

Memorandum 2001-68

Statutes Made Obsolete by Trial Court Restructuring: Overview

This memorandum reports progress on the project to repeal statutes made obsolete by trial court restructuring and suggests procedures for completion of the project.

BACKGROUND

Government Code Section 71674, operative January 1, 2001, directs the Law Revision Commission to recommend the repeal of statutes made obsolete by trial court funding reform, trial court unification, and trial court employment reform:

71674. The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The commission shall report its recommendations to the Legislature, including any proposed statutory changes, on or before January 1, 2002.

This is a massive project. The staff has estimated that it requires the Commission to review and dispose of somewhere in the vicinity of 3,000 statute sections. To complicate the matter only one year is allowed for the task, and many of the statutes implicated in the project are not ripe for disposition because the stakeholders have not yet resolved underlying policy and fiscal issues.

PROGRESS TO DATE

The Commission in February reviewed and approved general approaches to disposition of statutes relating to judges, subordinate judicial officers, court reporters, sheriffs and marshals, county-specific municipal court statutes, general municipal court statutes, and county-specific superior court statutes, as well as constitutional amendments.

The staff has been working to implement these decisions. Our procedure has been to prepare a draft disposition of statutes affecting a particular subject matter, and to circulate the staff draft to stakeholders and other interested persons for review and comment. The staff thereafter revises the draft to correct errors or other problems identified by persons reviewing and commenting on the material. Policy issues raised by the drafts are brought to the Commission for resolution. (Memoranda scheduled for the Commission's September meeting, for example, present policy issues relating to subordinate judicial officers, court clerks, official reporters, sheriffs and marshals, and miscellaneous issues.)

The persons to whom staff drafts are circulated for comment include presiding judges and executive officers of all the superior courts, Administrative Office of the Courts personnel, county administrative officers, labor union representatives, professional organization representatives (including judges, court commissioners, court reporters, county clerks, and sheriffs), and other interested persons, including key legislative personnel.

To date we have circulated drafts of statutes relating to sheriffs and marshals, court reporters, court clerks, and county-specific statutes affecting 50 of the state's 58 counties. (The most extensive bodies of county-specific statutory material — those relating to Los Angeles and San Diego counties — have not yet been circulated.)

The staff is also in the process of reviewing and preparing drafts of miscellaneous general provisions. That would include a wide variety of statutory material such as obsolete references to municipal courts, judicial districts, subject matter jurisdiction limitations, and other desultory and sui generis matters. These drafts have not yet been circulated to interested persons for comment.

So far we have generated about 400 pages of statutory material. We expect that will double in the next month or two. The bulk of the Commission's final recommendation on the matter is impossible to predict at present.

WHAT REMAINS TO BE DONE

At the staff level, we need to complete our analysis and proposed revision of the remaining county-specific statutes and continue our search for suspect general statutes. We must also review every section of Title 8 of the Government Code for potential unclassified problems.

Although we will be able to locate and dispose of the bulk of the obsolete statutes by this process, there will be a significant number of statutes that raise issues that cannot be resolved at this time. These are statutes where the stakeholders have not worked out a general resolution of underlying policy or fiscal issues.

For example, many statutes provide for fees collected by court officers to be transmitted to the county treasury for deposit in the general fund. Although many of these fees are generated by court processes or are court-related in nature, the counties have taken the position the fees nonetheless should go to the county. They point out that the shift of trial court funding from the counties to the state was accomplished in a comprehensive negotiated agreement that identified specific responsibilities and funding arrangements for each party. Revenues not specifically shifted from the county to the state were intended to be reserved to the county. The staff agrees with this analysis; those statutes cannot be considered obsolete until the next phase of the county-state funding relationship has been worked out by the parties.

Statutes governing fringe benefits of judges offer another example of unresolved issues. Although judicial salaries and benefits are court operations for which the state is responsible, some county-specific statutes entitle judges to receive the county benefit package. This type of issue has been resolved for non-judicial court employees by the Trial Court Employment Protection and Governance Act, but not for judges. Resolution of the issue for judges is necessary before we can dispose of these statutes.

The numerous statutes relating to court sessions require separate and careful treatment. Sessions are tied to court facilities, which have historically been county structures. Under trial court unification procedures, municipal court locations are preserved as superior court locations until superseding legislation is enacted. Statutes requiring a session in a particular location are dependent in part on control of that facility. In addition, statutes requiring a session in a particular location may also serve the function of ensuring convenient access for citizens in remote parts of a county. The staff plans to deal with statutes of this type on an individual basis. But it will take time.

It is clear that any recommendation submitted by the Commission to the Legislature by January 1, 2002, cannot dispose of a number of relevant statutes of this type. For this reason, **the staff suggests that the Commission, as part of its recommendation, propose extension of the project beyond January 1, 2002:**

71674. The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The commission shall report its recommendations to the Legislature, including any proposed statutory changes, ~~on or before January 1, 2002.~~

Comment. Section 71674 is amended to delete the report deadline. This is intended to foster cleanup of obsolete statutes on a continuing basis as unresolved issues are settled after January 1, 2002.

