

Memorandum 2008-44

2008 Legislative Program: Final Report

This memorandum presents a final report on the status of Commission bills in 2008. See the attached chart.

As indicated, three of the Commission's bills were vetoed by the Governor. Those vetoes are discussed below.

The memorandum concludes by discussing a possible clean-up to the bill implementing the Commission's recommendation on no contest clauses.

AB 567 (SALDAÑA) — COMMON INTEREST DEVELOPMENT BUREAU

In 2005, the Commission recommended the creation of a state ombudsperson for common interest developments. See *Common Interest Development Ombudsperson*, 35 Cal. L. Revision Comm'n Reports 123 (2005). A bill implementing the Commission's recommendation was approved by the Legislature in 2006. See AB 770 (Mullin). However, it was vetoed by the Governor.

In 2007, Assembly Member Saldaña introduced a modified version of the Commission's recommendation, as AB 567. The bill was eventually amended to more closely conform to the Commission's recommendation and was approved by the Legislature in 2008. It too was vetoed. The Governor's veto message read:

I am returning Assembly Bill 567 without my signature.

This bill seeks to regulate common interest development associations by establishing a Common Interest Development Bureau within the Department of Consumer Affairs and impose a \$10 per unit biennial fee on such associations to fund the bureau's operations.

Creating another layer of government bureaucracy is costly and unnecessary. Numerous bills have been signed into law in the past few years to address the various problems cited by the author. There is little or no evidence that these measures have proven ineffective in addressing the current situation. Today, several other government agencies are handling issues raised with these

associations. As such, I can see no reason to create an entirely new state entity at this time.

For these reasons I am returning this bill without my signature.

Given the policy objections that the Governor has expressed, the staff recommends against any effort to reintroduce this proposal at this time.

AB 2299 (SILVA) — TECHNICAL AND MINOR SUBSTANTIVE STATUTORY
CORRECTIONS: REFERENCES TO RECORDING TECHNOLOGY

Assembly Bill 2299 (Silva) would have implemented the Commission's recommendations on *Technical and Minor Substantive Statutory Corrections: References to Recording Technology*, 37 Cal. L. Revision Comm'n Reports 211 (2007).

The bill was approved by the Legislature, but vetoed by the Governor. The veto message reads:

I am returning Assembly Bill 2299 without my signature.

The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time.

A substantively identical veto message was used to explain the vetoes of over 150 other bills in 2008.

The veto message refers to the time constraint that resulted from the delay in enacting a budget, rather than any specific objection to the content of the bill. It does not foreclose the possibility that the bill might be signed at another time.

The Commission should decide whether to seek reintroduction of the proposed law in 2009. If the proposed law is reintroduced, it should be introduced using language drawn from the enrolled form of AB 2299, to reflect amendments that were made to the bill in 2008.

SB 1691 (LOWENTHAL) — MECHANICS LIEN LAW

Senate Bill 1691 (Lowenthal) would have implemented the nonsubstantive reorganization of mechanics lien law recommended by the Commission in *Mechanics Lien Law* (Feb. 2008). The bill was approved by the Legislature, but vetoed by the Governor. The veto message was substantively the same as the one used to explain the veto of AB 2299:

I am returning Senate Bill 1691 without my signature.

The historic delay in passing the 2008-2009 State Budget has forced me to prioritize the bills sent to my desk at the end of the year's legislative session. Given the delay, I am only signing bills that are the highest priority for California. This bill does not meet that standard and I cannot sign it at this time.

Again, the Commission needs to decide whether to seek reintroduction of the proposed law in 2009. Reintroduction in 2009 would have the advantage of providing two years for consideration of the bill if the Legislature sees the need to put the bill on a slower track.

If the proposed law is reintroduced, it should be introduced using language drawn from the enrolled form of SB 1691, to reflect amendments that were made to the bill during 2008. However, the operative date of the bill should be extended by one year (to January 1, 2010), to preserve the one-year deferred operation period (which would give practitioners time to adjust to the new organization of the law, before it takes effect).

The Commission also needs to decide whether to pursue substantive reforms that were included in the Commission's recommendation, but that were removed from SB 1691 in order to avoid having substantive changes in a large technical bill. For the most part, the decisions to remove those substantive reforms from SB 1691 were not based on specific objections to the merits of the reforms, but rather on the procedural question of how to best proceed with a large and mostly nonsubstantive bill.

