

Leg. Prog.

May 31, 1996

Memorandum 96-35

1996 Legislative Program: Status of Bills

Attached to this memorandum is a chart showing the status of the Commission's 1996 legislative program. We will update this chart at the meeting. The status of SB 197 (homestead exemption) is discussed separately in Memorandum 96-43 and the status of SB 1510 (tolling statute of limitations) is discussed separately in Memorandum 96-42.

The Commission should be aware of the following additional matters.

SB 1400 (Monteith) — Scientific Evidence in Administrative Proceedings

Senate Bill 1400 (Monteith) was introduced to address an issue that has arisen in administrative adjudication. If an agency has adopted a regulation based on a particular scientific procedure (e.g., an air quality opacity test), can a person who is the subject of an adjudicative proceeding for violation of the regulation challenge the validity of the scientific procedure? Case law states that a challenge of this sort to the validity of the regulation cannot be made collaterally in the adjudicative proceeding, but may only be made directly in a judicial proceeding. Senate Bill 1400 was introduced to reverse this rule, allowing a collateral attack on the scientific validity of the regulation in an administrative adjudication enforcement proceeding.

Because of legislative concern about the proposal, the bill was amended in the Senate Judiciary Committee to instead provide for a study of the issue by the Law Revision Commission:

To the extent feasible using existing budgetary resources, the California Law Revision Commission shall study the scope and effectiveness of existing law regarding the ability of parties to present evidence, in adjudicatory hearings and in judicial proceedings reviewing writs of mandamus, challenging the scientific reliability and validity of scientific tests which are required to be conducted by a regulation at issue in the hearing or proceeding. Upon completion of the study, on or before January 31, 1997, if feasible, the California Law Revision Commission shall make recommendations to the Legislature regarding any changes to existing law related to this issue which it deems appropriate.

The measure has passed the Senate in this form and is now pending in the Assembly. Although it will not be enacted or become law for some time, the staff believes the Commission should proceed to address this issue immediately; we will need all the time available to circulate for comment any tentative recommendations on this subject. There is no question of the Commission's authority to study this matter apart from the bill, since we are independently authorized to study administrative law, including adjudication, rulemaking, and judicial review.

SCA 4 (Lockyer) — Trial Court Unification

This measure is still pending in the Assembly. In its current form it would amend the Constitution to allow unification on a county by county basis, on a vote of a majority of the superior court judges and a majority of the municipal court judges in the county. It would become effective immediately on passage at the November general election.

The county option will create a need for parallel statutes concerning some matters, depending on whether the courts in a county are unified or not (e.g., venue issues, economic litigation procedures, small claims jurisdiction, filing fees). It is possible some of these issues could be addressed in general "band-aid" type legislation that could be cobbled together fairly quickly and put in place. Ultimately, though, the statutes should be worked over and cleaned up (including cleanup to reflect the recent abolition of justice courts).

The staff has been in contact with Senator Lockyer's office concerning these considerations. Their concern at the moment is with the constitutional amendment, but they will let us know as things proceed what role the Legislature expects the Commission to play. SCR 43 (Kopp), the Commission's annual resolution of authority, maintains the Commission's authority concerning "Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification."

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATUS OF 1996 COMMISSION LEGISLATIVE PROGRAM

(as of May 31, 1996)

SB 197 (Kopp): Homestead Exemption

SB 392 (Sen. Judic. Comm.): Probate Committee Bill
(collecting small estate without administration)

SB 794 (Kopp): Administrative Adjudication Followup

SB 1033 (Sen. Judic. Comm.) Family Law Committee Bill
(Family Code corrective amendment)

SB 1510 (Kopp): Civil Procedure Omnibus Bill
(tolling statute of limitations; trial court delay
reduction)

SCR 43 (Kopp): Continuing Authority to Study Topics
(adds studies of contract law, consolidation of
environmental statutes)

AB 2751 (Kaloogian): Probate Omnibus Bill
(statute of limitations in trust matters;
inheritance involving out of wedlock child)

Bill Status		SB 197	SB 392	SB 794	SB 1033	SB 1510	SCR 43	AB 2751
Introduced		1995	1995	1995	1995	Feb 13	Jan 3	Feb 22
Last Amended		Apr 25	May 6	May 14	Jan 23	May 28	Apr 25	[May 31]
First House	Policy Committee	[June 19]	Jan 17	Jan 16/17	Jan 22	May 21	Apr 23	Mar 27
	Fiscal Committee		—	Jan 29	—	—	May 13	—
	Passed House		Jan 25	Jan 31	Jan 25	May 29	May 24	Apr 22
Second House	Policy Committee		[June 19]	[June 11]	[June 19]			[June 4]
	Fiscal Committee		—		—	—		—
	Passed House							
Concurrence								
Governor	Received						—	
	Approved						—	
Chaptered by Secretary of State	Date							
	Chapter #							

• Unless otherwise noted, all dates are in 1996

[date]: scheduled

—: not applicable