An extension would also enable us to continue our search for less obvious provisions, and to deal in a thoughtful manner with complex provisions that may require more sophisticated treatment than outright repeal.

COMMISSION ACTION

The progress described above is mainly staff work. At some point in the process the Commission needs to promulgate its recommendations to the Legislature. The procedures we have followed to date allow the Commission to efficiently make its way through this material by focusing on policy issues that have been raised. But the Commission must ultimately confront the draft statute.

The staff has assumed the Commission will want to follow its standard procedure of circulating a tentative recommendation for review and comment before issuing a final recommendation to the Legislature. For this purpose, the staff intends to prepare a draft tentative recommendation for Commission review at the November meeting. Assuming the tentative recommendation is approved by the Commission at that meeting, we will want to allow an adequate opportunity for interested persons to review and comment on the tentative recommendation. The Commission could review comments at its January meeting before finalizing a recommendation to the Legislature.

Two months is not a lot of time for a document of this magnitude, particularly when that period includes the year-end holiday season. But most people concerned will have had a chance previously to review and comment on the material of interest to them in staff draft form, so they should be able to get through the tentative recommendation relatively expeditiously.

That means the Commission would not be able to approve a final recommendation until after the statutory deadline of January 1, 2002. An option would be for the Commission to skip the tentative recommendation phase and proceed directly to a final recommendation in November. Any problems interested persons had with the draft would be directed to the bill in the Legislature. Is it better to meet the statutory deadline even if it means the bill will have more problems, or miss the statutory deadline but give the Legislature a better product? **The staff believes the Legislature would prefer a better product, and would follow our standard tentative recommendation procedure.** The missed deadline would not impact the ability to meet legislative time constraints for 2002, since a spot bill could be introduced and the final product amended into it when ready.

A separate question is a logistical one — production and distribution to the Commission and others of this substantial bulk of material. We have been fortunate so far in this process that most people we have dealt with are able to receive drafts electronically. However, these have been smaller drafts dealing with discrete issues. The electronic file size of the tentative recommendation would create transmissibility and other problems.

One option would be to transmit the electronic file in installments. A limited number of hard copies would have to be produced for those who could not cope with the electronic files. With any luck, a large number of hard copies would not be required.

An alternative we have used in the past on large projects is to have a preprint bill introduced in the Legislature. This would be accompanied by a Commission report containing only Comments to the provisions of the bill. People needing to see hard copy could refer to the bill. The separate document with Commission Comments would be more manageable in size. An added advantage of a preprint bill is that it would alert people to the project who we have not previously identified as interested. This may help generate useful reaction to the tentative recommendation. One concern is the time required by Legislative Counsel to process a preprint bill request. **The staff recommends we explore the preprint bill approach to producing this material.**

DRAFTING DETAILS

The implementing legislation will be so voluminous, it raises the question whether it makes sense logistically to split the material into several bills. An advantage to doing this is that the entire bill would not need to be reprinted every time an amendment is made. A disadvantage is that multiple bills would make the legislative process more complex.

The staff recommends that, for now, we continue to draft the material as a single bill. It can always be split up later if that appears advisable. However, **the proposed amendments to the California Constitution will need to be split out and presented in the form of a proposed constitutional amendment** rather than in the form of a bill.

Another drafting decision we have deferred until now is treatment of a provision that is being preserved when the remainder of the article or chapter in which it resides is being repealed. Should we leave that one provision in place and repeal each individual provision around it, or should we repeal the entire article or chapter and then reenact the individual provision (either in place or in a new location)?

The staff suggests that we repeal the entire article or chapter and reenact the saved provision in place. This will save a tremendous amount of paper in setting out the text of every section being repealed, since the repeal can be done by reference to the article or chapter number. It will also avoid confusion over the location of the saved provision. Most of the affected sections will be preserved only temporarily, pending resolution of issues such as funding responsibilities.

It is probably unnecessary to add a general saving clause to the bill for repealed and reenacted provisions of this type, since the Government Code already includes one:

2. The provisions of this code in so far as they are substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations, and not as new enactments.

The staff would add a cross-reference to this provision in the Comment to each repealed and reenacted section.

CONCLUSION

The staff believes we are making satisfactory progress on this project, given the constraints. We expect the Commission will be in a position at its mid-November meeting to approve a tentative recommendation on repeal of statutes made obsolete by trial court restructuring. That schedule will cause the Commission to miss the statutory deadline of January 1 for its final recommendation, but the staff believes that is preferable to presenting the Legislature with a product that may have substantial problems in it.

In any event, the Commission's recommendation will necessarily be incomplete due to unresolved issues among stakeholders. The Commission should request extension of the January 1, 2002, deadline to allow it to complete the statutory cleanout process as issues are resolved.

The biggest challenge confronting us is the logistical one of disseminating the large volume of material involved. Electronic communication helps substantially but does not provide a complete solution. The Commission should explore the preprint bill option as a potentially promising way to deal with the problem.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary