

Memorandum 2004-35

2004 Legislative Program: Status of Bills

Attached to this memorandum is a chart showing the status of the Commission's 2004 legislative program. This memorandum supplements the information in the chart.

AB 1836 (Harman) – Alternative Dispute Resolution in Common Interest Developments

Action is not yet complete on AB 1836 (Harman). The bill has passed the Legislature and gone to the Governor. The Governor has until September 30 to act on the bill.

AB 2598 (Steinberg) and SB 1682 (Ducheny) are bills identical to each other that would substantially reform the process for collecting overdue assessments in a common interest development. Those bills provide that the ADR provisions of AB 1836 would apply at certain points in the collection process. Prepayment of a disputed assessment would no longer be required for application of the ADR process to an assessment dispute.

AB 1836 was amended to coordinate with those proposed policies. One of those technical amendments requires the following revision of the Commission's Comment to proposed Civil Code Section 1369.520:

Civ. Code § 1369.520. ADR prerequisite to enforcement action

Comment. Subdivision (a) of Section 1369.520 continues the substance of a portion of the first sentence of former Section 1354(b). See also Section 1369.510 ("alternative dispute resolution" and "enforcement action" defined). Subdivision (a) does not continue the clause excepting a dispute where the applicable time limitation for commencing the action would run within 120 days. Instead, action under this subdivision tolls a statute of limitations that would run within 120 days. See Section 1369.550.

Subdivision (b) expands the provision of the first sentence of former Section 1354(b) specifying the types of enforcement actions to which the section applies. As revised, the provision covers an action for writ relief, as well as an action for declaratory or injunctive relief. It makes clear that a dispute resolution effort is not

a prerequisite to a small claims action. Because the alternative dispute resolution requirement is limited to an action for declaratory, injunctive, or writ relief (or those types of relief joined with a damage claim not exceeding the jurisdictional limit of the small claims division of superior court), the requirement necessarily is inapplicable to a small claims proceeding. *Cf.* Code Civ. Proc. § 116.220 (limited jurisdiction of small claims court). A small claims action itself satisfies key functions of alternative dispute resolution — it provides a quick and inexpensive means of resolving a dispute within the jurisdiction of the small claims division of the superior court. Subdivision (b) is also revised to make clear that alternative dispute resolution is not applicable to an assessment dispute, except to the extent that it is made applicable by another provision of law.

~~Subdivision (b) also is revised to include an explicit cross-reference to Section 1366.3 (alternative dispute resolution for assessments). Although the alternative dispute resolution requirement does not by its terms apply to assessment disputes, the requirement may be made applicable pursuant to the procedure provided in Section 1366.3.~~

The informational cross-reference to Section 1366.3 was deleted from Section 1369.520 because Section 1366.3 would be repealed by AB 2598 and SB 1682. If those bills are not enacted, we can revisit the question of whether to add a cross-reference. **The staff recommends that the Commission approve the revised Comment.**

AB 3081 (Assem. Judic. Comm.) – Civil Discovery: Nonsubstantive Reform

AB 3081 (Assem. Judic. Comm.) implemented the Commission's nonsubstantive reorganization of the Civil Discovery Act. It was enacted as 2004 Cal. Stat. ch. 182. The new civil discovery provisions will become operative on July 1, 2005.

The bill was amended in the legislative process to avoid a potential conflict with AB 3078 (Assem. Judic. Comm.), which proposed clarifying amendments to two civil discovery provisions: Code of Civil Procedure Sections 2024 and 2034. AB 3078 was enacted and will become operative on January 1, 2005. The bill conflict provisions in AB 3081 ensure that the effect of AB 3078 will be preserved when the nonsubstantive reorganization becomes operative on July 1, 2005.

However, several of the Commission's Comments to the new civil discovery provisions require revision to reflect the enactment of AB 3078. **The revised Comments are set out below for the Commission's review and approval.**

Code Civ. Proc. § 2016.060 (added). Computation of time when last day falls on Saturday, Sunday, or holiday

Comment. Section 2016.060 continues former Section 2024(g) (as amended by 2004 Cal. Stat. ch. 171, § 5) without change, except to replace “article” with “title.”

