

Admin.

May 23, 1997

Memorandum 97-34**Strategic Plan**

Attached is a draft of the Commission's "strategic plan" for 1997. This is a document now required by statute; it conforms to specifications established by the Department of Finance. It is submitted for your information only — no Commission action is required.

Respectfully submitted,

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Executive Secretary

Admin.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Draft

1997 Strategic Plan

May 1997

California Law Revision Commission
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EXECUTIVE SUMMARY

In this strategic plan the California Law Revision Commission states its overall goal to maintain the same high level of performance that has characterized it in the past.

To achieve this goal the plan establishes sequencing and completion dates for major legislative assignments, and determines that current levels of funding are adequate for this purpose.

This plan may be revised from time to time to reflect changes in the Commission's calendar of topics and changes in legislative priorities.

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MISSION STATEMENT

The California Law Revision Commission was created in 1953 as the permanent successor to the Code Commission and given responsibility for a continuing substantive review of California statutory and decisional law. The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

DESCRIPTION

The duties and responsibilities of the California Law Revision Commission include:

(1) Examining the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(2) Receiving and considering proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, and other learned bodies.

(3) Receiving and considering suggestions from judges, public officials, lawyers, and the public as to defects and anachronisms in the law.

(4) Recommending changes in the law necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

(5) Recommending the express repeal of all statutes repealed by implication, or held unconstitutional by the United States Supreme Court or the California Supreme Court.

The Commission submits its reports and recommendations as to revision of the laws to the Governor and the Legislature.

INTERNAL/EXTERNAL ASSESSMENT SUMMARY

Planning Assumptions

As California grows and evolves, the state's laws will continue to become more voluminous and complex, and will continually become outdated and obsolete. The need for law reform is permanent.

During its 45-year history, the Law Revision Commission has established a reputation for high-quality, reliable work, and high productivity; its publications have become a fundamental legislative research tool. The legal community expects these standards to be maintained.

Internal and External Issues

The major issue facing the Law Revision Commission is the advent of governmental term limits. The Commission depends for successful completion of its mission on the Governor's and Legislature's favorable reception of the Commission's recommendations. Their acceptance is based in part on the Commission's reputation for neutrality, integrity, and careful work. A high rate of legislative turnover may impair this bond of trust. However, it may also force greater legislative reliance on aids such as the Law Revision Commission. The full impact of term limits is not yet clear.

Another important issue is the involvement in Commission projects of persons and organizations affected by the projects. The success of Commission recommendations is substantially affected by the extent to which concerns of affected parties are satisfactorily addressed. It is not always easy to obtain the involvement of affected parties, but it is necessary.

Active participation by Commission members is important to the quality of the Commission's work. Because the Commission members serve as volunteers, other priorities often intervene. This is a perennial problem, more acute at some times than at others.

GOALS

By any measure, the Law Revision Commission has been a highly successful agency. Its output is high, its product is respected, its recommendations are overwhelmingly enacted into law by the Governor and Legislature. The Commission's overall goal is to maintain the same high level of performance that has characterized it in the past.

The Law Revision Commission has only one program — law reform. Any other goals are subordinate to that end.

OBJECTIVES

For maximum efficiency in achieving the goal of continuing high quality law reform, the Commission must process a number of large and small projects simultaneously. The Commission must take preliminary steps to activate new projects in a timely manner as ongoing projects are completed. Simultaneous work in a number of fields should also help improve interaction with the Legislature and interested parties, as well as Commissioner involvement. To this end, the Commission's objectives for the next three fiscal years include, in addition to work on a number of minor projects, the following activities on major studies:

1997-98 Fiscal Year

- Additional work on Judicial Review of Agency Action
- Complete work on Trial Court Unification

- Complete work on Business Judgment Rule
- Continue work on Health Care Decisions
- Begin work on Uniform Unincorporated Nonprofit Association Act
- Begin work on Environmental Law Consolidation
- Begin work on Derivative Actions
- Engage consultant on Discovery Improvements
- Engage consultant on General Assignments for Benefit of Creditors
- Engage consultant on Contract Formation and Electronic Communications

1998-99 Fiscal Year

- Complete work on Health Care Decisions
- Complete work on Administrative Rulemaking
- Complete work on Derivative Actions
- Complete work on Uniform Unincorporated Nonprofit Association Act
- Partial report on Environmental Law Consolidation
- Begin work on Issues in Judicial Administration
- Begin work on Eminent Domain Issues

1999-2000 Fiscal Year

- Partial report on Environmental Law Consolidation
- Continue work on Issues in Judicial Administration
- Continue work on Eminent Domain Issues
- Begin work on Evidence Code and Electronic Communications
- Begin work on General Assignments for Benefit of Creditors

Important Note: This schedule may be revised from time to time as the Legislature and Commission redetermine assignments and priorities.

