

Leg. Prog.

March 6, 1995

Memorandum 95-10**1995 Legislative Program**

GENERAL MATTERS

It has been a challenge to place the Commission's recommendations for 1995 for a number of reasons. The Commission currently has no legislative members due to the departure of Terry Friedman from the Legislature and the resignation of Tom Campbell from the Commission. In addition, the uncertainty in the organization and operation of the Assembly has made it problematic to place proposals with Assembly authors. This has put more pressure on the Senate, which operates under constraints on the number of bills a Senator may author.

Nonetheless, we have managed to place all our recommendations for this session. Senator Kopp has agreed to author the Commission's main recommendations for 1995 — administrative adjudication and debtor/creditor relations. Commissioner Skaggs arranged with Assembly Member Rainey for our annual resolution of authority.

A chart showing authorship of the bills is attached. We will update the chart periodically with information on the progress of the bills. Issues on the bills will be discussed in separate memoranda relating to them.

SCA 4 (LOCKYER) — TRIAL COURT UNIFICATION

We have listed SCA 4 (Lockyer) on trial court unification for informational purposes even though this is not really part of the Commission's legislative program. A copy of the measure is attached as Exhibit pp. 1-10. The Commission had asked for an analysis of the differences between SCA 4 and the Commission's 1994 recommendations on SCA 3. Our analysis shows that SCA 4 largely implements the Commission's recommendations on SCA 3, with the following differences:

(1) The text of some of the constitutional provisions affected by SCA 4 differs from the text in the Commission's report due to constitutional amendments

adopted at the November 1994 election abolishing justice courts and overhauling the Commission on Judicial Performance. (Article VI, Sections 1, 5, 6, 8, 11, 15, 23)

(2) The recommended provision establishing an appellate division in the superior court is relocated from the section dealing with appellate jurisdiction to the section dealing with the organization of the superior court. (Article VI, Section 4)

(3) SCA 4 incorporates changes in the structure of the Judicial Council which the Commission recognized in its report but did not explicitly recommend as beyond the scope of trial court unification. (Article VI, Section 6)

(4) The original jurisdiction of the appellate division of the superior court to issue writs directed to the superior court is limited by SCA 4 to causes within the appellate jurisdiction of the appellate division. (Article VI, Section 10)

(5) The Commission's recommendation would have given the court of appeal appellate jurisdiction in felonies and in civil causes prescribed by statute. SCA 4 defines the appellate jurisdiction of the court of appeal as "causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995". (Article VI, Section 11)

(6) The proposal to allow the Legislature to specify the manner of election of superior court judges in case of Voting Rights Act violations is revised by SCA 4 to require "two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court". (Article VI, Section 16(b))

(7) The proposal to postpone election to fill a vacancy until the general election after the *third* January 1 following the vacancy was cut back by SCA 4 to the general election after the *second* January 1 following the vacancy. (Article VI, Section 16(c))

(8) SCA 4 would be on the March 1996 ballot and would become operative January 1, 1998, compared with SCA 3 which would have been on the November 1994 ballot and become operative January 1, 1996. (Article VI, Section 23)

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATUS OF 1995 COMMISSION LEGISLATIVE PROGRAM
(as of March 6, 1995)

ACR 14 (Rainey): Countinuing Authority to Study Topics
 SB 222 (Beverly): Uniform Prudent Investor Act
 SB 523 (Kopp): Administrative Adjudication

SB 832 (Kopp): Debtor/Creditor Relations
 SB 984 (Campbell): Power of Attorney Cleanup
 SCA 4 (Lockyer): Trial Court Unification

Bill Status		ACR 14	SB 222	SB 523	SB 832	SB 984		SCA 4
Introduced		Feb 17	Feb 6	Feb 21	Feb 23	Feb 24		1994
Last Amended								
First House	Policy Committee		[Apr 4]					
	Fiscal Committee		—		—	—		
	Passed House							
Second House	Policy Committee							
	Fiscal Committee		—		—	—		
	Passed House							
Concurrence								
Governor	Received	—						
	Approved	—						
Chaptered by Secretary of State	Date							
	Chapter #							

• Unless otherwise noted, all dates are in 1995

[date]: scheduled

—: not applicable

Introduced by Senator Lockyer

December 6, 1994

Senate Constitutional Amendment No. 4—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 16 of Article I thereof, and by amending Sections 1, 4, 6, 8, 10, 11, 15, and 16 of, adding and repealing Section 23 of, and repealing Section 5 of, Article VI thereof, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

SCA 4, as introduced, Lockyer. Courts: consolidation.

