

8/16/63

Memorandum No. 63-38

Subject: 1964. Annual Report

In order to preserve our good relationship with the State Printer, it is essential that we submit the copy for our 1964 Annual Report to him as soon as possible. Attached is a proposed draft of the 1964 Annual Report. We will work this draft over to correct technical errors (such as form of citations, etc.) before sending it to the printer.

We plan to include this annual report in Bound Volume No. 4. By doing this, we avoid printing the legislative history twice--once in the bound volume and once in an annual report. For this reason, we have dated the report December 31, 1963--the last day of the year covered by the report and the bound volume.

The first portion of the 1964 Annual Report follows closely the form used in the previous annual report. For your convenience in determining the changes we propose to make, we have marked the changes on the printed pages of the last annual report. We retained the type used to print the last annual report so we will make a significant saving to the extent we can use the same type without making changes.

The following policy matters should be considered in connection with the annual report:

(1) We propose to include the special reports made by the legislative committees on Senate Bill No. 42 (two reports--you have already received these) and the special report made on

Section 152 of Senate Bill No. 43 (copy attached). We can use the type used to print these reports in the Journals so we will not incur any substantial cost in including this material in our annual report. Since many persons do not purchase the Journals, the inclusion of this material in our annual report will make the material generally available to interested persons.

(2) Please examine the first portion of the report (printed pages) for proposed revisions, deletions and additions.

(3) We have included (pages 13-20) a detailed statement of the amendments made to Senate Bill No. 42. In view of our printing costs, this statement might be omitted and only the material on page 12 would be contained in the report. We suggest, however, that we include pages 13-20 in the report, for it is a convenient statement of the changes made after Senate Bill No. 42 was introduced. The special reports of the legislative committees on Senate Bill No. 42 do not indicate the changes made; they merely contain revised comments and new comments for the various sections in Senate Bill No. 42.

(4) Please note the explanation of the Assembly amendment to Section 810.2 (paragraph (1) on page 13 of the report).

(5) Please note paragraph (25) on pages 17 and 18.

(6) Please note paragraph (11) on page 23.

(7) Please note paragraph (1) at the top of page 25.

(8) Please note the discussion of S.B. 46 (motor vehicle liability) on pages 25-26.

(9) We will submit the revised portion of the report dealing with unconstitutional statutes to you for approval in January 1964. (This is covered by last two pages of proposed report.)

(10) The typewritten introductory portion of the part of the report on Calendar of Topics Selected for Study (page 8) should be revised to read:

During the year covered by this report, the Commission had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study. The Commission proposes to continue its study of these topics.

If this revision is made, we can continue to use the same type in each subsequent report. Apart from this consideration, we believe the revision will improve the report.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

1964 — 1963 Annual Report

December
1963

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA



COMMISSION MEMBERS

HERMAN F. SELVIN

Chairman

JOHN R. McDONOUGH, Jr.

Vice Chairman

SENATOR JAMES A. COBEY

ASSEMBLYMAN PEARCE YOUNG

JOSEPH A. BALL

JAMES R. EDWARDS

RICHARD H. KEATINGE

SHO SATO

THOMAS E. STANTON, Jr.

ANGUS C. MORRISON

Ex Officio

December 31,
1963

COMMISSION STAFF

JOHN H. DEMOULLY

Executive Secretary

JOSEPH B. HARVEY

Assistant Executive Secretary

JON D. SMOCK

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission herewith submits this
report of its activities during the year ~~1962~~ 1963.

Respectfully submitted,

HERMAN F. SELVIN

Chairman

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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1962

1963

FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is *ex officio* a nonvoting member.¹

The principal duties of the Law Revision Commission are to:

(1) Examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein.

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations and other learned bodies, judges, public officials, lawyers and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.²

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.³

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Most of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure 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 necessary to understand the specific problems under consideration.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, a printed pamphlet is published containing the research study, the tentative recommendation, and the Commission's final recommendation.

¹ See Cal. Stats. 1953, Ch. 1445, p. 3995; CAL. GOVT. CODE §§ 10308-10340. And see Cal. Stats. (1st Ex. Sess.) 1960, Ch. 61, p. 411, which revises Section 10308 of the Government Code.

² See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331. See also pp. 114-15 infra.

³ See CAL. GOVT. CODE § 10325.

(107)

The tentative recommendation usually is distributed in mimeographed form, but in some instances it is published in a printed pamphlet.

its recommendation to the Legislature, including a draft of any legislation necessary + effecting its recommendation, is published in a printed pamphlet.

