

Admin.

November 26, 2008

Memorandum 2008-55

2008-2009 Annual Report (Staff Draft)

Attached to this memorandum is a staff draft of the text of the Commission's 2008-2009 *Annual Report*. In the interest of saving photocopying and mailing costs, we have not reproduced here the various tables and appendices that are published with the Annual Report (e.g., text of Commission's governing statute, cumulative table of legislative action on Commission recommendations, revised Comments to legislation enacted during session, etc.). After approval of the text of the Annual Report, the staff will assemble the various parts and send the Annual Report to the printer.

Major Studies in Progress

The Annual Report describes the major studies that the Commission will be working on in 2009. That description may be affected by any decisions that the Commission may still make in its continued consideration of new topics and priorities for 2009. If so, the report will be revised to reflect those decisions.

Calendar of Topics Authorized for Study

In the report, the Commission recommends that the Legislature delete from the Commission's Calendar of Topics in next year's authorizing resolution the topic of offers of compromise. This reflects a decision made at the Commission meeting on October 29, 2008. See CLRC Minutes (Oct. 2008), p. 3.

Personnel of Commission

The report identifies the members of the Commission, along with the date upon which each member's term expires. The report reflects the appointment of Justice John Zebrowski (ret.) as a Commissioner on October 24, 2008, and the resignation of Commissioner Edmund L. Regalia on October 17, 2008.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The final version of the report will also include a resolution proposed for adoption by the Commission in honor of Mr. Regalia. See p. 25. Proposed text for this resolution will be presented in a supplement to this memorandum.

Activities of Commission Members and Staff

The report notes activities of Commission members and staff related to the Commission's work, such as speeches made and articles published during the past year. Please notify the staff if you have any activities of this nature to report.

Editorial Suggestions

If you have any editorial suggestions relating to the draft, please be sure to inform the staff.

Respectfully submitted,

Steve Cohen
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

2008-2009 Annual Report

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739
www.clrc.ca.gov

Cite this pamphlet as *2008-2009 Annual Report*, 38 Cal. L. Revision Comm'n Reports 1 (2008). This is publication #231.

SUMMARY OF WORK OF COMMISSION

Holdover Recommendation to the 2007 Legislature

In 2007, one of the bills that would have effectuated a new Commission recommendation was held over until 2008. It was not enacted.¹

Recommendations to the 2008 Legislature

In 2008, bills effectuating four new Commission recommendations were enacted, relating to the following subjects:

- Trial court restructuring
- Transfer of case based on lack of jurisdiction
- Revision of no contest clause statute
- Deposition in out-of-state litigation

Bills that would have effectuated Commission recommendations on the following subjects were not enacted, but follow-up work is planned:

- Appellate jurisdiction of bail forfeiture
- Statutory clarification and simplification of CID law²
- Statutory references to recording technology³
- Reorganization of mechanics lien law⁴

1. AB 250 (DeVore) (revocable transfer on death deed). Another 2007 bill, which reintroduced a Commission recommendation that failed in a previous legislative session, was also held over until 2008. See AB 567 (Saldaña) (common interest development ombudsperson). It passed the Legislature but was vetoed. Three bills to effectuate Commission recommendations were enacted in 2007.

2. This bill was withdrawn for further study by the Commission.

3. This bill was vetoed in connection with the historic delay in passing the 2008-09 budget.

4. This bill was vetoed in connection with the historic delay in passing the 2008-09 budget.

The Commission also submitted recommendations on the following subjects in compliance with a legislative deadline, but did not seek introduction of legislation to effectuate these recommendations relating to the hearsay rule:

- Forfeiture by wrongdoing
- Present sense impression

Recommendations to the 2009 Legislature

In 2009, the Commission plans to submit recommendations on the following new subjects to the Legislature:

- Donative transfer restrictions
- Nonsubstantive reorganization of weapon statutes
- Attorney-client privilege after the death of the client

A bill to effectuate the recommendation on donative transfer restrictions will be introduced in 2009; legislation to effectuate the other recommendations will not be introduced until later.

The Commission may submit additional recommendations in 2009, if time permits.

Commission Activities Planned for 2009

During 2009, the Commission will work on the following major topics: attorney-client privilege after the death of the client, nonsubstantive reorganization of deadly weapon statutes, common interest development law, removal of an executor, and statutes made obsolete by trial court restructuring. The Commission will also consider other subjects to the extent time permits.

