the following:

(1) The property which is the subject of litigation.

(2) The place where any relevant event occurred.

(3) Any object, demonstration, or experiment, a view of which is relevant and admissible in evidence in the case and which cannot with reasonable convenience be viewed in the courtroom .

3. The Comment should explain that a determination that a view is proper should be based on a balancing of the inconvenience of the view with the need therefor, that the statutory procedure is intended to supplant the common law authority of the judge to order a view, and that a view by the court ~~taken~~ without compliance with Section 651 is not independent evidence upon which a finding can be based.

4. Code of Civil Procedure Section 632 should be amended to require the judge to state in his announcement of intended decision or in the findings which findings are based primarily on the view and the observations at the view supporting each such finding..

STUDY 63.50 - ADMISSIBILITY OF COPIES OF BUSINESS RECORDS

The Commission considered Memorandum 74-48 and the attached revised tentative recommendation. The revised tentative recommendation was approved for distribution to interested persons and organizations for comment after the following revisions have been made:

(1) A portion of what had been proposed to be added to Section 1562 is to be made a new section, to be designated Section 712 of the Evidence Code, to read substantially as follows:

712. A copy of the business records subpoenaed under Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 is admissible in evidence to the same extent as though the original thereof were offered, and is not made inadmissible by the hearsay rule when offered to prove an act, condition, or event recorded, if all of the following are established:

(a) The affidavit accompanying the copy of the records contains the statements required by subdivision (a) of Section 1561.

(b) The subpoena duces tecum served upon the custodian of records or other qualified witness for the production of the copy of the records did not contain the clause set forth in Section 1564 requiring personal attendance of the custodian or other qualified witness and the production of the original records.

(c) The party causing such subpoena duces tecum to be issued and has served on each adverse party, not less than 20 days prior to the date of the trial, a copy of the business records to be offered in evidence and a notice that such copy is a copy of business records that have been subpoenaed for trial in accordance with the procedure authorized pursuant to subdivision (b) of Section 1560, and Sections 1561 and 1562, of the Evidence Code and will be offered in evidence pursuant to Section 712 of the Evidence Code.

(d) The adverse party served with the notice referred to in subdivision (c) has not, within 10 days after being served with such notice, served a written demand for compliance with the requirements of Section 1271 upon the party causing the subpoena duces tecum to be issued and served upon the custodian of records or other qualified witness of the business.

(2) Existing Section 1562 should be revised to state that the copy of the records is admissible in evidence to the extent stated in Section 712.

STUDY 65.90 - INVERSE CONDEMNATION (PAYMENT OF JUDGMENTS  
AGAINST LOCAL PUBLIC ENTITIES)

The Commission considered Memorandum 74-42 and the attached tentative recommendation, the First Supplement to Memorandum 74-42, an additional letter from Mr. Kanner.

The recommendation was approved for printing after it has been revised to provide that the court may order payment of a judgment in installments only where the governing body of the public entity adopts an ordinance or resolution finding that unreasonable hardship will otherwise arise and the court, after hearing, finds that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship. In addition, the phrase ", with interest thereon," should be inserted in subdivision (a) of Section 970.6.

The Commission decided not to recommend that public entities be allowed to build up a fund to pay future tort and inverse condemnation judgments. There was no showing of the need for such authority, and it was thought that the authority would not be used in view of the other demands on local public entities for tax-financed services.

APPROVED

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Secretary

August 28, 1974

1974 Legislative Program

MEASURES APPROVED

- Res. Ch. 45, Stats. 1974 (Continues Authority to Study Topics)
- Chapter 211, Stats. 1974 (Enforcement of Sister State Judgments)
- Chapter 227, Stats. 1974 (Erroneously Compelled Disclosure of Privileged Information)
- Chapter 331, Stats. 1974 (Disposition of Abandoned Personal Property)
- Chapter 332, Stats. 1974 (Abandonment of Leased Real Property)
- Chapter 425, Stats. 1974 (Nonresident Aliens)
- Chapter 426, Stats. 1974 (Improvement Acts)

SENT TO FLOOR "DO PASS" IN SECOND HOUSE

- AB 2948 (Prejudgment Attachment)

DEAD

- AB 101 (Wage Garnishment)(died in Senate Finance Committee)
- AB 102 (Discharge From Employment Because of Wage Garnishment)  
(died in Senate Judiciary Committee)
- SB 1532 (Liquidated Damages)(recommendation withdrawn for further study)
- SB 1534 (Physician-Patient Privilege)(recommendation withdrawn for further study)