If the research study has not been previously published, it also is included in this pamphlet.

Footnote 4 on next page

4

*printed
The pamphlets
are*

~~Commission together with a draft of any legislation necessary to effectuate the recommendations.~~ This pamphlet is distributed to the Governor, Members of the Legislature, heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors and law libraries throughout the State.⁵ Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

In 1955, 1957, 1959 and 1961, the Commission submitted to the Legislature recommendations for legislation accompanied by bills prepared by the Commission. The Commission also submitted a number of reports on topics as to which, after study, it concluded that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

A total of ~~47~~ bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. ~~Thirteen~~ of these bills became law—three in 1955,⁶ seven in 1957,⁷ thirteen in 1959,⁸ and eight in 1961.⁹ One proposed constitutional amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.¹⁰

⁵ Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

⁶ See CAL. GOVT. CODE § 10333.

⁷ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

Cal. Stats. 1955, Ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)

⁸ Cal. Stats. 1957, Ch. 102, p. 878. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

Cal. Stats. 1957, Ch. 139, p. 733. (Maximum period of confinement in a county jail.)

Cal. Stats. 1957, Ch. 249, p. 903. (Judicial notice of the law of foreign countries.)

Cal. Stats. 1957, Ch. 456, p. 1303. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1498, p. 2834. (Bringing new parties into civil actions.)

⁹ Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)

Cal. Stats. 1959, Ch. 485, p. 2403. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 489, p. 2404. (Time within which motion for new trial may be made.)

Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)

Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)

Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 528, p. 2496. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)

¹⁰ Cal. Stats. 1961, Ch. 461, p. 1540. (Arbitration.)

Cal. Stats. 1961, Ch. 539, p. 1733. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 636, p. 1836. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)

Cal. Stats. 1961, Ch. 657, p. 1897. (Survival of actions.)

Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1818, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

Cal. Stats. [complete later]

[cite Constitutional provision]

*Recommend
deletion*

57

thirty-nine

*and eight
in 1963*

?

5

December 31,

PERSONNEL OF COMMISSION

As of ~~September 30~~ 1963, the membership of the Law Revision Commission is:

	Term expires
Herman F. Selvin, Los Angeles, <i>Chairman</i>	October 1, 1965 (1967)
John R. McDonough, Jr., Stanford, <i>Vice Chairman</i>	October 1, 1965 (1967)
Hon. James A. Cobey, Merced, <i>Senate Member</i>	*
Hon. Cliff L. Bradley , San Jose, <i>Assembly Member</i>	*
Joseph A. Ball, Long Beach, <i>Member</i>	October 1, 1965
James R. Edwards, San Bernardino, <i>Member</i>	October 1, 1965 (1967)
Richard H. Keatinge, Los Angeles, <i>Member</i>	October 1, 1965 (1967)
Sho Sato, Berkeley, <i>Member</i>	October 1, 1965
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1965
Angus C. Morrison, Sacramento, <i>ex officio Member</i>	**

* The legislative members of the Commission serve at the pleasure of the appointing power.

** The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

Pearce Young, Napa

On July 1, 1963, the position of Executive Secretary of the Commission became a full time position. Previously, the Executive Secretary devoted 80 per cent of his time to Commission work and 20 per cent of his time to service as a member of the law faculty of Stanford University. This change reflects the expansion of the Commission's program over the past several years and the realization, which this development has brought, that the Executive Secretary is required to devote his full time to Commission activities.

1963

SUMMARY OF WORK OF COMMISSION

During ~~1962~~ the Law Revision Commission was engaged in ^(three) principal tasks:

(2)

Work on various assignments given to the Commission by the Legislature. ⁽³⁾ Although the Commission considered several other topics on its current agenda of studies, the Commission has devoted substantially all of its time during ~~1962~~ to the study of sovereign or governmental immunity.

(3)

A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.

The Commission held ~~seven~~ ^{five} two-day meetings and five three-day meetings in ~~1962~~ 1963.

* See pp. ~~xxx-xx~~ of this report *infra*.
* See pp. ~~xxx-xx~~ of this report *infra*.

3/ See pp. ~~xxx-xx~~ of this report *infra*.

(1) Presentation of its 1963 legislative program to the Legislature. ✓

1963

Two topics: (a) and (b) the Uniform Rules of Evidence.

7

CALENDAR OF TOPICS SELECTED FOR STUDY

STUDIES IN PROGRESS

In addition to the topics included in the legislative program of the Commission, the Commission during 1963 had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study.

Studies Which the Legislature has Directed the Commission to Make.