The California Constitution currently provides for superior and municipal courts, provides for their establishment and jurisdiction, and provides for the qualification and election of their judges.

This measure would eliminate the provisions for municipal courts, and instead revise the provisions for the superior courts, their establishment and jurisdiction, the number of jurors required in certain civil actions, and the qualification and election of their judges. The measure would become operative on January 1, 1998. The measure would also specify its purposes, and make related, conforming changes. The measure would also declare that its provisions are severable.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

- 1 *Resolved by the Senate, the Assembly concurring,* That
- 2 the Legislature of the State of California at its 1995-96
- 3 Regular Session commencing on the fifth day of

1 December, 1994, two-thirds of the membership of each
2 house concurring, hereby proposes to the people of the
3 State of California that the Constitution of the State be
4 amended as follows:

5 First—That Section 16 of Article I thereof is amended
6 to read:

7 SEC. 16. Trial by jury is an inviolate right and shall be
8 secured to all, but in a civil cause three-fourths of the jury
9 may render a verdict. A jury may be waived in a criminal
10 cause by the consent of both parties expressed in open
11 court by the defendant and the defendant's counsel. In a
12 civil cause a jury may be waived by the consent of the
13 parties expressed as prescribed by statute.

14 In civil causes the jury shall consist of 12 persons or a
15 lesser number agreed on by the parties in open court. In
16 civil causes ~~in municipal or justice court~~ *other than causes*
17 *within the appellate jurisdiction of the court of appeal* the
18 Legislature may provide that the jury shall consist of eight
19 persons or a lesser number agreed on by the parties in
20 open court.

21 In criminal actions in which a felony is charged, the jury
22 shall consist of 12 persons. In criminal actions in which a
23 misdemeanor is charged, the jury shall consist of 12
24 persons or a lesser number agreed on by the parties in
25 open court.

26 Second—That Section 1 of Article VI thereof is
27 amended to read:

28 SEC. 1. The judicial power of this State is vested in
29 the Supreme Court, courts of appeal, *and* superior courts,
30 ~~and municipal courts. All courts all of which~~ *are* courts of
31 record.

32 Third—That Section 4 of Article VI thereof is amended
33 to read:

34 SEC. 4. In each county there is a superior court of one
35 or more judges. The Legislature shall prescribe the
36 number of judges and provide for the officers and
37 employees of each superior court. If the governing body
38 of each affected county concurs, the Legislature may
39 provide that one or more judges serve more than one
40 superior court.

1 The county clerk is ex officio clerk of the superior court
2 in the county.

3 In each superior court there is an appellate division.
4 The Chief Justice shall assign judges to the appellate
5 division for specified terms pursuant to rules, not
6 inconsistent with statute, adopted by the Judicial Council
7 to promote the independence of the appellate division.

8 Fourth—That Section 5 of Article VI thereof is
9 repealed.

10 **SEC. 5.** (a) Each county shall be divided into
11 municipal court districts as provided by statute, but a city
12 may not be divided into more than one district. Each
13 municipal court shall have one or more judges. Each
14 municipal court district shall have no fewer than 40,000
15 residents; provided that each county shall have at least
16 one municipal court district. The number of residents
17 shall be determined as provided by statute.

18 (b) On the operative date of this subdivision, all
19 existing justice courts shall become municipal courts, and
20 the number, qualifications, and compensation of judges,
21 officers, attachés, and employees shall continue until
22 changed by the Legislature. Each judge of a part/time
23 municipal court is deemed to have agreed to serve full
24 time and shall be available for assignment by the Chief
25 Justice for the balance of time necessary to comprise a
26 full/time workload.

27 (c) The Legislature shall provide for the organization
28 and prescribe the jurisdiction of municipal courts. It shall
29 prescribe for each municipal court the number,
30 qualifications, and compensation of judges, officers, and
31 employees.