PERFORMANCE MEASURES

There are a number of quantitative benchmarks that might be used to gauge the Commission's performance, including volume of materials considered by the Commission, number of recommendations completed, printed pages of reports produced, number of bills introduced, number of statute sections enacted, etc. However, none of these measures has proved to be adequate or especially useful. A significant improvement in the law that requires substantial Commission resources may be expressed in a brief report or statute, whereas a modest cleanup of codes requiring relatively few Commission resources may entail an extensive report on hundreds of statute sections. Enactment of legislation based on the Commission's work is also not a useful measure, since the legislation may be enacted some years after completion of the work, and the legislative process ordinarily involves amendments, partial enactments, etc. There is no direct

correlation between quantity and quality in the work of the Law Revision Commission.

More useful quantitative measures would look to the Commission's progress on key elements of each study in its law reform program. For this purpose, production of a consultant contract (or staff study) marks the initiation of work on a project, issuance of staff memoranda and intermediate drafts mark progress on the project, promulgation of a tentative recommendation marks completion of substantial work on the project, and publication of a report and submission to the Governor and Legislature mark conclusion of the project.

Taking work actually completed on both major and minor studies, and expected completion of major studies only (subject to changing legislative priorities), performance data for this submittal are:

1994-95 Actual

Debtor-Creditor Relations (11/94)
Uniform Prudent Investor Act (11/94)
Administrative Adjudication by State Agencies (1/95)

1995-96 Actual

Statute of Limitations in Trust Matters (11/95)
Inheritance From or Through Child Born out of Wedlock (11/95)
Tolling Statute of Limitations when Defendant Out of State (11/95)
Repeal of Civil Code Section 1464 (11/95)
Collecting Small Estate Without Administration (1/96)
Homestead Exemption (4/96)

1996-97 Estimated (Target)

Administrative Adjudication by Quasi-Public Entities (10/96)
Marketable Title: Enforceability of Land Use Restrictions (10/96)
Unfair Competition Litigation (11/96)
Attachment by Undersecured Creditors (11/96)
Ethical Standards for Administrative Law Judges (11/96)
Best Evidence Rule (11/96)
Mediation Confidentiality (1/97)
Judicial Review of Agency Action (2/97)
Public Utility Deregulation (6/97)

1997-98 Expected (Target)

Business Judgment Rule (11/97)
Trial Court Unification (1/98)

1998-99 Expected (Target)

Health Care Decisions
Administrative Rulemaking

Derivative Actions
Uniform Unincorporated Nonprofit Association Act
Environmental Law Consolidation (partial report)

1999-2000 Expected (Target)

Eminent Domain Issues
Environmental Law Consolidation (partial report)

RESOURCE ASSUMPTIONS

For fiscal year **1996-97**, the Law Revision Commission has developed its goals, objectives, and performance targets based on its fiscal year 1996-97 appropriation and other expected funds.

For fiscal year **1997-98**, the Law Revision Commission expects to accomplish its goals, objectives, and performance targets within its current base budget plus an augmentation of \$31,000 expected in the legislative budget process. The augmentation has been approved by the Senate and Assembly Budget Subcommittees in recognition of a number of major new multi-year priority studies assigned by the Legislature.

For fiscal years **1998-99** and **1999-2000**, the Law Revision Commission expects to accomplish its goals, objectives, and performance targets within the expected 1997-98 base budget (including the \$31,000 augmentation). No new resources are being sought to support the Commission's strategic plan. This is subject to two qualifications:

(1) The Commission currently receives extensive library materials on an exchange basis with various legal publishers. Due to consolidation within the legal publishing industry, the Commission may lose access to critical library materials. If this occurs, it may be necessary to increase the Commission's operating expenses for library materials.

(2) If the Legislature continues to increase the Commission's priority workload, it may be necessary to increase the Commission's legal staff by one position and increase the Commission's operating expenses by an indeterminate amount.

**FINANCIAL AND FULL-TIME EQUIVALENT (FTE)
POSITION INFORMATION**

1995-96 Actual Expenditures

| | |
|-----------------------------------|------------------|
| Summary of Total Agency Resources | |
| General Fund | \$419,000 |
| Reimbursements | <u>\$ 34,000</u> |
| Total Funds | \$453,000 |
| FTE Position Total | 4.1 |

1996-97 Estimate

Summary of Total Agency Resources

| | |
|--------------------|------------------|
| General Fund | \$566,000 |
| Reimbursements | <u>\$ 23,000</u> |
| Total Funds | \$589,000 |
| FTE Position Total | 6.0 |

1997-98 Budget Request

Summary of Total Agency Resources

| | |
|-----------------------|------------------|
| General Fund | \$566,000 |
| Reimbursements | <u>\$ 15,000</u> |
| Total Funds | \$581,000 |
| Expected Augmentation | |
| in Budget Bill | <u>\$ 31,000</u> |
| Revised Total | \$611,000 |
| FTE Position Total | 6.0 |