

Memorandum 99-18

Environment Code: Status of Project

On March 15, 1999, the Assembly Natural Resources Committee held an informational hearing on the Commission's study of the reorganization of California's environmental and natural resource statutes. The Commission requested the hearing in order to receive clearer legislative guidance on the advisability of proceeding with the study. The hearing was attended by Commissioner Wayne (in his role as Chair of the committee), Nathaniel Sterling and Brian Hebert of the Commission staff, and one of the two Commission consultants on this study, Professor John P. Dwyer.

SUMMARY OF THE HEARING

The hearing opened with a ten minute presentation by the Commission staff, describing the history and nature of the project. This was followed by five minute comments from the following witnesses:

- Daniel L. Siegel, representing the Attorney General's Office (neutral)
- Mary Akins, representing J. William Yeates (opposed)
- Edwin F. Lowry, representing the California District Attorney's Association (opposed)
- Harold M. Thomas, of the Department of Fish and Game, speaking on his own behalf (opposed)
- Cindy K. Tuck, representing the California Council for Environmental and Economic Balance (opposed)
- Brian E. White, representing the California Chamber of Commerce (opposed)

The witnesses raised the following concerns:

(1) *The reorganization is unnecessary. Commercially available practice guides already make the statutes adequately accessible. The reorganization is unwanted by those it is intended to benefit.*

(2) *Reorganization would impose significant transition costs. Section renumbering would render existing reference materials obsolete. Cross-reference tables would be required to relate old numbering to new in case law and statutory annotations. Numerous agency regulations would need to be amended.*

(3) *Reorganization would result in substantive change, either as the result of drafting error or because of existing policy tensions that cannot be successfully reconciled in a unified code.*

Witness testimony was followed by questions and comments from Assembly Members Aanestad, Alquist, Jackson, Keeley, and Wayne. As a result of a scheduling problem, most members of the committee were no longer present at the end of the hearing, and were unable to give us direct feedback. Assembly Member Wayne is writing to each member asking their opinion about this project. Their responses will be presented at or before the April meeting.

POINTS RAISED BY THE MEMBERS

The principal points raised by members of the committee are briefly described below.

Assembly Member Aanestad

Assembly Member Aanestad inquired about the cost to the state of developing the Environment Code. The staff explained that there would be no direct cost to the state, only the opportunity cost resulting from the commitment of Commission resources to the Environment Code project rather than another Commission project.

Assembly Member Alquist

Assembly Member Alquist asked whether the study was the best use of the Commission's time, particularly considering the nonsubstantive nature of the project and the controversy over whether the benefits of the project would outweigh its cost. She also noted that her experience working with the Education Code inclines her against the creation of another very large code.

Assembly Member Jackson

Assembly Member Jackson commented that her work with the Family Code convinced her that the benefits of statutory reorganization can outweigh the inconvenience resulting from section renumbering. However, she expressed

concern that an attempt to resolve statutory ambiguity might result in an inadvertent substantive change.

Assembly Member Keeley

Assembly Member Keeley asked the staff to respond to four concerns expressed in letters received by the Commission in the course of the study:

- *Could a change in the context or placement of a provision that is included in the Environment Code affect the interpretation of that provision?* The staff responded that the proposed code would contain express provisions indicating that location of a provision in the code is intended as a continuation of that provision and that no interpretive inference should be drawn from a decision to include a provision in the code. Assembly Member Alquist felt that this approach would be “fraught with danger.”
- *Don't existing commercial practice books make the environmental statutes sufficiently accessible?* Professor Dwyer responded that reorganization would make the environmental statutes more accessible to those who are new to the field (such as new lawyers) and to those who must understand environmental statutes but are not regular practitioners in the field (such as judges).
- *How do we intend to correct obsolete and duplicative statutes without affecting their substance?* The staff responded that our approach has been cautious. Apparent problems are identified early on and public commentary specifically requested on whether the problem is real and should be addressed.
- *How can we avoid disrupting federal delegation of environmental responsibility where that delegation is conditioned on California enacting specific statutory language?* The staff responded that we are aware of this issue but do not believe that it is a problem because we are preserving existing wording in nearly all cases.

Assembly Member Wayne

Assembly Member Wayne questioned whether it is possible to identify a single body of “environmental” statutes where the points of similarity between those statutes are greater than the points of difference. The staff responded that it may not be necessary to combine natural resource and pollution control statutes in a single code, but that there is probably no drawback in doing so. This is because any reorganization of those provisions will result in renumbering and renumbering is the source of many of the concerns identified by the project opponents. In addition, the staff summarized Professor Gray's position that a

division between water resource statutes and water quality statutes is artificial and inappropriate — water resource allocation and water quality are inextricably linked.

CONCLUSION

Once received, the responses of the committee members should give guidance to the Commission as to whether to proceed with developing the Environment Code. If the Commission decides to proceed, the staff will continue its work in developing the next installment, the Water Resources division. If the Commission decides not to proceed, we may want to work with the legal staff of the Air Resources Board to salvage any changes proposed in the tentative recommendation that appear useful.

Respectfully submitted,

Brian Hebert
Staff Counsel