CONTENTS

Page

2008-2009 ANNUAL REPORT	9
Introduction	9
2009 Legislative Program	10
Major Studies in Progress	10
Attorney-Client Privilege	10
Nonsubstantive Reorganization of Weapon Statutes	11
Common Interest Development Law	11
Trial Court Restructuring	11
Removal of an Executor	11
Other Subjects.....	11
Calendar of Topics for Study	12
Offers of Compromise.....	12
Function and Procedure of Commission.....	12
Background Studies	13
Recommendations.....	14
Official Comments.....	15
Commission Materials as Legislative History.....	16
Use of Commission Materials To Determine Legislative Intent.....	18
Publications	22
Electronic Publication and Internet Access.....	22
Electronic Mail	23
MCLE Credit	23
Personnel of Commission	23
Commission Budget.....	26
Other Activities	26
National Conference of Commissioners on Uniform State Laws.....	26
Education.....	27

Legislative History of Recommendations in the 2008
Legislative Session 27
Deposition in Out-of-State Litigation 28
Trial Court Restructuring 28
Revision Of No Contest Clause Statute 28
Resolution Authorizing Topics for Study 29
Report on Statutes Repealed by Implication or Held
Unconstitutional 29
Recommendations..... 30

APPENDICES

1. Statute Governing the California Law Revision
Commission 31
2. Calendar of Topics Authorized for Study 37
3. Legislative Action on Commission Recommendations
(Cumulative)..... 43
4. Report of the California Law Revision Commission
on Chapter 174 of the Statutes of 2008 (Senate
Bill 1264)..... 73
5. Report of the California Law Revision Commission
on Chapter 231 of the Statutes of 2008 (Assembly
Bill 2193)..... 75
6. Commission Publications..... 77

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, ROOM D-2
PALO ALTO, CA 94303-4739
650-494-1335

PAMELA L. HEMMINGER, Chairperson
SUSAN DUNCAN LEE, Vice Chairperson
DIANE F. BOYER-VINE
SENATOR ELLEN CORBETT
ASSEMBLY MEMBER NOREEN EVANS
SIDNEY GREATHOUSE
FRANK KAPLAN
WILLIAM E. WEINBERGER
ASSOCIATE JUSTICE JOHN ZEBROWSKI (RET.)

December 11, 2008

To: The Honorable Arnold Schwarzenegger
Governor of California, and
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission submits this report of its activities during 2008 and its plans for 2009.

Four of eight Commission recommendations introduced in the Legislature in 2008 were enacted into law. One of the other recommendations was voluntarily withdrawn for further study. Two were vetoed due to the historic budget delay, but may be introduced in 2009.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation:

- Senator Dick Ackerman (Trial Court Restructuring: Part 4, Transfer of Case Based on Lack of Jurisdiction)
- Senator Tom Harman (Revision of No Contest Clause)
- Senator Alan Lowenthal (Mechanics Lien Law)
- Assembly Member Lori Saldaña (Common Interest Developments)
- Assembly Member Jim Silva (Recording Technology)

- Assembly Member Van Tran (Deposition in Out-of-State Litigation, Appellate Jurisdiction of Bail Forfeiture)

In response to a request by the Senate Committee on the Judiciary, the Commission also submitted two recommendations to the Legislature relating to the rules of evidence, but did not seek introduction of legislation to effectuate these recommendations.

The Commission has held seven one-day meetings in 2008. Meetings were held in Burbank and Sacramento.

Respectfully submitted,

Pamela L. Hemminger
Chairperson

2008-2009 ANNUAL REPORT

Introduction

The California Law Revision Commission was created in 1953 and commenced operation in 1954 as the permanent successor to the Code Commission,⁵ with responsibility for a continuing substantive review of California statutory and decisional law.⁶ The Commission studies the law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission ordinarily works on major topics, assigned by the Legislature, that require detailed study and cannot easily be handled in the ordinary legislative process. The Commission's work is independent, nonpartisan, and objective.

The Commission consists of:⁷

- A Member of the Senate appointed by the Rules Committee
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

The Commission may study only topics that the Legislature has authorized.⁸

5. See 1953 Cal. Stat. ch. 1445, operative September 9, 1953. The first meeting of the Commission was held on February 23, 1954.

6. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*). See also 1955 Report [Annual Report for 1954] at 7, 1 Cal. L. Revision Comm'n Reports (1957).

7. For current membership, see "Personnel of Commission" *infra*.

8. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*. However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution. Gov't Code § 8298. Additionally, a concurrent resolution or statute may directly confer authority to study a particular subject. See, e.g., 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes); 2006 Cal. Stat. ch. 216 [AB 2034] (donative transfer restrictions).

The Commission has submitted 384 recommendations to the Legislature, of which 349 (more than 90%) have been enacted in whole or in substantial part.⁹ Commission recommendations have resulted in the enactment of legislation affecting 22,493 sections of California law: 4,507 sections amended, 9,511 sections added, and 8,475 sections repealed.

The Commission's recommendations, reports, and other selected materials are published in softcover and later collected in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions are at the end of this Annual Report.¹⁰

2009 Legislative Program

In 2009, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Donative transfer restrictions
- Statutory references to recording technology

Major Studies in Progress

During 2009, the Commission will work on the following major topics: attorney-client privilege after the death of the client, nonsubstantive reorganization of weapon statutes, common interest development law, removal of an executor, and statutes made obsolete by trial court restructuring. The Commission may also consider other subjects to the extent time permits.

Attorney-Client Privilege

Pursuant to AB 403 (Tran), enacted as Chapter 388 of the Statutes of 2007, the Commission will continue to study whether the attorney-client privilege should survive the death of the client,

9. See *Legislative Action on Commission Recommendations*, Appendix 3 *infra*.

10. See *Commission Publications*, Appendix 5 *infra*.

and, if so, under what circumstances. The Commission's report on the matter is due by July 1, 2009.

