

6/10/76

Memorandum 76-77

Subject: Schedule for Consideration of Topics

I believe that it is useful each year to review the topics on the Commission's agenda and to set goals to be accomplished during the next few years. The establishment of priorities permits the staff to give priority to those topics the Commission wishes to be given priority and permits us to inform interested persons and organizations as to when a recommendation on a particular topic is likely to be produced.

I further believe that the goals set should be ambitious and, at the same time, be reasonably possible to achieve. With this in mind, the staff has prepared a suggested schedule for the production of recommendations on various topics on the Commission's agenda of topics. The schedule, if approved, will be reviewed next year in light of the situation existing at that time.

Topics on Agenda; Topics to Be Dropped From Agenda

The topics on the Commission's agenda are set out as Exhibit I (pink). Two topics the staff suggests be dropped from the agenda are set out in Exhibit II (yellow).

1977 Legislative Program

The items suggested for inclusion in the 1977 Legislative Program are set out in Exhibit III (green). Whether wage garnishment will be included should be determined after Memorandum 76-79 has been considered at the September meeting.

Recommendations Not Enacted in 1976

Exhibit IV (buff) lists recommendations submitted to the 1976 Legislature that were not enacted. (We assume that bills that have not already been killed will be enacted.) The staff recommends against submitting bills in 1977 on any of these recommendations.

Study of Cooperative Corporation Law

As the Commission is aware, there is an acute need for a study of cooperative corporation law. There are three major statutes which adopt to some extent the provisions of the repealed General Corporation Law and, in the case of one statute, would adopt the repealed General Non-profit Corporation Law (if the new Nonprofit Corporation Law is enacted).

With respect to this problem, there are several alternatives listed below:

(1) The Commission could commence an immediate study of cooperative corporation law. The staff recommends against this since we believe that the Commission should not undertake this study if Assemblyman Knox plans to have another Assembly Select Committee appointed to make such a study.

(2) The Chairman could send a letter to Assemblyman Knox to ascertain whether he plans to have an Assembly Select Committee appointed to make the study. A draft of such a letter is attached as Exhibit V (blue).

(3) The Commission could recommend in its final recommendation on nonprofit corporation law that such a study be made by an Assembly Select Committee. The reason for such a recommendation would be that cooperative corporations are more like business corporations than other nonprofit corporations, and the new General Corporation Law was drafted by an Assembly Select Committee. The difficulty with this recommendation is that there is no assurance that an Assembly Select Committee would actually be appointed, and the law relating to cooperative corporations might remain in its present undesirable state for many years.

There may be other alternatives. What is the Commission's desire with respect to this matter?

Study of Governmental Tort Liability

There is little doubt but that Assemblyman McAlister's bill to create a Joint Legislative Committee on Tort Liability to make a comprehensive study of tort liability will be enacted. This bill includes the following provision:

The joint committee may contract with the California Law Revision Commission, or with other persons or groups with expertise in this area, to conduct specific portions of the study. It may also seek the recommendation of the California Law Revision Commission with regard to any of the issues of this study.

A resolution to authorize the Commission to study all aspects of tort liability also probably will be enacted, but no additional funding will be provided and it is understood by all concerned that the Joint Legislative Committee will make the study.

There is one aspect of the overall problem of tort liability that the Commission is particularly qualified to study--governmental liability. A study of the liability and immunity provisions of the governmental liability statute to determine whether any revisions are needed should be included as a part of the overall study. In fact, the bill introduced by Assemblyman McAlister was amended to include the following:

(b) The Legislature finds all of the following:

* * * * *

(2) That cities and other entities and organizations of local government are experiencing difficulty in locating markets which provide liability insurance for willful and negligent acts of themselves and their employees in their official capacities, whether governmental or proprietary.

The question presented is whether the Commission wishes to make known to the Joint Legislative Committee its willingness to cooperate in the tort liability study by studying governmental liability. Professor Van Alstyne is willing to prepare a study which he could deliver early in 1977. The staff is not recommending that the Commission become involved and perhaps it would be the best course of action to await a request from the Joint Legislative Committee--a request that probably would not be made in absence of some expression of interest on behalf of the Commission. On the other hand, the Joint Legislative Committee has an impossible task and might be grateful for any assistance we could provide.

Recommendations to 1978 and Subsequent Sessions

The staff has listed in Exhibit VI (gold) its suggestions concerning the recommendations for 1978 and subsequent sessions. Two major matters--cooperative corporations and governmental liability--have been discussed above. With respect to the other matters listed, the following observations are made:

(1) It would not be possible to cover all the topics listed for the 1978 Legislative Program.

(2) If possible, we should obtain a consultant on the discovery study, which we believe is a relatively simple one since it involves a review of experience under the existing law and an examination and evaluation of the recent amendments to the federal discovery provisions. We recommend that Garrett Elmore be retained as a consultant. If the

Commission agrees, we will discuss with him whether he is willing to be the consultant on the topic and the compensation he would expect.