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
2. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts, should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
- ⑤ 3. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
- ⑥ 4. Whether a trial court should have the power to require, as a condition of denying a motion for a new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
- ⑦ 5. Whether the laws relating to bail should be revised.

which the Commission will continue to study;

Studies Authorized by the Legislature Upon the Recommendation of the Commission

- ③ 1. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.
2. Whether the law relating to escheat of personal property should be revised.
- ⑤ 3. Whether the law relating to the rights of a putative spouse should be revised.
4. Whether the law respecting post conviction sanity hearings should be revised.

SET

3. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study.

The legislative directives to make these studies are found in the following:

- Nos. 1 and 2: Cal. Stats. 1956, Res. Ch. 42, p. 283.
Nos. 3 through 7: Cal. Stats. 1957, Res. Ch. 202, p. 4589.
No. 8: Cal. Stats. 1957, Res. Ch. 287, p. 4744.

Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, *inter alia*, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.

The legislative authority for the studies in this list is:

- No. 1: Cal. Stats. 1956, Res. Ch. 207, p. 4207.
Nos. 2 through 7: Cal. Stats. 1956, Res. Ch. 42, p. 283.
Nos. 8 through 16: Cal. Stats. 1957, Res. Ch. 202, p. 4589.
Nos. 17 through 19: Cal. Stats. 1958, Res. Ch. 61, p. 135.
No. 20: Cal. Stats. 1959, Res. Ch. 218, p. 5732; Cal. Stats. 1956, Res. Ch. 42, p. 283.
No. 21: Cal. Stats. 1962, Res. Ch. 23, p. 4207.

For a description of this topic, see 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1955 Report at 28 (1957). For the legislative history, see 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 18 (1959).

See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 25 (1957).
Id. at 26.
Id. at 28.

See 4 Cal. Law Revision Comm'n,

Rep., Rec. & Studies, Recommendation -

ions at 807, 1005, 1205, 1305, 1405, 1505, and 1609;

No. 3: Cal. Stats. 1956, Res. Ch. 42, p. 283. See 3 Cal. Law Revision

Comm'n, Rep., Rec. & Studies, Recommendation and Study at A-1, B-1 and C-1, and Legislative History at 1-5 (1961); 4 Cal. Law Revision

Comm'n, Rep., Rec. & Studies, Recommendation and Study at 705 (1962); Legislative History at 1-5 (1963).

Legislative History at 1-5 (1963); 5 Cal. Law Revision Comm'n,

Rep., Rec. & Studies, Study at 11 (1963).

Nos. 1 and 2: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

8

1964

5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised. 7
6. Whether the law relating to attachment, garnishment and property exempt from execution should be revised. 8
7. Whether the Small Claims Court Law should be revised. 9
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised. 10
9. Whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas. 11
10. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised. 12
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised. 13
12. Whether the provisions of the Penal Code relating to arson should be revised. 14
13. Whether Civil Code Section 1698 should be repealed or revised. 15
14. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised. 16
15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised. 17
16. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support. 18
17. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court. 19
18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised. 20
19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants. 21

7. *Id.* at 29.

8. See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1967 Report at 15 (1967).

9. *Id.* at 16.

10. *Id.* at 17.

11. *Id.* at 18.

12. *Ibid.*

13. *Id.* at 19.

14. *Id.* at 20.

15. *Id.* at 21.

16. *Id.* at 23.

17. *Id.* at 24.

18. *Id.* at 25.

19. See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1968 Report at 18 (1968).

20. *Id.* at 20.

21. *Id.* at 21.

9

20. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales. (23)
21. Whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner. (23)

STUDIES FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code, the Commission has reported 58 topics that it had selected for study to the Legislature since 1955. Forty-eight of these topics were approved. (1) The Legislature also has referred 11 other topics to the Commission for study.

(57) A total of 49 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. The Commission also has submitted four reports on topics which, after study, it concluded either that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

(2) The Commission now has an agenda consisting of 28 studies in progress, some of substantial magnitude, that will require all of its energies during the current fiscal year and during the fiscal year 1964-65. (1964) For this reason, the Commission will not request authority at the 1963 legislative session to undertake additional studies.

(22) See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 21 (1957).

(23) See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1962 Report at 20 (1963).

(1) Although 48 topics actually have been approved by the Legislature at the request of the Commission, one of these topics was consolidated with a topic which the Legislature later directed the Commission to study. See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 12, n. 31 (1957).

(2) For a complete list of these studies, see pp. 244-245 supra.