Nonsubstantive Reorganization of Weapon Statutes

Pursuant to ACR 73 (McCarthy), enacted as Resolution Chapter 128 of the Statutes of 2006, the Commission will continue its review of the portions of the Penal Code relating to the control of deadly weapons, and will recommend legislation that simplifies and reorganizes the material without making any substantive change to the scope of criminal liability under those provisions. The Commission's report on the matter is due by July 1, 2009.

Common Interest Development Law

The Commission will continue its review of statutes affecting common interest developments. The Commission will revise its recommendation on *Statutory Clarification and Simplification of CID Law*, and commence new studies on simplification of governance procedure for small associations and the application of the Davis-Stirling Act to nonresidential associations. The Commission may study other matters relating to the application of the Davis-Stirling Act as time permits.

Trial Court Restructuring

The Commission will continue its work to identify and study statutes made obsolete as a result of trial court unification, the Lockyer-Isenberg Trial Court Funding Act (1997 Cal. Stat. ch. 850), and the Trial Court Employment Protection and Governance Act (2000 Cal. Stat. ch. 1010).

Removal of an Executor

Pursuant to its authority to study revision of the Probate Code, the Commission will commence a new study of whether the executor of a will should be removed if the executor is a disqualified person under Probate Code Section 21350.5.

Other Subjects

The major studies in progress described above will dominate the Commission's time and resources during 2009. The Commission will consider other subjects authorized for study, as time permits.

Calendar of Topics for Study

The Commission's calendar includes 22 topics authorized by the Legislature for study.¹¹ The Commission recommends that one topic be deleted from the calendar in 2009.

Offers of Compromise

The Commission's calendar of topics includes a study of "whether the law relating to offers of compromise should be revised."¹² The Commission does not plan to do any further work on this topic, and recommends that the topic be deleted from the calendar.

Function and Procedure of Commission

The principal duties of the Commission are to:¹³

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,¹⁴ bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.¹⁵

11. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

12. *Id.*

13. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1 *infra*.

14. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261.

15. Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290. See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. Under its general authority, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes for study.¹⁶ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹⁷ Additionally, a concurrent resolution¹⁸ or statute¹⁹ may directly confer authority to study a particular subject.

Background Studies

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study

16. Gov't Code § 8293. Section 8293 requires a concurrent resolution authorizing the Commission to study topics contained in the calendar of topics set forth in the Commission's regular report to the Legislature. Section 8293 also requires that the Commission study any topic that the Legislature by concurrent resolution or statute refers to the Commission for study.

17. Gov't Code § 8298.

18. For an example of a concurrent resolution referring a specific topic to the Commission for study, see 2006 Cal. Stat. res. ch. 128 [ACR 73] (nonsubstantive reorganization of weapon statutes).

19. For example, Code of Civil Procedure Section 703.120(a) requires the Commission to review statutes providing for exemptions from enforcement of money judgments every 10 years and to recommend any needed revisions. The Commission also has continuing statutory authority to study enforcement of judgments pursuant to Code of Civil Procedure Section 703.120(b).

Government Code Section 70219 requires the Commission, in consultation with the Judicial Council, to perform follow-up studies taking into consideration the experience in courts that have unified. For a list of specific studies, see *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 82-86 (1998).

Government Code Section 71674 requires the Commission to recommend repeal of provisions made obsolete by the Trial Court Employment Protection and Governance Act (Gov't Code § 71600 *et seq.*), Lockyer-Isenberg Trial Court Funding Act of 1997 (1997 Cal. Stat. ch. 850), and the implementation of trial court unification.

Statutory authority may be uncoded. See, e.g., 2005 Cal. Stat. ch. 422 (beneficiary deeds).

may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.²⁰ Law professors and practicing attorneys who serve as consultants have already acquired the considerable knowledge necessary to understand the specific problems under consideration, and receive little more than an honorarium for their services. From time to time, expert consultants are also retained to advise the Commission at meetings.

Recommendations

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to interested persons and organizations, including the State Bar, local and specialized bar associations, public interest organizations, and business and professional associations. Notice of the availability of the tentative recommendation is mailed to interested persons on the Commission's mailing list and publicized in legal newspapers and other relevant publications. Notice is also posted on the Commission's website and emailed to interested persons.

Comments received on the tentative recommendation are considered by the Commission in determining what recommendation, if any, will be made to the Legislature.²¹ When

20. The following persons are presently under contract as Commission consultants, or have served in that capacity on presently active studies: James E. Acret, Pacific Palisades; Professor Susan F. French, UCLA Law School.; David Gould, Calabasas; Prof. Edward C. Halbach Jr., Berkeley; Keith Honda, Monterey; Gordon Hunt, Hunt Ortmann; Professor J. Clark Kelso, McGeorge School of Law; Professor Miguel A. Méndez, Stanford Law School; Nathaniel Sterling, former Executive Secretary, California Law Revision Commission, Palo Alto; Professor Gregory S. Weber, McGeorge School of Law.

21. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A. J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

the Commission has reached a conclusion on the matter,²² its recommendation to the Legislature (including a draft of any necessary legislation) is published and distributed in printed form and on the Internet. If a background study has been prepared in connection with the recommendation, it may be published by the Commission or in a law review.²³

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment,

22. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission. Dissents are noted in the minutes of the meeting at which the recommendation is approved.

23. For recent background studies published in law reviews, see Méndez, *California Evidence Code — Federal Rules of Evidence*, VI. *Authentication and the Best and Secondary Evidence Rules*, 41 U.S.F. L. Rev. 1 (2006); Méndez, *California Evidence Code - Federal Rules of Evidence*, V. *Witnesses: Conforming the California Evidence Code to the Federal Rules of Evidence*, 39 U.S.F. L. Rev. 455 (2005); Alford, *Report to Law Revision Commission Regarding Recommendations for Changes to California Arbitration Law*, 4 Pepp. Disp. Resol. L.J. 1 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence*, IV. *Presumptions and Burden of Proof: Conforming the California Evidence Code to the Federal Rules of Evidence*, 38 U.S.F. L. Rev. 139 (2004); Méndez, *California Evidence Code - Federal Rules of Evidence*, I. *Hearsay and Its Exceptions: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 351 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence*, II. *Expert Testimony and the Opinion Rule: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 411 (2003); Méndez, *California Evidence Code - Federal Rules of Evidence*, III. *The Role of Judge and Jury: Conforming the Evidence Code to the Federal Rules*, 37 U.S.F. L. Rev. 1003 (2003); Tung, *After Orange County: Reforming California Municipal Bankruptcy Law*, 53 Hastings L.J. 885 (2002); Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts*, 32 McGeorge L. Rev. 1051 (2001).

For a list of background studies published in law reviews before 2000, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002).

or repeal. The Comments are included in the Commission's published recommendations. A Comment indicates the derivation of a section and often explains its purpose, its relation to other law, and potential issues concerning its meaning or application.²⁴

Commission Materials as Legislative History

Commission recommendations are printed and sent to both houses of the Legislature, as well as to the Legislative Counsel and Governor.²⁵ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁶

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁷ A copy of the recommendation is provided to legislative committee members and staff before the bill is heard and throughout the legislative process. The legislative committees rely on the recommendation in analyzing the bill and making recommendations to the Legislature concerning it.²⁸

24. Commission Comments are published by LexisNexis and Thomson/West in their print and CD-ROM editions of the annotated codes, and printed in selected codes prepared by other publishers. Comments are also available on Westlaw and LexisNexis.

25. See Gov't Code §§ 8291, 9795, 11094-11099; see also *Reynolds v. Superior Court*, 12 Cal. 3d 834, 847 n.18, 528 P.2d 45, 53 n.18, 117 Cal. Rptr. 437, 445 n.18 (1974) (Commission "submitted to the Governor and the Legislature an elaborate and thoroughly researched study").

26. See, e.g., Senate J. Aug. 18, 2003, at 2031 (noting receipt of 2002-2003 recommendations and their transmittal to the Committee on Judiciary).

27. See, e.g., Office of Chief Clerk, California State Assembly, California's Legislature 126-27 (2000) (discussing purpose and function of legislative committee system).

28. The Commission does not concur with the suggestion of the court in *Conservatorship of Wendland*, 26 Cal. 4th 519, 542, 28 P.3d 151, 166, 110 Cal. Rptr. 2d 412, 430 (2001), that a Commission Comment might be entitled to less weight based on speculation that the Legislature may not have read and endorsed every statement in the Commission's report. That suggestion belies the operation of the committee system in the Legislature. See White, *Sources of Legislative Intent in California*, 3 Pac. L.J. 63, 85 (1972) ("The best evidence of legislative intent must surely be the records of the legislature itself and the

If an amendment is made to the bill that renders one of the Commission's original Comments inconsistent, the Commission generally will adopt a revised Comment and provide it to the committee. The Commission also provides this material to the Governor's office once the bill has passed the Legislature and is before the Governor for action. These materials are a matter of public record.

Until the mid-1980s, a legislative committee, on approving a bill implementing a Commission recommendation, would adopt the Commission's recommendation as indicative of the committee's intent in approving the bill.²⁹ If a Comment required revision, the revised Comment would be adopted as a legislative committee Comment. The committee's report would be printed in the journal of the relevant house.³⁰

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.³¹

reports which the committees relied on in recommending passage of the legislation.”).

29. See, e.g., *Baldwin v. State*, 6 Cal. 3d 424, 433, 491 P.2d 1121, 1126, 99 Cal. Rptr. 145, 150 (1972). For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

30. For an example of such a report, see *Report of Senate Committee on Judiciary on Assembly Bill 3472*, Senate J. June 14, 1984, reprinted in 18 Cal. L. Revision Comm'n Reports 1, 115 (1986).

