

Leg. Prog.

May 22, 1998

**Memorandum 98-32****1998 Legislative Program**

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Attached to this memorandum is a chart showing the status of bills in the Commission's 1998 legislative program and other items of interest. This memorandum supplements the chart as to a few matters. We will make any necessary updates at the meeting

**AB 707 (Ackerman) — Real Property Covenants**

As a followup to this bill, we have received communications and draft language from the Executive Council of Homeowners (ECHO) to codify rules relating to the running of the statute of limitations against a homeowner's association that fails to perform a duty imposed by covenant that is a continuing obligation of the association. Cf. *Cutujian v. Benedict Hills Estates Ass'n*, 41 Cal. App. 4th 1379, 49 Cal. Rptr. 2d 166 (1996).

ECHO's attorney has now indicated it would be premature for the Commission to consider this matter until the attorney has cleared ECHO's suggestion with others in the field. The staff will schedule this matter for Commission consideration only after further communications from ECHO.

**AB 1973 (Campbell) — Telecommunications Deregulation**

This bill has passed the Assembly in the following form:

Section 316.5 is added to the Public Utilities Code to read:

316.5. In order to enhance fair competition and promote deregulation in the telecommunications industry, the commission, in consultation with the Law Revision Commission, shall submit a report to the Legislature, on or before October 31 of each year, that includes all of the following:

(a) A report on the status of competition in the telecommunications marketplace.

(b) A report on significant changes that have occurred in the telecommunications marketplace in the previous year.

(c) A review of any statutes that might impede or discourage competition in, or deregulation of, the telecommunications marketplace.

(d) Recommendations to the Legislature on statutes that should be amended, repealed, or enacted to enhance and reflect the competitive telecommunications environment or promote the orderly deregulation of the telecommunications industry, or both of those things.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

If the bill is enacted in this form, we will need to consult with CPUC to decide the most practical means of our consultation on this matter.

#### **AB 2164 (Wayne) — Administrative Law Judge Code of Ethics**

Assemblyman Howard Wayne has managed to get the ALJ Code of Ethics material into a bill in time for the legislative deadlines. The bill has been approved by the Assembly unanimously.

One issue that arose on the bill is whether ALJ's ought not to be subject to the same limitations on accepting honoraria, gifts, and travel that elected officials are subject to under the Political Reform Act of 1974. These limitations currently apply to workers compensation referees but not other ALJ's, unless the ALJ is a "designated employee" under the particular agency's conflict of interest code. Most, but not all, agencies designate ALJ's under their conflict of interest codes. The ALJ Code of Ethics would also cover this area, although its coverage is not as strict as that found in the PRA.

In order to address the issue, the bill was amended on the Assembly floor simply to provide that:

11475.40. A violation of an applicable provision of the Code of Judicial Ethics, or a violation of the restrictions and prohibitions on accepting honoraria, gifts, or travel that otherwise apply to elected state officers pursuant to Chapter 9.5 (commencing with Section 89500) of Title 9, by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

Also in connection with this bill, the Commission has suggested that, rather than exempting ALJ's from the requirement of reporting criminal prosecutions to the Commission on Judicial Performance, ALJ's instead should be required to report to their disciplinary authority. Assemblyman Wayne is investigating the

politics of this matter, and plans to make any appropriate amendments in the Senate.

### **SB 2063 (Kopp) — Business Judgment Rule**

The bill to codify the business judgment rule was heard in Senate Judiciary Committee on May 12. The bill was supported by the Association for California Tort Reform, the Los Angeles Area Chamber of Commerce, the Peninsula Association of General Counsel, and the State Bar Business Law Section. Their support was based on the need for a clear statement of the law to reduce litigation. The bill was opposed by the Consumer Attorneys of California. The basis of their opposition was that the California Supreme Court has yet to speak on the matter, and the business judgment rule provides too low a standard.

The bill met a hostile reception from the Democrat members of the committee and the committee's staff. The Commission made an effective case for its recommendation, represented at the hearing by Senator Kopp, Professor Mel Eisenberg, Tim Hoxie of the State Bar Business Law Section, and the Commission's executive secretary. However, the bill failed passage 3-3 on a straight party line vote, all Republican members of the committee voting yes and all Democrat members present voting no. (Five affirmative votes are required for passage.)

The fate of this bill raises the question whether it makes sense for the Commission to proceed to the second part of this two-part study of corporate governance issues. The second part relates to demand and excuse requirements in derivative actions, and would be far more complex and controversial than a simple codification of the business judgment rule. We already have on hand a background study on the matter prepared for us by Professor Eisenberg. The staff will elaborate on this in the fall in connection with the Commission's consideration of its topics and priorities for the coming year.

### **SB 2139 (Lockyer) — Trial Court Unification**

This bill is a placeholder for the Commission's proposed language to implement Proposition 220 (trial court unification). It is an urgency bill.

If Proposition 220 is approved by the voters at the June 2 general election, Senator Lockyer's present plan is immediately to amend in the Commission's proposed language. Once the amended bill is in print, interested parties, particularly those who have not previously seen the proposed language, will have

an opportunity to review it. The Commission will be able to review suggested revisions at its July meeting. Passage by the Legislature will be sought during August, once any other necessary amendments have been made to the bill.

For discussion of substantive issues in trial court unification under Proposition 220, please refer to Memoranda 98-33 and 98-41, scheduled for consideration at the Commission's June meeting.

**Inheritance Involving Stepparent or Foster Parent**

The recommendation on inheritance involving a stepparent or foster parent is too small to warrant a separate bill. The Assembly Judiciary Committee continues to consider it for possible inclusion in the committee's omnibus probate bill — AB 2801.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**STATUS OF 1998 COMMISSION LEGISLATIVE PROGRAM  
AND OTHER BILLS OF INTEREST**

(as of May 22, 1998)

AB 707 (Ackerman): Real Property Covenants (includes First Rule in  
Spencer's Case and Statute of Limitations)  
AB 1094 (Assem. Jud. Comm.): Response to Demand for Production of  
Documents in Discovery  
AB 1973 (Campbell): PUC/Telecommunications Deregulation  
AB 2164 (Wayne): ALJ Code of Ethics

SB 177 (Kopp): Best Evidence Rule  
SB 2063 (Kopp): Business Judgment Rule  
SB 2139 (Lockyer): Trial Court Unification  
SCR 65 (Kopp): Continuing Authority to Study Topics  
Budget Bill (AB 1656/SB 1391)

Bill Status		AB 707	AB 1094	AB 1973	AB 2164	SB 177	SB 2063	SB 2139	SCR 65	Budget
Introduced		2/26/97	2/27/97	Feb 17	Feb. 19	1/22/97	Feb 20	Feb 20	Jan 14	Jan 12
Last Amended		Mar 4	May 11	Apr 27	May 14	5/5/97	Mar 23	Apr 2		
First House	Policy Committee	Jan 14	Jan 16	Apr 20	May 5	Jan 14	Failed	Apr 14	Mar 13	Mar 24
	Fiscal Committee	—	—	May 13	—	—		May 4	Apr 20	
	Passed House	Jan 22	Jan 26	May 19	May 18	Jan 22		May 14	Apr 30	
Second House	Policy Committee	Mar 18								Mar 30
	Fiscal Committee	—	—		—	—				
	Passed House	Mar 26								
Concurrence		Mar 30								
Governor	Received	Apr 1								
	Approved	Apr 6								
Chapters by Secretary of State	Date	Apr 7								
	Chapter #	14								

• Unless otherwise noted, all dates are in 1998

[date]: scheduled

—: not applicable