1963 LEGISLATIVE PROGRAM OF THE COMMISSION

TOPICS SELECTED FOR STUDY

Senate Concurrent Resolution No. 21 was introduced by Honorable James A. Cobey, the Senate Member of the Law Revision Commission. This resolution requested legislative authorization for the Commission to continue its study of topics previously approved by the Legislature.¹ The resolution was adopted by the Legislature, becoming Resolution Chapter 139 of the Statutes of 1963.²

¹Section 10335 of the Government Code provides that the Commission shall confine its studies to those topics set forth in the calendar of topics contained in the last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The section also requires that the Commission study any topic which the Legislature, by concurrent resolution, refers to it for such study. Cal. Stats. 1963, Ch. , creates a joint legislative committee to study the Penal Code and related laws and authorizes the committee to request the Commission to undertake the study of specific portions of the Penal Code and related laws.

²The resolution was amended in the Senate to authorize the Commission to study the Penal Code and related laws, but this amendment was deleted in the Senate since Cal. Stats. 1963, Ch. , creates a legislative committee to study this subject and authorizes the committee to request the Commission to undertake the study of specific portions of the subject.

OTHER MEASURES

Tort Liability of Public Entities and Public Employees

Senate Bill No. 42, which in amended form became Chapter 1681 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.³

The bill was considered by four legislative committees and was substantially amended by each committee. Many of the amendments were technical or clarifying amendments. Comments to various sections of the bill to reflect the principal amendments of a substantive nature are contained in special reports prepared by the Senate Committee on Judiciary and the Assembly Committee on Ways and Means. These reports were printed in the Journal⁴ and also are set out as Exhibit I (Senate Report), beginning on page *** infra, and Exhibit II (Assembly Report), beginning on page *** infra.

It should be noted that the special reports of the legislative committees state that, unless such reports contain new or revised comments, the comments contained under the various sections of Senate Bill No. 42 as set out in the Commission's printed recommendation reflect the intent of the legislative committees in approving the various provisions of Senate Bill No. 42.

³See 4 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at 807 (1963).

⁴See Report of Senate Committee on Judiciary on Senate Bill No. 42 (printed in Senate Journal for April 24, 1963); Report of the Assembly Committee on Ways and Means on Senate Bill No. 42 (printed in Assembly Journal for June 15, 1963).

The following are the principal amendments of Senate Bill No. 42 that are of a substantive nature:

(1) Section 810.2 was amended in the Senate to change "officer, agent or employee" to "officer, employee or servant, whether or not compensated."

Section 810.2 was amended in the Assembly to indicate, by way of illustration, that the term "employee" includes members and alternative members of the advisory boards appointed pursuant to Section 1300.15 of the Agricultural Code. This amendment was subsequently deleted by an amendment made in the Assembly because the Commission believes that such advisory board members are included in the definition of "employee" and the amendment merely added unnecessary language to the bill.

(2) Section 814.2 was added in the Senate to make clear that the new statute will not impliedly repeal any provision of the Workmen's Compensation Act.

(3) Section 815 was amended in the Senate to substitute "statute" for "enactment" so that (a) liability of public entities will exist only if it is imposed by statute and (b) the immunity provisions will prevail over the liability provisions except as otherwise provided by statute.

(4) Section 815.2(b) was amended in the Senate to substitute "statute" for "enactment" so that liability of public entities will exist only if it is imposed by statute.

C

(5) An amendment made in the Senate deleted proposed Section 815.8 which would have made a public entity liable for an injury caused by an employee if the injury was proximately caused by the failure of the appointing power of the public entity to exercise due care in selecting or appointing the employee or by the failure to exercise due care to eliminate the risk of such injury after the appointing power had knowledge or notice that the conduct, or the continued retention, of the employee in the position to which he was assigned created an unreasonable risk of such injury.

C

(6) An amendment made in the Senate deleted proposed Section 816 which would have made a public entity liable for injury proximately caused by an employee of the public entity if the employee, acting within the scope of his employment, instituted or prosecuted a judicial or administrative proceeding without probable cause and with actual malice. Before the section was deleted, it was amended in the Senate to exclude from its application an administrative or judicial proceeding to discipline or discharge a public employee.

(7) Section 818.2 was amended in the Senate to substitute "law" for "enactment."

(8) Section 818.8 was added in the Senate to provide that a public entity is not liable for misrepresentation by an employee of the public entity.

(9) Section 820.2 was amended in the Senate to substitute "statute" for "enactment" so that liability for discretionary acts or omissions of public employees may be imposed only by statute.