31. Commission reports have in the past been published as well in the legislative journals. See, e.g., *In re Marriage of Neal*, 153 Cal. App. 3d 117, 124, 200 Cal. Rptr. 341, 345 (1984) (noting that Chairman of Senate Judiciary Committee, when reporting on AB 26 on Senate floor, moved that revised Commission report be printed in Senate Journal as evidence of legislative intent).

Use of Commission Materials To Determine Legislative Intent

Commission materials that have been placed before and considered by the Legislature are legislative history, are declarative of legislative intent,³² and are entitled to great weight in construing statutes.³³ The materials are a key interpretive aid for practitioners as well as courts,³⁴ and courts may judicially notice and rely on them.³⁵ Courts at all levels of the state³⁶ and federal³⁷

32. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v. Williams*, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it. [Citation]”).

33. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d. 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. Southern Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal. App. 3d 391, 400, fn. 8 [276 Cal. Rptr. 524]; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal. App. 3d 524, 535, fn. 7 [260 Cal. Rptr. 713].) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal. App. 4th 23, 30, fn. 10 [17 Cal. Rptr. 2d 340].)

34. Cf. 7 B. Witkin, *Summary of California Law Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

35. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927, *supra* note 29; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

36. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Administrative Management Services, Inc. v. Fidelity & Deposit Co.*, 129 Cal. App. 3d 484, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.³⁸ Appellate courts alone have cited Commission materials in several thousand published opinions.³⁹

Commission materials have been used as direct support for a court's interpretation of a statute,⁴⁰ as one of several indicia of legislative intent,⁴¹ to explain the public policy behind a statute,⁴² and on occasion to demonstrate (by their silence) the Legislature's

37. See, e.g., *California v. Green*, 399 U.S. 149 (1970) (United States Supreme Court); *Southern Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950 (9th Cir. 1997) (federal court of appeal); *Williams v. Townsend*, 283 F. Supp. 580 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289 (Bankr. S.D. Cal. 1984) (bankruptcy court).

38. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 11 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature's intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

39. In this connection it should be noted that the Law Revision Commission should not be cited as the "Law Revision Committee" or as the "Law Review Commission." See, e.g., *Venerable v. City of Sacramento*, 185 F. Supp. 2d 1128, 1132 (E.D. Cal. 2002) (Law Revision "Committee"); *Ryan v. Garcia*, 27 Cal. App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

40. See, e.g., *People v. Ainsworth*, 45 Cal. 3d 984, 1015, 755 P.2d 1017, 1036, 248 Cal. Rptr. 568, 586 (1988).

41. See, e.g., *Heieck & Moran v. City of Modesto*, 64 Cal. 2d 229, 233 n.3, 411 P.2d 105, 108 n.3, 49 Cal. Rptr. 377, 380 n.3 (1966).

42. See, e.g., *Southern Cal. Gas Co. v. Public Utils. Comm'n*, 50 Cal. 3d 31, 38 n.8, 784 P.2d 1373, 1376 n.8, 265 Cal. Rptr. 801, 804 n.8 (1990).

intention not to change the law.⁴³ The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴⁴

Commission materials are entitled to great weight, but they are not conclusive.⁴⁵ While the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every consistent or inconsistent case is noted in the Comments,⁴⁶ nor can it anticipate judicial conclusions as to the significance of existing case authorities.⁴⁷ Hence, failure of the Comment to note every change the recommendation would make in prior law, or to refer to a consistent or inconsistent judicial decision, is not intended to, and should not, influence the construction of a clearly stated statutory provision.⁴⁸

43. See, e.g., *State ex rel. State Pub. Works Bd. v. Stevenson*, 5 Cal. App. 3d 60, 64-65, 84 Cal. Rptr. 742, 745-46 (1970) (finding that Legislature had no intention of changing existing law where "not a word" in Commission's reports indicated intent to abolish or emasculate well-settled rule).

44. See, e.g., *Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 935-36, 496 P.2d 480, 490, 101 Cal. Rptr. 568, 578 (1972).

45. See, e.g., *Redevelopment Agency v. Metropolitan Theatres Corp.*, 215 Cal. App. 3d 808, 812, 263 Cal. Rptr. 637, 639 (1989) (Comment does not override clear and unambiguous statute). Commission materials are but one indicium of legislative intent. See, e.g., *Estate of Joseph*, 17 Cal. 4th 203, 216, 949 P.2d 472, 480, 70 Cal. Rptr. 2d 619, 627 (1998). The accuracy of a Comment may also be questioned. See, e.g., *Buzgheia v. Leasco Sierra Grove*, 30 Cal. App. 4th 766, 774, 36 Cal. Rptr. 2d 144, 149 (1994); *In re Thomas*, 102 B.R. 199, 202 (Bankr. E.D. Cal. 1989).

46. Cf. *People v. Coleman*, 8 Cal. App. 3d 722, 731, 87 Cal. Rptr. 554, 559 (1970) (Comments make clear intent to reflect existing law even if not all supporting cases are cited).

47. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 885, 109 Cal. Rptr. 421, 426-27 (1973) (noting that decisional law cited in Comment was distinguished by the California Supreme Court in a case decided after enactment of the Commission recommendation).

48. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered*

Some types of Commission materials may not properly be relied on as evidence of legislative intent. Courts have on occasion cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a statute.⁴⁹ While these materials may be indicative of the Commission's intent in proposing the legislation, only the Legislature's intent in adopting the legislation is entitled to weight in construing the statute.⁵⁰ Unless preliminary Commission materials were placed before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.⁵¹

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵² However, documents prepared by or for the Commission

Disclosure of Privileged Information, 11 Cal. L. Revision Comm'n Reports 1163 (1973); 1974 Cal. Stat. ch. 227.

49. See, e.g., *Rojas v. Superior Court*, 33 Cal. 4th 407, 93 P.3d 260, 15 Cal. Rptr. 3d 643 (2005) (tentative recommendation, correspondence, and staff memorandum and draft); *Yamaha Corp. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12-13, 960 P.2d 1031, 1037, 78 Cal. Rptr. 2d 1, 7 (1998) (tentative recommendation). However, in some cases, proposed legislation will be based on a tentative, rather than final, Commission recommendation. See, e.g., *Estate of Archer*, 193 Cal. App. 3d 238, 243, 239 Cal. Rptr. 137, 140 (1987). In that event, reliance on the tentative recommendation is proper.

See also *Ilkhchooyi v. Best*, 37 Cal. App. 4th 395, 406, 45 Cal. Rptr. 2d 766, 772-73 (1995) (letter responding to tentative recommendation); D. Henke, *California Legal Research Handbook* § 3.51 (1971) (background studies).

50. Cf. *Rittenhouse v. Superior Court*, 235 Cal. App. 3d 1584, 1589, 1 Cal. Rptr. 2d 595, 598 (1991) (linking Commission's intent and Legislature's intent); *Guthman v. Moss*, 150 Cal. App. 3d 501, 508, 198 Cal. Rptr. 54, 58 (1984) (determination of Commission's intent used to infer Legislature's intent).

51. The Commission concurs with the opinion of the court in *Juran v. Epstein*, 23 Cal. App. 4th 882, 894 n.5, 28 Cal. Rptr. 2d 588, 594 n.5 (1994), that staff memoranda to the Commission should not be considered as legislative history.

52. See, e.g., *Duarte v. Chino Community Hosp.*, 72 Cal. App. 4th 849, 856 n.3, 85 Cal. Rptr. 2d 521, 525 n.3 (1999).

may be used by the courts for their analytical value, apart from their role in statutory construction.⁵³

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵⁴ Commission materials are also distributed to interest groups, lawyers, law professors, courts, district attorneys, law libraries, and other individuals requesting materials.

The Commission's reports, recommendations, and studies are republished in hardcover volumes that serve as a permanent record of the Commission's work and, it is believed, are a valuable contribution to the legal literature of California. These volumes are available at many county law libraries and at some other libraries. About half of the hardcover volumes are out of print, but others are available for purchase.⁵⁵ Publications that are out of print are available as electronic files.⁵⁶

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁷ Interested persons with Internet access can find the current agenda, meeting minutes, background studies,

53. See, e.g., *Sierra Club v. San Joaquin Local Agency Formation Comm'n*, 21 Cal. 4th 489, 502-03, 981 P.2d 543, 551-52, 87 Cal. Rptr. 2d 702, 712 (1999) (unenacted Commission recommendation useful as "opinion of a learned panel"); *Hall v. Hall*, 222 Cal. App. 3d 578, 585, 271 Cal. Rptr. 773, 777 (1990) (Commission staff report most detailed analysis of statute available); *W.E.J. v. Superior Court*, 100 Cal. App. 3d 303, 309-10, 160 Cal. Rptr. 862, 866 (1979) (law review article prepared for Commission provides insight into development of law); *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 407 n.4, 123 Cal. Rptr. 669, 673 n.4 (1975) (court indebted to many studies of Commission for analytical materials).

54. See Gov't Code § 8291. For limitations on Section 8291, see Gov't Code §§ 9795, 11094-11099.

55. See *Commission Publications*, Appendix 5 *infra*.

56. See "Electronic Publication and Internet Access" *infra*.

57. The URL for the Commission's website is <<http://www.clrc.ca.gov>>.

tentative and final recommendations, staff memoranda, and general background information.

Since 2002, all Commission publications and staff memoranda are available as electronic files. Recent publications and memoranda may be downloaded from the Commission's website. Files that are not on the website are available on request.⁵⁸

Electronic Mail

Email commenting on Commission proposals or suggesting issues for study is given the same consideration as letter correspondence, if the email message includes the name and regular mailing address of the sender. Email to the Commission may be sent to *commission@clrc.ca.gov*.

The Commission distributes the majority of its meeting agendas, staff memoranda, and other written materials electronically, by means of its website and email distribution lists. The Commission encourages use of email as an inexpensive and expedient means of communication with the Commission.

MCLE Credit

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁵⁹ or may be purchased in advance from the Commission.

