

Legis. Prog.

March 11, 2002

Memorandum 2002-12**2002 Legislative Program**

Attached to this memorandum is a chart showing the status of bills in the Commission's 2002 legislative program. This memorandum presents additional information concerning a few matters.

We will update this memorandum at the meeting with any further information we have at that time.

COMMISSION RECOMMENDATIONS**AB 568 (Dutra) — Double Liability Problem in Home Improvement Contracts**

Assembly Member Dutra is reviewing amendments based on the Commission's recommendation on this topic, which was approved at the February meeting. At this point, the final form of the amendments Mr. Dutra plans to make to his bill have not been determined.

ACA 15 (Wayne) — Trial Court Restructuring (Constitutional Amendment)

This measure was introduced to publicize the contents of the Commission's Tentative Recommendation on *Trial Court Restructuring* (November 2001) and to satisfy the bill introduction deadline. The resolution will be amended to conform to the Commission's final recommendation on the matter before it is set for hearing. See also discussion of SB 1316 (below).

SB 1316 (Senate Judiciary Committee) — Trial Court Restructuring (Statutory Revision)

This measure was introduced to publicize the contents of the Commission's Tentative Recommendation on *Trial Court Restructuring* (November 2001) and to satisfy the bill introduction deadline. The bill will be amended to conform to the Commission's final recommendation on the matter before it is set for hearing. See also ACA 15 (above).

SB 1322 (Ackerman) — Debtor-Creditor Law Technical Revisions

This bill was originally set for hearing on March 12 in the Senate Judiciary Committee, but the hearing has been rescheduled. The Committee counsel analyzing SB 1322 was concerned about the proposed amendment to Code of Civil Procedure Section 715.010 providing for entry of the date to vacate the premises in the case of writs of possession of real property. The relevant part of the section, and the Commission Comment, read as follows:

Code Civ. Proc. § 715.010 (amended). Writ of possession of real property

....

(b) In addition to the information required by Section 712.020, the writ of possession of real property shall contain the following:

(1) A description of the real property, possession of which is to be delivered to the judgment creditor in satisfaction of the judgment.

(2) A statement that if the real property is not vacated within five days from the date of service of a copy of the writ on the occupant or, if the copy of the writ is posted, within five days from the date a copy of the writ is served on the judgment debtor, the levying officer will remove the occupants from the real property and place the judgment creditor in possession. The levying officer shall enter on the copy of the writ served pursuant to Section 715.020 the date and manner of service and the last date to vacate the premises. An error or omission in the levying officer's entries does not affect the validity of the service or the writ.

....

Comment. Subdivision (b)(2) of Section 715.010 is amended to provide for notice of the date to vacate, consistent with the substantive rule in Section 715.020(c). If the occupant is served under subdivision (a), the five-day period is counted from the date of delivery. If the writ is posted and personally served on or mailed to the judgment debtor under subdivision (b), the five-day period is counted from the date of personal service or mailing. As provided in Section 715.020(c), the five-day period is not subject to the extension of time rules in Section 684.120.

The staff attempted to work out a consensus with the L.A. County Sheriff's Department representative who requested the amendment and the Committee counsel, but this was not productive.

The staff consulted Commission Chairperson Cook, and recommended that the section be removed from the bill, pursuant to the Commission's procedures

for dealing with bill issues between Commission meetings. She agreed with the staff recommendation and the bill is in the process of being amended. This also has the beneficial result of removing the fiscal key on SB 1322, since the duty to fill in the date to vacate was interpreted as a state-mandated local cost. As amended, SB 1322 will not need to go fiscal committees.

Now that the hearing has been postponed, there is an opportunity for the Commission to review the amendment. The staff does not think there is any realistic hope that the Committee counsel's concerns can be resolved within the framework of this bill, and recommends that the Commission approve the amendment to remove Section 715.010 from the bill. A few other purely technical amendments have also been made.

SB 1323 (Ackerman) — Municipal Bankruptcy

This bill was originally set for hearing on March 6, but the hearing has been rescheduled for March 20. The Senate Local Government Committee consultant analyzing SB 1323 was concerned that the bill did not explicitly mention "cities" as candidates for Chapter 9 bankruptcy relief, based on her understanding of the weight of California home rule principles. Following a substantial effort to provide convincing background on this issue, the staff proposed a technical amendment to flesh out the language of Government Code 53760 to avoid any doubt on the issue. As revised (and including some late Legislative Counsel tinkering), this section reads:

Gov't Code § 53760 (added). Authorization for municipal bankruptcy

53760. (a) Except as otherwise provided by statute, a local public entity in this state may file a petition and exercise powers pursuant to applicable federal bankruptcy law.

(b) As used in this section, "local public entity" means any county, city, district, public authority, public agency, or other entity, without limitation, that is a "municipality," as defined in paragraph (40) of Section 101 of Title 11 of the United States Code (Bankruptcy) (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to political subdivisions of the state local public entities.