If the Commission decides to seek reintroduction of the nonsubstantive reorganization bill in 2009, the staff would strongly recommend that the substantive reforms removed from SB 1691 be postponed for a year. This would greatly simplify the drafting of the substantive reforms, as they could be based on the new statutory organization (if the proposed recodification is enacted), or on existing law (if the recodification is not enacted). If the substantive reforms were introduced at the same time as the nonsubstantive reorganization, the bills would need to include two different versions of each reform, one based on existing law and the other based on the proposed recodified law, with the operation of each contingent on whether the nonsubstantive reorganization is enacted. That complexity could be easily avoided by deferring the introduction of any substantive bills until 2010.

SB 1264 (HARMAN) — NO CONTEST CLAUSES

Senate Bill 1264 (Harman) implements the Commission's recommendation on *Revision of No Contest Clause Statute*, 37 Cal. L. Revision Comm'n Reports 359 (2007). The bill was enacted. See 2008 Cal. Stat. ch. 174.

SB 1264 repealed the existing no contest clause statute and replaced it with a new statute (with new section numbers). The new law is expressly limited in its application to instruments that become irrevocable on or after January 1, 2001. Under the general transitional rule in Probate Code Section 3, former law would continue to apply to instruments that are not governed by the new law (i.e., pre-2001 instruments).

The Executive Committee of the Trusts and Estates Section of the State Bar ("TEXCOM") is concerned that the former sections, which will continue to govern old instruments, will no longer be in the Probate Code. That will make it difficult for attorneys and judges to reference applicable statutory law when handling pre-2001 instruments.

That sort of transitional difficulty is common, and can occur whenever old statutes are replaced with new statutes. However, in the realm of estate planning, there are instruments that can continue to operate for decades. That extremely long duration prolongs the transitional reference problem to an unusual degree.

TEXCOM has suggested that the former statute be reenacted, along with a provision that expressly limits its application to pre-2001 instruments. There would then be two no contest clause statutes, applicable to different time periods, side-by-side in the Probate Code.

The staff believes that this would be a nonsubstantive change, which would probably be noncontroversial. It is not clear whether a legislator would be interested in using a bill to implement such a technical proposal, but the staff could inquire. Perhaps the proposal could be combined with a bill implementing the Commission's pending recommendation on Donative Transfer Restrictions.

Should the staff pursue this? If so, the staff will prepare implementing language for review at the December meeting.

Respectfully submitted,

Brian Hebert
Executive Secretary

Status of 2008 Commission Legislative Program

As of September 30, 2008

		AB 250	AB 567	AB 1921	AB 2166	AB 2193	AB 2299		SB 1182	SB 1264	SB 1691
	Introduced Last Amended	1/1/07	2/21/07	2/8/08	2/21/08	2/21/08	2/21/08		2/12/08	2/19/08	2/21/08
		4/9/08	1/17/08	5/22/08	—		5/5/08		—	3/24/08	4/1/08
First House	Policy Committee	3/27/07	1/16/08	4/2/08	Dead	3/25/08	3/25/08		3/25/08	4/8/08	4/8/08
	Fiscal Committee	3/31/07	1/24/08	4/29/08		4/9/08	—		—	—	4/28/08
	Passed House	6/4/07	1/29/08	5/27/08		4/21/08	4/3/08		4/1/08	4/21/08	5/15/08
Second House	Policy Committee	Dead	6/23/08	Dead		6/10/08	6/24/08		6/10/08	6/17/08	6/17/08
	Fiscal Committee		8/4/08			6/30/08	—		—	—	7/2/08
	Passed House		8/13/08			7/3/08	7/2/08		6/16/08	6/23/08	7/14/08
Concurrence			8/15/08			7/14/08	8/7/08		—	7/2/08	8/6/08
Governor	Received Approved		9/17/08			7/21/08	9/16/08		6/19/08	7/10/08	9/17/08
			Veto			8/1/08	Veto		7/1/08	7/22/08	Veto
Secretary of State	Date Chapter #					8/1/08			7/1/08	7/22/08	
						231			56	174	

Bill List: AB 250 (DeVore): Revocable TOD Deed
 AB 567 (Saldaña): CID Bureau
 AB 1921 (Saldaña): CID Recodification
 AB 2166 (Tran): Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture
 AB 2193 (Tran): Deposition in Out-of-State Litigation
 AB 2299 (Silva): References to Recording Technology

SB 1182 (Ackerman): Trial Court Restructuring: Part 4; Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction
 SB 1264 (Harman): Revision of No Contest Clause Statute
 SB 1691 (Lowenthal): Mechanics Lien Law

Also of Interest:

AB 1868 (Walters): Tort Liability of Charter Schools
 AB 2479 (Hancock): Property Boundaries and Earth Movement

KEY

Italics: Future or speculative

“—”: Not applicable

*: Double referral, not fiscal

[date]: Deadline