Code Civ. Proc. § 2024.030 (added). Discovery cutoff for expert witness

Comment. Section 2024.030 continues former Section 2024(d) (as amended by 2004 Cal. Stat. ch. 171, § 5) without change, except to conform the cross-reference and delete the second sentence as surplusage. See Section 2016.060 (computation of time when last day falls on Saturday, Sunday, or holiday).

Code Civ. Proc. § 2034.220 (added). Time of demanding exchange of expert witness information

Comment. Section 2034.220 continues former Section 2034(b) (as amended by 2004 Cal. Stat. ch. 171, § 6) without change, except to delete the third sentence as surplusage. See Section 2016.060 (computation of time when last day falls on Saturday, Sunday, or holiday).

Code Civ. Proc. § 2034.230 (added). Form and content of demand for exchange of expert witness information

Comment. Subdivision (a) of Section 2034.230 continues the first paragraph of former Section 2034(c) without change, except to replace “section” with “chapter.”

Subdivision (b) continues the second paragraph of former Section 2034(c) (as amended by 2004 Cal. Stat. ch. 171, § 6) without change, except to delete the third sentence as surplusage. See Section 2016.060 (computation of time when last day falls on Saturday, Sunday, or holiday).

In addition, several of the conforming revisions in AB 3081 were “chaptered out” by other legislation — i.e., the conforming revision will not become effective because another bill affecting the same section was enacted and prevails over the conforming revision. Cleanup legislation will be necessary to implement these conforming revisions. That could be coupled with legislation to implement the Commission’s recommendation on *Civil Discovery: Statutory Clarification and Minor Substantive Improvements* (2004), or the Commission’s proposal on *Civil Discovery: Correction of Obsolete Cross-References*, which is discussed in Memorandum 2004-36.

SB 1225 (Morrow) – Authority of Court Commissioner

The main purpose of SB 1225 (Morrow) was to overhaul Code of Civil Procedure Section 259, relating to the authority of a court commissioner.

Also included in the bill were miscellaneous technical changes to Government Code Section 71601, including correction of a definition of “subordinate judicial officer.” These changes had been enacted in the 2003 legislative session on Commission recommendation but were chaptered out by legislation later in that session.

The chaptered out technical changes to Government Code Section 71601 were resurrected in SB 1225 but have been chaptered out again this session, by a last minute budget bill.

The staff plans to look for an appropriate vehicle for the Government Code Section 71601 changes in 2005. Perhaps the third time will be the charm.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Status of 2004 Commission Legislative Program

As of September 3, 2004

		AB 1836	AB 2376	AB 3081		SB 111	SB 1225	SB 1746	
Introduced		Jan 22	Feb 19	Mar 11		1/22/03	Feb 11	Feb 20	
Last Amended		July 1	June 15	—		June 28	Apr 29	June 8	
First House	Policy Committee	Mar 24	Mar 24	Apr 13		Jan 13	Apr 27	Apr 13	
	Fiscal Committee	•May 4	•May 4	—		Jan 20	—	May 3	
	Passed House	May 20	May 20	Apr 19		Jan 28	May 6	May 10	
Second House	Policy Committee	June 7	June 21	June 1		June 8	June 1	June 1	
	Fiscal Committee	•July 1	—	—		Jun 23	—	Jun 23	
	Passed House	Aug 12	July 29	June 24		July 1	June 7	July 1	
Concurrence		Aug 17	Aug 12	July 1		July 12	June 7	July 12	
Governor	Received Approved	Aug 25	Aug 17	July 12		July 15	June 8	July 15	
			Aug 27	July 20		July 23	June 17	July 19	
Secretary of State	Date Chapter #		Aug 30	July 20		July 23	June 18	July 20	
			346	182		193	49	178	

Bill List: AB 1836 (Harman): Alternative Dispute Resolution in Common Interest Developments
 AB 2376 (Bates): Common Interest Development Law: Architectural Review and Decisionmaking
 AB 3081 (Judiciary): Civil Discovery: Nonsubstantive Reform
 SB 111 (Knight): Obsolete Reporting Requirements
 SB 1746 (Ackerman): Unincorporated Associations
 SB 1225 (Morrow): Authority of Court Commissioner/Subordinate Judicial Officers

Also of Interest:

AB 286 (Dutra): Double Liability Problem in Home Improvement Contracts

KEY

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