32 (d) Notwithstanding subdivision (a), any city in San
33 Diego County may be divided into more than one
34 municipal court district if the Legislature determines that
35 unusual geographic conditions warrant such division.

36 Fifth—That Section 6 of Article VI thereof is amended
37 to read:

38 **SEC. 6.** The Judicial Council consists of the Chief
39 Justice and one other judge of the Supreme Court, 3
40 judges of courts of appeal, 5 10 judges of superior courts,

1 and 5 judges of municipal courts 2 nonvoting court
2 administrators, and such other nonvoting members as
3 determined by the voting membership of the council,
4 each appointed by the Chief Justice for a ~~2-year~~ 3-year
5 term pursuant to procedures established by the council;
6 4 members of the State Bar appointed by its governing
7 body for ~~2-year~~ 3-year terms; and one member of each
8 house of the Legislature appointed as provided by the
9 house.

10 Council membership terminates if a member ceases to
11 hold the position that qualified the member for
12 appointment. A vacancy shall be filled by the appointing
13 power for the remainder of the term.

14 The council may appoint an Administrative Director of
15 the Courts, who serves at its pleasure and performs
16 functions delegated by the council or the Chief Justice,
17 other than adopting rules of court administration,
18 practice and procedure.

19 To improve the administration of justice the council
20 shall survey judicial business and make recommendations
21 to the courts, make recommendations annually to the
22 Governor and Legislature, adopt rules for court
23 administration, practice and procedure, ~~not inconsistent~~
24 ~~with statute~~; and perform other functions prescribed by
25 statute. *The rules adopted shall not be inconsistent with*
26 *statute.*

27 The Chief Justice shall seek to expedite judicial business
28 and to equalize the work of judges. The Chief Justice may
29 provide for the assignment of any judge to another court
30 but only with the judge's consent if the court is of lower
31 jurisdiction. A retired judge who consents may be
32 assigned to any court.

33 Judges shall report to the ~~Judicial Council~~ *council* as the
34 Chief Justice directs concerning the condition of judicial
35 business in their courts. They shall cooperate with the
36 council and hold court as assigned.

37 Sixth—That Section 8 of Article VI thereof is amended
38 to read:

39 SEC. 8. (a) The Commission on Judicial
40 Performance consists of one judge of a court of appeal;

1 one judge of a superior court, and one judge of a
2 municipal court and 2 judges of superior courts, each
3 appointed by the Supreme Court; 2 members of the State
4 Bar of California who have practiced law in this State for
5 10 years, each appointed by the governor; and 6 citizens
6 who are not judges, retired judges, or members of the
7 State Bar of California, 2 of whom shall be appointed by
8 the Governor, 2 by the Senate Committee on Rules, and
9 2 by the Speaker of the Assembly. Except as provided in
10 ~~subdivision~~ subdivisions (b) and (c), all terms are for 4
11 years. No member shall serve more than 2 4-year terms,
12 or for more than a total of 10 years if appointed to fill a
13 vacancy.

14 (b) Commission membership terminates if a member
15 ceases to hold the position that qualified the member for
16 appointment. A vacancy shall be filled by the appointing
17 power for the remainder of the term. A member whose
18 term has expired may continue to serve until the vacancy
19 has been filled by the appointing power. Appointing
20 powers may appoint members who are already serving on
21 the commission prior to March 1, 1995, to a single 2-year
22 term, but may not appoint them to an additional term
23 thereafter.

24 ~~(b)~~

25 (c) To create staggered terms among the members of
26 the Commission on Judicial Performance, the following
27 members shall be appointed, as follows:

28 (1) Two members appointed by the Supreme Court to
29 a term commencing March 1, 1995, shall each serve a
30 term of 2 years and may be reappointed to one full term.
31 *The superior court judge appointed to fill the vacancy*
32 *caused by the measure adopted March 26, 1996, and*
33 *operative January 1, 1998 shall be appointed to an initial*
34 *term equivalent to the term remaining to the municipal*
35 *court judge member of the commission on December 31,*
36 *1997.*

37 (2) One attorney appointed by the Governor to a term
38 commencing March 1, 1995, shall serve a term of 2 years
39 and may be reappointed to one full term.