(3) If Clarence B. Taylor is willing to serve as an expert consultant on the Marketable Title Act study, the staff suggests that we work out a contract with him for the study. This is a very technical study, and we would want to get considerable input from the California Land Title Association on the proposed Uniform Act before we brought the matter to the Commission for consideration. Taylor drafted the model act that served as the basis for much of the Uniform Act. It is not too early to start work at the staff and consultant level on this project.

(4) The notations under the various topics in Exhibit VI will give you some background information. If you need any additional information, we can provide it at the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

STUDIES ON CURRENT AGENDA OF LAW REVISION COMMISSION

<u>STUDY</u>	<u>STUDY STATUS</u>
23 - Partition Procedure	Recommendation enacted 1976
26 - Escheat; Unclaimed Property	Recommendation enacted 1975
30 - Child Custody, Adoption, and Related Matters	Background studies on child custody and adoption prepared; staff study of guardianship and conservatorship in progress
36 - Condemnation	Recommendations enacted 1975, 1976; continuing study required
39 - Creditors' Remedies	Recommendations enacted 1971, 1973, 1974, 1975, 1976; continuing study required. Additional recommendation (wage garnishment)--1977 legislative program; study on enforcement of judgments in progress.
47 - Oral Modification of Contracts	Recommendations enacted 1975, 1976
52 - Sovereign Immunity	Recommendations enacted; continuing study required.
63 - Evidence Code	Recommendations enacted; continuing study required; background study of federal rules prepared.
65 - Inverse Condemnation	Recommendations enacted; general study published; staff study on procedure will be prepared.
67 - Unincorporated Associations	Recommendations enacted; further study may be required.
70 - Arbitration	Recommendations enacted; further study may be required.
72 - Liquidated Damages	Recommendation--1976 leg. program; continuing study required.
77 - Nonprofit Corporations	Recommendation--1977 leg. program
78 - Landlord-Tenant Relations	Recommendations enacted; additional recommendation--1977 leg. program.
79 - Parol Evidence Rule	Study deferred
80 - Prejudgment Interest in Civil Actions	Study deferred
81 - Out-of-State Trusts	Recommendation enacted 1976
82 - Class Actions	Authorized 1975; study deferred
83 - Offers of Compromise	Authorized 1975; study deferred
84 - Discovery in Civil Cases	Authorized 1975; study deferred
85 - Possibilities of Reverter and Powers of Termination	Authorized 1975; study deferred
86 - Marketable Title Act	Authorized 1975; study deferred
87 - Tort Liability	Possible authorization 1976 (ACR 170)

EXHIBIT II

STUDIES SUGGESTED TO BE DROPPED FROM CURRENT AGENDA

47 - Oral Modification of Contracts

Recommendations on this topic were enacted in 1975 and 1976. The topic does not appear to be one that requires continuing study.

81 - Out-of-State Trusts

Recommendation on this topic was enacted in 1976. This topic does not appear to be one that requires continuing study.

EXHIBIT III

1977 LEGISLATIVE PROGRAM

1. Nonprofit Corporation Law. The Commission is working on a recommendation on this subject for submission to 1977 Legislature.
2. Damages in Action for Breach of a Lease. Recommendation approved for printing and submission to 1977 Legislature.
3. Sister State Money Judgments. Recommendation proposing technical revisions approved for printing and submission to 1977 Legislature.
4. Wage Garnishment. Recommendation printed on this subject in 1975, but no bill was introduced in 1976. Commission will consider comments of State Bar Committee at September meeting. Could submit recommendation to 1977 Legislature.

EXHIBIT IV

RECOMMENDATIONS SUBMITTED TO 1976 SESSION BUT NOT ENACTED

1. Admissibility of Duplicates

This is a sound recommendation, but it was not acceptable to the the Assembly Judiciary Committee, and no purpose would be served by again introducing the recommended legislation at the request of the Commission.

2. Undertakings for Costs

This recommendation was unacceptable to the Assembly Judiciary Committee, which took a dim view toward undertakings for costs generally and was unwilling to revise existing statutes to make them constitutional. The staff sees no useful purpose served by again introducing the recommended legislation at the request of the Commission.

3. Condemnation for Byroads and Utility Easements

The recommended legislation was amended in committee and reported "do pass" to the assembly floor. However, before it came to a vote on the Assembly floor, the bill was amended to delete private condemnation authority for byroads. As so amended, the bill passed the Assembly with the bare 41 votes required to pass a bill (41 for; 31 against). The staff recommends against the Commission's again proposing legislation to authorize condemnation for byroads. Other interested organizations--such as the State Bar Committee on Condemnation--can propose such legislation if such organization believes that the legislation is desirable.

EXHIBIT V

DRAFT OF LETTER TO ASSEMBLYMAN KNOX

Dear Assemblyman Knox:

During the month of July, the Law Revision Commission completed its work on a tentative recommendation relating to nonprofit corporation law and distributed the tentative recommendation to a large number of persons and organizations for review and comment. We sent you a copy of the tentative recommendation.