Personnel of Commission

As of December 11, 2008, the following persons were members of the Law Revision Commission:

58. See *Commission Publications*, Appendix 5 *infra*.

59. See "Electronic Publication and Internet Access" *supra*.

Legislative Members⁶⁰

Senator Ellen Corbett, San Leandro
 Assembly Member Noreen Evans, Santa Rosa

Members Appointed by Governor⁶¹

	<i>Term Expires</i>
Pamela L. Hemminger, Los Angeles <i>Chairperson</i>	October 1, 2011
Susan Duncan Lee, San Francisco <i>Vice Chairperson</i>	October 1, 2011
Sidney Greathouse, Calabasas Hills	October 1, 2011
Frank Kaplan, Santa Monica	October 1, 2009
William E. Weinberger, Los Angeles	October 1, 2009
Justice John Zebrowski (ret.), Glendale	October 1, 2011

Legislative Counsel⁶²

Diane F. Boyer-Vine, Sacramento

Effective September 1, 2008, the Commission elected Pamela L. Hemminger as Chairperson (succeeding Sidney Greathouse), and Susan Duncan Lee as Vice Chairperson (succeeding Pamela L. Hemminger). The terms of the new officers end August 31, 2009.

On October 24, 2008, the Governor appointed retired Associate Justice John Zebrowski of Glendale as a Commissioner, filling the vacant seat of former Commissioner David Huebner. Justice Zebrowski's term as Commissioner ends on October 1, 2011.

60. The Senate and Assembly members of the Commission serve at the pleasure of their respective appointing powers, the Senate Committee on Rules and the Speaker of the Assembly. Gov't Code § 8281.

61. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 60 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

62. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

On October 17, 2008, Edmund L. Regalia retired from the Commission after six years of distinguished service as a member of the Commission, including one year as Vice Chairperson and one year as Chairperson. The Commission adopted the following resolution in honor of Mr. Regalia at its meeting in Burbank on December 11, 2008:

CALIFORNIA LAW REVISION COMMISSION
RESOLUTION IN HONOR OF

EDMUND L. REGALIA

[text of resolution to be presented in supplemental memorandum]

The following persons are on the Commission's staff:

Legal

BRIAN HEBERT
Executive Secretary

BARBARA S. GAAL
Chief Deputy Counsel

CATHERINE BIDART
Staff Counsel

STEVE COHEN
Staff Counsel

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

VICTORIA V. MATIAS
Secretary

Elizabeth Lyon, a student at the University of California, Hastings College of the Law, and Michael Djavakhyan, a student at the University of California, Davis, School of Law, worked for the Commission during the 2007-08 academic year on a work-study basis. Andrew Slade, a student at the University of California, Davis, School of Law, worked for the Commission during the 2007-08 academic year as an extern.

Commission Budget

The Commission's operations are funded from the state general fund. The amount appropriated to the Commission for the 2008-09 fiscal year from the general fund is \$664,223.00.

The Commission's general fund allocation is supplemented by \$15,000.00 budgeted for income generated from sale of documents to the public, representing reimbursement for the production and shipping cost of the documents.

The Commission also receives substantial donations of necessary library materials from the legal publishing community, especially California Continuing Education of the Bar, LexisNexis, and Thomson/West. The Commission receives additional library materials from other legal publishers and from other law reform agencies on an exchange basis, and has full access to the Stanford University Law Library and the McGeorge Law School Library. In 2008, the Commission received donations of benchbooks from the California Center for Judicial Education and Research (CJER). In addition, Professor William R. Slomanson of the Thomas Jefferson School of Law donated a copy of his new book, *Slomanson, California Civil Procedure in a Nutshell* (3d ed. 2008).

The Commission is grateful for these contributions.

Other Activities

The Commission is directed by statute to cooperate with bar associations and other learned, professional, or scientific associations, institutions, or foundations in any manner suitable for the fulfillment of the purposes of the Commission.⁶³

National Conference of Commissioners on Uniform State Laws

The Commission is directed by statute to receive and consider proposed changes in the law recommended by the National Conference of Commissioners on Uniform State Laws.⁶⁴ Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform

63. Gov't Code § 8296.

64. Gov't Code § 8289.

State Laws and the National Conference. The Commission's Executive Secretary, Brian Hebert, is an associate member of the National Conference.

Education

On February 27, 2008, Brian Hebert, Executive Secretary, met with the government affairs committee of the Sun City Roseville community, to discuss the Commission's study of common interest development law. On February 28, 2008, Mr. Hebert spoke at the 2008 Probate Institute held by the California Center for Judicial Education and Research, to discuss the Commission's recommendation to reform the no contest clause statute. On March 13, 2008, Mr. Hebert appeared at a town hall meeting in San Diego organized by Assembly Member Lori Saldaña to discuss oversight of common interest developments. On May 22, 2008, Mr. Hebert participated in a discussion of legislative reform of common interest development law at an event in San Francisco organized by the Executive Council of Homeowners.

Legislative History of Recommendations in the 2008 Legislative Session

In 2008, bills to effectuate eight new Commission recommendations were introduced.⁶⁵ Four of the recommendations were enacted.⁶⁶ A resolution relating to the Commission's calendar

65. In response to a request by the Senate Committee on the Judiciary, the Commission also submitted two recommendations to the Legislature relating to the rules of evidence, but did not seek introduction of legislation to effectuate these recommendations. See *Miscellaneous Hearsay Exceptions: Present Sense Impression*, 37 Cal. L. Revision Comm'n Reports 407 (2007, *Miscellaneous Hearsay Exceptions: Forfeiture by Wrongdoing*, 37 Cal. L. Revision Comm'n Reports 443 (2007).