1 (3) One citizen member appointed by the Governor
2 to a term commencing March 1, 1995, shall serve a term
3 of 2 years and may be reappointed to one full term.

4 (4) One member appointed by the Senate Committee
5 on Rules to a term commencing March 1, 1995, shall serve
6 a term of 2 years and may be reappointed to one full term.

7 (5) One member appointed by the Speaker of the
8 Assembly to a term commencing March 1, 1995, shall
9 serve a term of 2 years and may be reappointed to one full
10 term.

11 (6) All other members shall be appointed to full 4-year
12 terms commencing March 1, 1995.

13 Seventh—That Section 10 of Article VI thereof is
14 amended to read:

15 SEC. 10. The Supreme Court, courts of appeal,
16 superior courts, and their judges have original jurisdiction
17 in habeas corpus proceedings. Those courts also have
18 original jurisdiction in proceedings for extraordinary
19 relief in the nature of mandamus, certiorari, and
20 prohibition. *The appellate division of the superior court*
21 *has original jurisdiction in proceedings for extraordinary*
22 *relief in the nature of mandamus, certiorari, and*
23 *prohibition directed to the superior court in causes*
24 *subject to its appellate jurisdiction.*

25 Superior courts have original jurisdiction in all *other*
26 causes ~~except those given by statute to other trial courts.~~

27 The court may make such comment on the evidence
28 and the testimony and credibility of any witness as in its
29 opinion is necessary for the proper determination of the
30 cause.

31 Eighth—That Section 11 of Article VI thereof is
32 amended to read:

33 SEC. 11. (a) The Supreme Court has appellate
34 jurisdiction when judgment of death has been
35 pronounced. With that exception courts of appeal have
36 appellate jurisdiction when superior courts have original
37 jurisdiction *in causes of a type within the appellate*
38 *jurisdiction of the courts of appeal on June 30, 1995, and*
39 *in other causes prescribed by statute. Superior courts*
40 *have When appellate jurisdiction in civil causes is*

1 *determined by the amount in controversy, the*
2 *Legislature may change the appellate jurisdiction of the*
3 *courts of appeal by changing the jurisdictional amount in*
4 *controversy.*

5 *(b) Except as provided in subdivision (a), the*
6 *appellate division of the superior court has appellate*
7 *jurisdiction in causes prescribed by statute ~~that arise in~~*
8 *~~municipal courts in their counties.~~*

9 *(c) The Legislature may permit appellate courts*
10 *exercising appellate jurisdiction to take evidence and*
11 *make findings of fact when jury trial is waived or not a*
12 *matter of right.*

13 Ninth—That Section 15 of Article VI thereof is
14 amended to read:

15 SEC. 15. A person is ineligible to be a judge of a court
16 of record unless for ~~5 years immediately preceding~~
17 ~~selection to a municipal court or 10 years immediately~~
18 ~~preceding selection to other courts,~~ the person has been
19 a member of the State Bar or served as a judge of a court
20 of record in this ~~State~~ *state*. ~~A judge eligible for municipal~~
21 ~~court service may be assigned by the Chief Justice to~~
22 ~~serve on any court.~~

23 Tenth—That Section 16 of Article VI thereof is
24 amended to read:

25 SEC. 16. (a) Judges of the Supreme Court shall be
26 elected at large and judges of courts of appeal shall be
27 elected in their districts at general elections at the same
28 time and places as the Governor. Their terms are 12 years
29 beginning the Monday after January 1 following their
30 election, except that a judge elected to an unexpired term
31 serves the remainder of the term. In creating a new court
32 of appeal district or division the Legislature shall provide
33 that the first elective terms are 4, 8, and 12 years.

34 (b) Judges of ~~other superior courts~~ shall be elected in
35 their counties ~~or districts~~ at general elections *except as*
36 *otherwise necessary to meet the requirements of federal*
37 *law, in which case the Legislature, by two-thirds vote of*
38 *the membership of each house thereof, with the advice*
39 *of judges within the affected court, may provide for their*
40 *election in electoral subdivisions of the affected court at*

1 *general elections, by the system prescribed in subdivision*
2 *(d), or by any other arrangement.* The Legislature may
3 provide that an unopposed incumbent's name not appear
4 on the ballot.