During the course of its study, the Commission examined the three major statutes under which cooperative corporations are formed and concluded that cooperative corporations should not be governed by the new nonprofit corporation law. Two of these statutes now provide that cooperative corporations are governed to some extent by the repealed General Corporation Law, and the Commission has tentatively concluded that the third statute should be amended to provide that cooperative corporations formed under that statute should continue to be governed to some extent by the existing General Nonprofit Corporation Law (which will be repealed when a new nonprofit corporation law is enacted).

As the Commission points out in the tentative recommendation (pages 65-67), it will remain necessary to refer to repealed statutory provisions to determine the law applicable to cooperative corporations until necessary revisions have been made in the three major cooperative corporation statutes. The Commission recommends that a general study of cooperative corporation law be made with the objective of correcting this undesirable situation as soon as possible.

The Commission understands that the existing Select Committee does not plan to cover cooperative corporations in its current study of nonprofit corporation law. The Commission solicits your views on the best method of making the necessary study of cooperative corporation law. Specifically, do you believe that the Commission should commence this study immediately with the objective of submitting a recommendation to the 1978 Legislature, or would you prefer to have another Assembly Select Committee appointed to make the study? The Commission would appreciate knowing your views on this matter because we do not want to undertake this study if you are planning to have such a study made by an Assembly Select Committee.

Sincerely,

John W. McLaurin
Chairman

EXHIBIT VI

RECOMMENDATIONS TO 1978 AND SUBSEQUENT SESSIONS

1978 LEGISLATIVE SESSION

1. Evidence in Eminent Domain and Inverse Condemnation

This recommendation would propose any revisions in the Evidence Code needed to conform the Evidence Code provisions to the new Eminent Domain Law or to make other needed changes in the Evidence Code provisions.

2. Guardianship and Conservatorships

Under existing law, a guardianship or a conservatorship may be created to protect property of a person who is not able to handle his or her own property. When the conservatorship statute was enacted upon recommendation of the State Bar, it was planned that the conservatorship of property statute would be repealed in time so that the overlap of that statute and the new guardianship statute would be eliminated. The staff believes that this would be a desirable project and a State Bar Committee is in agreement and is willing to work with the Commission on the project. The staff would give this project priority with a view to submitting a recommendation to the 1978 Legislature.

3. Cooperative Corporations

If the Commission undertakes this study, it should be given a top priority with a view to submitting the recommendation to the 1978 Legislature. This would be at the expense of other topics listed for the 1978 Legislative Program.

4. Evidence--Psychotherapist-Patient Privilege

Recent cases and law review articles and letters to the Commission indicate that a study of the psychotherapist-patient privilege is urgently needed.

5. Governmental Liability

If the Commission undertakes this study, it should be given a top priority with a view to submitting the recommendation to the 1978 Legislature. This would be at the expense of other topics listed for the 1978 Legislative Program.

1979 LEGISLATIVE SESSION

1. Revisions of the Evidence Code

We have on hand the study of the federal rules and needed conforming changes in the California Evidence Code.

2. Discovery in Civil Actions

We will need a consultant on this topic. See this memorandum.

3. Creditors' Remedies

The Commission has devoted considerable time and resources to this topic. The staff believes that it should be given priority (at the expense of other topics not given a top priority) during 1977 and 1978 with a view to submitting a recommendation to the 1979 Legislature. We have a draft statute that covers the entire subject (except exemptions) although considerable work needs to be completed on some aspects of the project. Considerable Commission time will be required to complete work on this topic.

1980 LEGISLATIVE SESSION

1. Child Custody and Related Matters

We have two background studies on this topic. After work on the guardianship-conservatorship study is completed, the staff suggests that the Commission start work on this topic. The staff will soon start work, in cooperation with our consultant--Professor Brigitte M. Bodenheimer--to prepare a draft statute with Comments. This is a complex and controversial topic and will require a long time to complete. We would expect to start Commission consideration of the topic in 1978 or earlier, depending on the situation with respect to other topics.

2. Class Actions

You will recall that the Commission selected Professor Friedenthal as the expert consultant to prepare a background study on this topic. No contract has been made for the study. I discussed the study with Professor Friedenthal. He believes that it would be better to defer the study for a year or two to permit court decisions to further identify the problems and possible solutions. The National Conference of Commissioners on Uniform State Laws has approved a Uniform Act on Class Actions.

3. Marketable Title Act and Related Matters

The National Conference of Commissioners on Uniform State Laws has approved a Uniform Simplification of Land Transfers Act. The Preface to that Act states: "Particularly influential has been the model legislation prepared by Professor Lewis M. Simes and Clarence B. Taylor for the Section of Real Property, Probate and Trust Law of the American Bar Association and for the University of Michigan Law School. . . ." We suggest Mr. Taylor as the consultant on this topic. See this memorandum.