66. Two bills introduced in 2007 to effectuate Commission recommendations became two year bills and were not enacted. See AB 250 (DeVore) (revocable transfer on death deed); AB 567 (Saldaña) (common interest development ombudsperson).

One bill introduced in 2008 was voluntarily withdrawn for further study by the Commission. See AB 1921 (Saldaña) (statutory clarification and simplification of CID law). One bill was not approved by the Legislature. See AB 2166 (Tran) (appellate jurisdiction of bail forfeiture). Two bills were

of topics was also passed by the Legislature in the 2007-2008 legislative session.

Deposition in Out-of-State Litigation

Assembly Bill 2193 (2008 Cal. Stat. ch. 231) was introduced by Assembly Member Van Tran to effectuate the Commission's recommendation on *Deposition in Out-of-State Litigation*, 37 Cal. L. Revision Comm'n Reports 99 (2007). The measure was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 231 of the Statutes of 2008 (Assembly Bill 2193)*, 38 Cal. L. Revision Comm'n Reports 75 (2008) (Appendix 5 *infra*).

Trial Court Restructuring

Senate Bill 1182 (2008 Cal. Stat. ch. 56) was introduced by Senator Dick Ackerman to effectuate two of the Commission's recommendations, on *Trial Court Restructuring: Part 4*, 37 Cal. L. Revision Comm'n Reports 171 (2007), and *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction*, 37 Cal. L. Revision Comm'n Reports 195 (2007). The measure was enacted.

Revision Of No Contest Clause Statute

Senate Bill 1264 (2008 Cal. Stat. ch. 174) was introduced by Senator Tom Harman to effectuate the Commission's recommendation on *Revision of No Contest Clause Statute*, 37 Cal. L. Revision Comm'n Reports 359 (2008). The measure was enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 174 of the Statutes of 2008 (Senate Bill 1264)*, 38 Cal. L. Revision Comm'n Reports 73 (2008) (Appendix 4 *infra*).

vetoed in connection with the historic delay in enacting a budget. See SB 1691 (Lowenthal) (mechanics lien law); AB 2299 (Silva) (recording technology). The Governor's veto message on both bills reads in relevant part as follows:

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.

Resolution Authorizing Topics for Study

Assembly Concurrent Resolution 35 (2007 Cal. Stat. ch. 100) was introduced by Assembly Member Noreen Evans. It authorizes the Commission's continued study of 21 previously authorized topics, removes the Commission's authority to study the circumstances in which parties are entitled to oral argument and related matters, and authorizes the Commission to study the new topic of place of trial in a civil case.

**Report on Statutes Repealed by Implication
or Held Unconstitutional**

Government Code Section 8290 provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared⁶⁷ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.⁶⁸

67. This study has been carried through opinions published on or before November 3, 2008.

68. The Commission also found two decisions of the United States Supreme Court holding that a California statute is preempted by federal law.

In *Chamber of Commerce of the United States of America v. Brown*, ___ U.S. ___, 128 S. Ct. 2408 (2008), the United States Supreme Court held that Government Code Sections 16645.2 and 16645.7 are pre-empted by the National Labor Relations Act (29 U.S.C. § 151 et seq.).

In *Preston v. Ferrer*, ___ U.S. ___, 128 S. Ct. 978 (2008), the United States Supreme Court held that Labor Code Sections 1700.44(a) and 1700.45 are preempted by the Federal Arbitration Act (9 U.S.C. § 1 et seq.).

- One decision of the California Supreme Court holding a state statute unconstitutional has been found, as described below.⁶⁹

In *In re Marriage Cases*, 43 Cal. 4th 757, 183 P.3d 384, 76 Cal. Rptr. 3d 683 (2008), the California Supreme Court held that a clause in Family Code Section 300 defining marriage as between “a man and a woman,” and Family Code Section 308.5, which provides that “only marriage between a man and a woman is valid or recognized in California,” infringe on a fundamental constitutional right to marry embodied in article I, section 1 of the California Constitution, and violate the equal protection provision of the California Constitution (Art. 1, § 7).

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized, but delete as a topic for study the topic of offers of compromise.⁷⁰

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under “Report on Statutes Repealed by Implication or Held Unconstitutional,” *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

69. The Commission also found a decision of the California Supreme Court holding that the Legislature’s ratification of a memorandum of understanding between the state and a state employee union violated Section 5 of Proposition 35 (enacted by the electorate on November 7, 2000), and article XXII, § 1 of the California Constitution, which relates to government contracts for architectural and engineering services. *Consulting Engineers and Land Surveyors of California, Inc. v. Professional Engineers in California Government*, 42 Cal. 4th 578, 169 P3d 903, 67 Cal. Rptr. 3d 485 (2007).

70. See *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.