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Memorandum 76-24

Subject: General Problem in Drafting New Statute

The Commission has determined generally to retain the language of the new business corporations law in comparable provisions of the new nonprofit corporations law unless some reason exists justifying departure from the business corporations law language.

At the last meeting, the Commission briefly discussed this matter and the related problem of the form in which the business corporations law is drafted. The staff expressed its concern that many of the sections of the business corporations law are very lengthy.

At the last meeting, the Commission was in general agreement with the staff's proposal to split up some of the long sections of the business corporations law into a series of shorter sections in preparing the new nonprofit corporations law.

The following is an analysis in justification of that decision. In Ballantine & Sterling, California Corporation Laws, Volume 1 at 18, the authors discuss the improvement made when the Corporations Code was prepared by the California Code Commission. Among the improvements, they note the following:

In this Code, as in other codes prepared by the commission, long sections have been divided into several short sections whenever feasible. This practice facilitates reference to particular provisions; further, when amendments are proposed, and the entire text of the section amended must be set forth in the legislative act in compliance with the republication requirement of the Constitution [footnote omitted], the use of short sections not only minimizes the chance of unintentional change in the law through unnoticed printing errors, but also effects a substantial savings to the state in the cost of typesetting, proof-reading, etc.

There are other advantages of short sections. The volume of the state-published session laws is less; the pocket parts to the codes published by private publishers are smaller. More important, long sections create significant problems in later revision of the law. If a bill proposes to make a minor amendment in a long section, it is not infrequent that other legislators or interest groups will want to add other amendments to the bill to deal with different problems since the long section being

amended deals with these other problems as well. In addition, members of the legislative committees look at the provisions contained in the long sections when the bill is heard and decide they want to make changes (not proposed by the author of the bill) in other parts of the section. Another bill may be introduced amending the same section in a different way, and the two bills must be coordinated because the last one signed will "chapter out" any amendment made by the earlier bill that is not included in the last bill signed. These practical problems will more often be presented when long sections containing much material are used than when short sections are used. Finally, use of short sections permits the use of boldface leadlines that describe the contents of the short sections. This makes it easier to find a specific provision when compared to the case where long sections are used which contain many provisions and very general leadlines. Also, annotations are easier to use when long sections are divided into short sections since only the annotations to the short section will need to be examined.

For the reasons indicated above, the staff does not believe that the apparent drafting philosophy--long sections--of the business corporations law should be followed in drafting the nonprofit corporations law. We see no significant problems created by splitting up long sections into short sections since we will provide a Comment that indicates the source of each section, and this Comment will be printed in the annotated codes under the section. Moreover, we will develop conversion tables which will be included in our printed recommendation and will be available to the Legislature when our recommended legislation is considered by the Legislature and to the practitioner after it is enacted.

Respectfully submitted,

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Executive Secretary