5 (c) Terms of judges of superior courts are 6 years
6 beginning the Monday after January 1 following their
7 election. A vacancy shall be filled by election to a full term
8 at the next general election after the *second* January 1
9 following the vacancy, but the Governor shall appoint a
10 person to fill the vacancy temporarily until the elected
11 judge's term begins.

12 (d) Within 30 days before August 16 preceding the
13 expiration of the judge's term, a judge of the Supreme
14 Court or a court of appeal may file a declaration of
15 candidacy to succeed to the office presently held by the
16 judge. If the declaration is not filed, the Governor before
17 September 16 shall nominate a candidate. At the next
18 general election, only the candidate so declared or
19 nominated may appear on the ballot, which shall present
20 the question whether the candidate shall be elected. The
21 candidate shall be elected upon receiving a majority of
22 the votes on the question. A candidate not elected may
23 not be appointed to that court but later may be
24 nominated and elected.

25 The Governor shall fill vacancies in those courts by
26 appointment. An appointee holds office until the Monday
27 after January 1 following the first general election at
28 which the appointee had the right to become a candidate
29 or until an elected judge qualifies. A nomination or
30 appointment by the Governor is effective when
31 confirmed by the Commission on Judicial Appointments.

32 Electors of a county, by majority of those voting and in
33 a manner the Legislature shall provide, may make this
34 system of selection applicable to judges of superior courts.

35 Eleventh—That Section 23 is added to Article VI
36 thereof, to read:

37 SEC. 23. (a) The purpose of the repeal of Section 5,
38 and the amendments to Sections 1, 4, 6, 8, 10, 11, 15, and
39 16, of this article, and the amendments to Section 16 of
40 Article I, approved at the March 26, 1996, general election

1 is to abolish the municipal courts and unify their
2 operations within the superior courts. Notwithstanding
3 Section 8 of Article IV, the implementation of, and
4 orderly transition under, the provisions of the measure
5 adding this section may include urgency statutes that
6 create or abolish offices or change the salaries, terms, or
7 duties of offices, or grant franchises or special privileges,
8 or create vested rights or interests, where otherwise
9 permitted under this Constitution.

10 (b) On January 1, 1998, the judgeships in each
11 municipal court in a county are abolished and the
12 previously selected municipal court judges shall become
13 judges of the superior court in that county. The term of
14 office of a previously selected municipal court judge is not
15 affected by taking office as a judge of the superior court.
16 The 10-year membership or service requirement of
17 Section 15 does not apply to a previously selected
18 municipal court judge. Pursuant to Section 6, the Judicial
19 Council may prescribe appropriate education and
20 training for judges with regard to trial court unification.

21 (c) Subject to contrary action pursuant to statute, on
22 January 1, 1998, in each preexisting superior and
23 municipal:

24 (1) Previously selected officers, employees, and other
25 personnel who serve the court become the officers and
26 employees of the superior court.

27 (2) Preexisting court locations are retained as superior
28 court locations.

29 (3) Preexisting court records become records of the
30 superior court.

31 (4) Pending actions, trials, proceedings, and other
32 business of the court become pending in the superior
33 court under the procedures previously applicable to the
34 matters in the court in which the matters were pending.

35 (5) Matters of a type previously within the appellate
36 jurisdiction of the superior court remain within the
37 jurisdiction of the appellate division of the superior court.

38 (6) Matters of a type previously subject to rehearing
39 by a superior court judge remain subject to rehearing by

1 a superior court judge, other than the judge who
2 originally heard the matter.

3 (7) Penal Code procedures that necessitate superior
4 court review of, or action based on, a ruling or order by
5 a municipal court judge shall be performed by a superior
6 court judge other than the judge who originally made the
7 ruling or order.

8 (d) This section shall be operative until January 1,
9 2003, and as of that date is repealed.

10 Twelfth—That Sections 1 to 10, inclusive, of this
11 measure shall become operative on January 1, 1998.

12 Thirteenth—That if any provision of this measure or its
13 application to any person or circumstance is held invalid,
14 the invalidity does not affect other provisions or
15 applications of this measure that can be given effect
16 without the invalid provision or application, and to this
17 end the provisions of this measure are severable.