Comment. Section 53760 supersedes former Sections 43739 (city bankruptcy), 53760 (taxing agency or instrumentality bankruptcy), and 53761 (state consent). The former sections contained obsolete references to repealed federal bankruptcy law. This section is intended to provide the broadest possible state authorization for

municipal bankruptcy proceedings, and thus provides the specific state law authorization for municipal bankruptcy filing required under federal law. See 11 U.S.C. § 109(c)(2) (Westlaw 2001).

As recognized in the introductory clause of subdivision (a), this broad grant of authority is subject to specific limitations provided by statute. See, e.g., Ins. Code § 10089.21 (California Earthquake Authority precluded from resort to bankruptcy); Sts. & Hy. Code § 9011 (prerequisites to bankruptcy filing under Improvement Bond Act of 1915). See also Educ. Code § 41325 (control of insolvent school district by Superintendent of Public Instruction); Health & Safety Code § 129173 (health care district trusteeship).

The staff discussed this issue with Chairperson Cook, who approved the amendment in anticipation of the March 6 hearing.

Now that the hearing has been postponed, there is an opportunity for the Commission to review the amendment. The staff believes this amendment is purely technical, but is advisable since it satisfied the Committee consultant's concern. There is no need to revise the Comment to Section 53760, because it is fully consistent with the section before and after the amendment. It should also be noted that the bill has been amended to make the above revisions.

SB 1371 (Morrow) — Cases in Which Court Reporter is Required

This bill duplicates material in SB 1316. The duplicative material will be removed from SB 1316 when that bill is amended to incorporate the Commission's final recommendation on statutes made obsolete by trial court restructuring.

For discussion of other issues concerning SB 1371, please refer to Memorandum 2002-16.

SB 2061 (Morrow) — Electronic Communications and Evidentiary Privileges

This bill was introduced by Senator Morrow on behalf of the Commission to meet the bill introduction deadline. Because the Legislative Counsel draft was prepared before the Commission finalized its recommendation on the matter, the bill as introduced includes a provision the Commission decided temporarily to defer final action on — requisite intent to waive a privilege. That remnant will be removed from the bill before it is heard.

We have received an expression of interest from the author of another bill to add the Commission's recommendation to that bill. We will discuss this possibility at the Commission meeting.

ALSO OF INTEREST

ACA 125 (Papan) — Protection of Personal Information

ACR 125 would direct the Commission to study, report on, and prepare recommended legislation concerning the protection of personal information relating to or arising out of financial transactions. The resolution has been amended to add language, “That it is not the intent of the Legislature that this measure restrict the introduction or passage of legislation relating to the financial service industry or related policy issues.”

Budget Bill

The Commission’s budget is set for hearing by Senate Budget Subcommittee #2 on March 14, potentially overlapping the Commission meeting. The subcommittee plans to hear the Commission’s budget first on its agenda, so the Executive Secretary can get back to the Commission meeting. We will report on the subcommittee’s action at the meeting.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

Nathaniel Sterling
Executive Secretary

Status of 2002 Commission Legislative Program

As of March 11, 2002

		AB 568	AB 1770	AB 1784	AB 1857		ACA 15	ACR 123	SB 1316	SB 1322	SB 1323	SB 1371
	Introduced	2/21/01	Jan 9	Jan 14	Jan 30		Jan 7	Jan 7	Jan 24	Jan 28	Jan 29	Feb 7
	Last Amended	5/2/01									3/7/02	
First House	Policy Committee	—			<i>Mar 19</i>						<i>Mar 20</i>	<i>Mar 19?</i>
	Fiscal Committee	—								—	—	
	Passed House	—										
Second House	Policy Committee											
	Fiscal Committee									—	—	
	Passed House											
Concurrence & Enrollment												
Governor	Received						—	—				
	Approved						—	—				
Secretary of State	Date											
	Chapter #											

- Bill List:** AB 568 (Dutra): Double Liability Problem in Home Improvement Contracts
 AB 1770 (Papan): Evidence of Prejudgment Deposit Appraisal in Eminent Domain
 AB 1784 (Harman): Rules of Construction for Trusts and Other Instruments
 AB 1857 (Wayne): Administrative Rulemaking Refinements
- SB 1316 (Senate Judiciary Committee): Trial Court Restructuring (Statutory Revision)
 SB 1322 (Ackerman): Debtor-Creditor Technical Revisions
 SB 1323 (Ackerman): Municipal Bankruptcy
 SB 1371 (Morrow): Cases in Which Court Reporter Is Required
 SB 2061 (Morrow): Electronic Communications and Evidentiary Privileges
- ACA 15 (Wayne): Trial Court Restructuring (Constitutional Amendment)
 ACR 123 (Wayne): Resolution of Authority

Also of Interest:
 ACR 125 (Papan): Protection of Personal Information

KEY

Italics: Future or speculative
 “—”: Not applicable
 *: Double referral, not fiscal
 [date]: Deadline