C

(10) Section 820.4 was amended in the Senate to substitute "execution or enforcement of any law" for "execution of any enactment."

(11) Section 820.6 was amended in the Senate to delete the phrase "exercising due care."

(12) Section 820.8 was amended in the Senate to substitute "statute" for "enactment" so that liability of a public employee for the act of another person may be imposed only by statute. The amendment did not affect the liability of the employee for his own negligence in selecting or failing to discharge another employee.

(13) The bill was amended in the Senate to add Section 822 providing that a public employee is not liable for money stolen from his official custody unless the loss was sustained as a result of his own negligent or wrongful act or omission.

(14) Section 822.2 was added by a Senate amendment to provide that a public employee is not liable for misrepresentation unless he is guilty of actual fraud, corruption or actual malice.

(15) Section 825, relating to indemnification of public employees, was amended in the Senate to allow a public entity to conduct the defense of a public employee or former employee against any claim or action under an agreement reserving the rights of the public entity not to pay the judgment, compromise or settlement unless it is established that the cause of action arose out of an act or omission occurring within the scope of his employment. As originally proposed by the Commission, this section would have required the public entity to determine whether or not the public employee or former employee against whom action is brought was acting within the scope of his employment prior to accepting the task of defending him; a public entity, then, would have been required

to pay any judgment, compromise or settlement to which the public entity has agreed, against an employee or former employee for whom the public entity provided defense.

In the Assembly Section 825 was amended to provide that a public employee or former employee who requests a public entity to defend an action or claim against him must make his request in writing not less than 10 days before the day of the trial.

(16) Section 830.5 was added by a Senate amendment to provide (a) that, except where the doctrine of res ipsa loquitur is applicable, the happening of an accident which results in injury is not in and of itself evidence that public property was in a dangerous condition and (b) that the fact that action was taken after an injury occurred to protect against a condition of public property is not evidence that the public property was in a dangerous condition at the time of the injury.

(17) Section 831.2 was amended in the Senate to apply to natural conditions of all types of unimproved property and to make the immunity unconditional.

(18) Section 831.4 was amended in the Senate to make the immunity unconditional and was amended in the Assembly to make the definition of recreational access roads more precise.

(19) Section 831.8 was added by amendment in the Assembly to grant immunity to public entities and public employees for an injury caused by the condition of reservoirs, canals, conduits or drains if at the time of the injury the person injured was using the property for any purpose other than that for which the public entity intended or permitted the property to be used. Subject to specified conditions, the immunity does not apply if the condition is a trap or an attractive nuisance.

(20) Section 835 was amended in the Senate to delete the requirement that the plaintiff establish that the public entity or public employee did not take adequate measures to protect against the risk of the dangerous condition.

(21) Section 835.2 was amended in the Senate to make evidence of what constitutes a reasonable inspection system and evidence of whether the entity maintained and operated such an inspection system admissible on the issue of whether the entity should have discovered a dangerous condition and its dangerous character.

(22) Section 840.2 was amended in the Senate to delete the requirement that the plaintiff establish that the public employee did not take adequate measures to protect against the risk of the dangerous condition.

(23) Section 840.4 was amended in the Senate to conform to the amendment made to Section 835.2.

(24) Section 844 was added by amendment in the Senate to define "prisoner."

(25) Section 844.6 was added by an amendment adopted by the Senate Committee on Judiciary, was deleted by a subsequent amendment adopted by that Committee, was restored by an amendment adopted by the Senate Committee on Finance, was deleted by an amendment adopted by the Assembly Committee on Judiciary and was restored by an amendment adopted by the Assembly Committee on Ways and Means. This section provides immunity, subject to several exceptions, to a public entity for an injury proximately caused by a prisoner or an injury to a prisoner. The section does not affect the liability of public employees, but the public entity need not pay judgments, compromises or settlements of claims against employees unless based on malpractice by a person licensed in one of the healing arts.

(26) Section 845.4 was amended in the Senate (a) to impose liability on a public entity where an employee acting in the scope of his employment is liable for intentional and unjustifiable interference with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement, and (b) to permit an action for an injury covered by that section to be commenced only after it has first been determined that the confinement was illegal.

(27) Section 845.6 was amended in the Senate to impose liability on a public entity where an employee acting within the scope of his employment knows or has reason to know that the prisoner is in need of immediate medical care and fails to take reasonable action to summon such medical care.

(28) Section 845.8 was amended in the Senate to provide immunity from liability for determining whether to revoke a parole or release of a prisoner.

(29) Section 846 was amended in the Senate to provide immunity for injury caused by failure to retain an arrested person in custody.

(30) Section 854 was added by a Senate amendment to define "medical facility."

(31) Section 854.2 was added by a Senate amendment to define "mental institution."

(32) Section 854.4 was added by a Senate amendment to define "mental illness or addiction."

(33) Section 854.8 was added by an amendment adopted by the Senate Committee on Judiciary, was deleted by a subsequent amendment adopted by that Committee, was restored by an amendment adopted by the Senate

Committee on Finance, was deleted by an amendment adopted by the Assembly Committee on Judiciary and was restored by an amendment adopted by the Assembly Committee on Ways and Means. Subject to several exceptions, this section provides immunity to a public entity for an injury proximately caused by a person committed or admitted to a mental institution or an injury to a person committed or admitted to a mental institution. The section does not affect the liability of public employees, but the public entity need not pay judgments, compromises or settlements of claims against employees unless based on malpractice by a person licensed in one of the healing arts.

(34) Section 855.2 was amended in the Senate (a) to impose liability on a public entity where an employee acting in the scope of his employment is liable for intentional and unjustifiable interference with the right of a mental patient to obtain a judicial determination or review of the legality of his confinement, and (b) to permit an action for an injury covered by that section to be commenced only after it has first been determined that the confinement was illegal.

(35) Section 855.8 was amended in the Senate (a) to make the immunities provided by that section applicable to public entities, (b) to eliminate immunity where a public employee undertakes to prescribe, and (c) to broaden the scope of the immunity to cover all persons afflicted with mental illness or addiction.

(36) Section 856 was amended in the Senate to make the immunities provided by that section applicable to public entities.

(37) Section 856.2 was added by a Senate amendment to provide immunity for injury caused by an escaping or escaped person who has been committed for mental illness or addiction.

(38) Section 856.4 was added by a Senate amendment to provide immunity for failure to admit a person to a public medical facility unless there was a mandatory duty to admit such person. This section was originally added as Section 856.2 but was renumbered as Section 856.4 by a later Senate amendment.

(39) Chapter 6 (containing Sections 860, 860.2 and 860.4) was added by an amendment in the Senate to provide immunity for injury caused by (a) instituting any judicial or administrative proceeding or action for or incidental to the assessment or collection of a tax or (b) an act or omission in the interpretation or application of any law relating to a tax.

(40) Section 895 was amended in the Senate to make clear that the definition of "agreement" does not include "an agreement between public entities which is designed to implement the disbursement or subvention of public funds from one of the public entities to the other, whether or not it provides standards or controls governing the expenditure of such funds."

(41) Section 895.8 was amended in the Senate so that Section 895.6 (relating to contribution) would not apply to existing agreements.

Claims, Actions and Judgments Against Public

Entities and Public Employees

Senate Bill No. 43, which in amended form became Chapter 1715 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject:⁵

A number of amendments were made. Most of them were of a technical or clarifying nature. The following are the principal amendments.

(1) Section 905.2 was amended in the Senate to substitute "statute or constitutional provision" for "enactment" in two places in the section.

(2) Section 910, which lists the information required to be shown on claims against public entities, was amended in the Senate to require two additional items of information: (a) the name or names of the public employee or employees causing the injury, damage, or loss, if known, and (b) an estimate of the amount of prospective injury, damage, or loss, insofar as it may be known at the time of the presentation of the claim. The latter is to be included in the amount claimed.

(3) Section 910.8 was amended in the Senate to make clear that claims against public entities may be considered and acted upon by persons designated by the governing body of a local public entity or by the State Board of Control as well as by the governing body or the Board of Control itself.

(4) Sections 911.6 and 912, relating to conditions under which permission to file a late claim against a public entity shall be granted by the board of the public entity or by a superior court, were amended in the Assembly to permit a public entity or a superior court to refuse such permission if

⁵ See 4 Cal. L. Revision Comm'n, Rep., Rec. & Studies, Recommendation at 1007 (1963).

the public entity would be "prejudiced"; in the original version submitted by the Commission, the public entity would have had to be "unduly prejudiced."

An amendment to each of the sections was adopted in the Senate to delete the provision relating to late filing of a claim if failure to file the claim within the time required by statute was through mistake, inadvertence, surprise or excusable neglect and to substitute a provision permitting late filing where that the claimant reasonably and in good faith relied on any misrepresentation made by any employee of the entity that a presentation of a claim was unnecessary or that a claim had been presented in conformity with legal requirements. This amendment was deleted by an Assembly amendment which restored the bill to its original form.

(5) Section 912.6, listing the alternative ways in which a public entity may dispose of a claim against it, was amended in the Assembly to provide that the board of a local public entity "may" (rather than "shall") act on a claim against it in one of the alternate ways listed in the section.

(6) Section 935.4 was amended in the Senate to provide that, by charter provision, a public employee may be authorized to allow, compromise or settle claims in excess of \$5000. The section was further amended in the Assembly authorizing delegation of functions to a "commission" of the public entity as well as to an employee of the public entity.

(7) Section 945.6 was amended in the Senate to provide that a prisoner whose civil right to commence an action has been suspended may bring an action within the prescribed time after his civil right to do so has been restored.

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(8) By a Senate amendment, a new section (Section 947.2) was added to permit a court to require a person bringing a malicious prosecution action against a public entity to post a written undertaking as security for all reasonable expenses that may be incurred by the public entity in defending the action. This section was deleted by a later Senate amendment after Senate Bill No. 42 was amended to eliminate liability for malicious prosecution.

(9) Section 950.4 was amended in the Senate to delete the requirement that the plaintiff notify the public entity within a reasonable time after he acquired the knowledge that the public entity or its employee caused the injury.

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(10) Section 950.6 was amended in the Senate to provide that a prisoner whose civil right to commence an action has been suspended may bring an action within the prescribed time after his civil right to do so has been restored.

(11) Proposed Sections 152 and 153 were deleted by a Senate amendment and replaced by a new Section 152 which provides that the bill applies to all causes of action heretofore or hereafter accruing and contains provisions to deal with some of the problems created by making the bill applicable to existing causes of action. After the bill was signed by the Governor, the Senate Committee on Judiciary, at the 1963 First Extraordinary Session, made a special report which was printed in the Senate Journal.⁶ This report which is set out in Exhibit III, beginning at page *** infra, contains an expression of the legislative intent with respect to Section 152.

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⁶See Report of the Senate Committee on Judiciary on Senate Bill No. 43 (printed in the Senate Journal for July 31, 1963).

Insurance Coverage for Public Entities and Public Employees

Senate Bill No. 44, which in amended form became Chapter 1682 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁷

A number of technical or clarifying amendments were made. The following are the principal amendments.⁸

(1) Section 990.8 was amended in the Senate to make clear that two or more local public entities having the same governing board may be coinsured under a master policy and the total premium prorated among such entities.

(2) Paragraph (a) of subdivision (1) of Section 11607.4 was amended in the Senate to conform to the definition of "employee" in Senate Bill No. 42.

(3) By a Senate amendment, Section 11290 of the Government Code was amended to conform to Senate Bills Nos. 42, 44 and 46. By an Assembly amendment, Section 11010 of the Government Code was amended to conform to Section 11290.

(4) By an Assembly amendment, Section 1017 of the Education Code was amended to conform to Senate Bills Nos. 42 and 44.

Defense of Public Employees

Senate Bill No. 45, which in amended form became Chapter 1683 of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.⁹

⁷ See 4 Cal. L. Revision Comm'n, Rep., Rec. & Studies, Recommendation at 1205 (1963).

⁸ Because Senate Bill No. 42 was enacted into law, Section 1 of Senate Bill No. 44 never became effective. See Cal. Stats. 1963, Ch. 1682, § 13. Hence, the amendments to Section 1 of Senate Bill No. 44 are not included in this discussion.

⁹ See 4 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at 1305 (1963).

A number of technical or clarifying amendments were made. The following are the principal amendments:¹⁰

(1) By a Senate amendment, proposed Section 996.2 was deleted as unnecessary. This section provided that a mention, during the voir dire examination of jurors or at any other time in the presence of the jury, of the statutory provisions relating to defense of public employees or of whether or not a public employee or former employee requested or was provided with defense by a public entity, constituted grounds for mistrial. An earlier amendment made in the Senate would have made clear that the court was to examine its discretion in ruling on a motion for a mistrial under the proposed section.

(2) Various sections of the bill were amended in the Senate to substitute "officer, employee or servant" for "officer, agent or employee" in order to conform these sections to the definition of "employee" contained in Senate Bill No. 42.

Liability of Public Entities for Ownership
and Operation of Motor Vehicles

Senate Bill No. 46 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹¹ The bill was not enacted as law. It passed the Senate in amended form and was further amended and passed by the Assembly, the Senate concurred in the Assembly amendments, but the Commission requested that Senator Cobey remove the bill from the Senate File and, as a result, the bill as amended by the Assembly was not passed by the Senate.

¹⁰ Because Senate Bill No. 42 was enacted into law, Section 1 of Senate Bill No. 45 never became effective. See Cal. Stats. 1963, Ch. 1683, § 21. Hence, the amendments to Section 1 of Senate Bill No. 44 are not included in this discussion.

¹¹ See 4 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at 1405 (1963).

In its latest amended form Senate Bill No. 46 would have limited public motor vehicle ownership liability to liability for vehicles owned, used or maintained for a "proprietary" purpose. Other legislation enacted at the 1963 legislative session upon recommendation of the Commission will eliminate the so-called "governmental-proprietary" distinction. The Commission concluded that it would be undesirable to retain the distinction in one small area of potential liability--vehicle ownership liability--and determined that it was preferable to leave the matter of whether public entities will be subject to motor vehicle ownership liability to the courts for decision.

Workmen's Compensation Benefits for Persons Assisting
Law Enforcement or Fire Control Officers

Senate Bill No. 47, which in amended form became Chapter **** of the Statutes of 1963, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹²

A number of technical or clarifying amendments were made. The following are the principal amendments of a substantive nature:

(1) Sections 3365 and 3366 were amended in the Senate to exclude independent contractors and employees of independent contractors from benefits under the bill.

(2) Section 3365 was amended in the Senate to exclude members of the armed forces of the United States while serving under military command in suppressing a fire from benefits under Section 4458.

¹² See 4 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at 1505 (1963).

(3) Section 3365 was amended in the Senate to add a subdivision covering the right of persons who furnish aircraft for fire suppression purposes to receive benefits under Section 4458.

(4) Section 3365 was amended in the Senate to define when a person is engaged in suppressing a fire.

(5) Section 4458 was amended in the Senate to provide for the method of calculating the benefits which inmates of penal or correctional institutions would be entitled to receive under that section.

Amendments and Repeals of Inconsistent Special Statutes

Senate Bills Nos. 483, 484 and 499 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹³

Senate Bill No. 483 was amended in the Senate to correct a typographical error and in its amended form became Chapter **** of the Statutes of 1963.

Senate Bill No. 484 was amended twice in the Assembly (a) to restore certain language in the existing law relating to contracts and agreements that the Commission had proposed to delete and (b) to make the various sections in the bill consistent with each other. As thus amended, the bill became Chapter **** of the Statutes of 1963.

Senate Bill No. 499 was amended in the Senate to correct several typographical errors and a technical amendment was made in the Assembly. As thus amended, the bill became Chapter **** of the Statutes of 1963.

¹³ See 4 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at 1605 (1963).

Condemnation Law and Procedure

Senate Bill No. 71 was introduced by Senator Cobey to effectuate the recommendation of the Commission relating to discovery in eminent domain proceedings.¹⁴ The bill passed the Senate in amended form but died in the Assembly Judiciary Committee.

¹⁴ See 4 Cal. Law Revision Comm'n, Rep., Rec. & Studies, Recommendation at 705 (1963).

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's 1962 Report was prepared.¹ It has the following to report:

(1) No decision of the Supreme Court of the United States holding a statute of the State repealed by implication has been found.

(2) ~~One decision of the Supreme Court of the United States holding a statute of the State unconstitutional has been found. Health and Safety Code Section 11721, which makes it a misdemeanor to "use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics," was held unconstitutional by the United States Supreme Court in Robinson v. California.²~~

(3) No decision of the Supreme Court of California holding a statute of the State repealed by implication has been found.

(4) ~~One decision of the Supreme Court of California holding a statute of the State unconstitutional has been found. Subdivision (a) of Business and Professions Code Section 2552, which pertains to licensing of dispensing opticians, was held unconstitutional by the California Supreme Court in Blumenthal v. Board of Medical Examiners.³~~

¹This study has been carried through ^{XX} Adv. Cal. ^{XXX (XXX)} and ^{XXX} U.S. ^{XXX} (1969).

²359 U.S. 964 (1959).
³45 Cal.2d 222, 18 Cal. Rptr. 501, 262 P.2d 121 (1958).

to be
revised
later

RECOMMENDATIONS

000-00. The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages ~~611-12~~ of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Section 11721 of the Health and Safety Code and subdivision (a) of Section 2552 of the Business and Professions Code to the extent that these provisions have been held unconstitutional.

to be revised later

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*
JOHN R. McDONOUGH, JR., *Vice Chairman*
JAMES A. COBEY, *Member of the Senate*
~~CHARLES E. HARRIS~~, *Member of the Assembly*
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PEARCE YOUNG

Suggest
deletion