

Admin.

November 17, 2011

Memorandum 2011-37

2011-2012 Annual Report (Staff Draft)

Attached to this memorandum is a staff draft of the text of the Commission's *2011-2012 Annual Report*. In the interest of saving photocopying and mailing costs, we have not reproduced the standard appendices to the Annual Report (e.g., text of Commission's governing statute, calendar of topics, cumulative table of legislative action on Commission recommendations, and Commission publications). After approval of the text of the Annual Report, the staff will add these appendices.

Much of the content of the Annual Report is routine, and does not change significantly from year to year. A few matters requiring special attention are noted below.

Major Studies in Progress

The report describes the major studies that the Commission will be working on in 2012. See pp. 10-11. That description may be affected by decisions that the Commission makes in its review of new topics and priorities for 2012. If so, the report will be revised to reflect those decisions.

Personnel of Commission

The report reflects the composition of the Commission as of November 29, 2011. See pp. 7, 23-24. As such, the report reflects the appointment of Assembly Member Roger Dickinson as a Commissioner on February 15, 2011, and the end of service of Commissioners Mark Dundee and Stephen Murphy on July 7, 2011, and of Commissioner Damian Capozzola on November 14, 2011.

Activities of Commission Members and Staff

The report typically notes any activities of Commission members and staff related to the Commission's work, such as speeches made and articles published

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.

during the past year. See p. 26. **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

2011-2012 Annual Report

California Law Revision Commission
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Cite this report as *2011-2012 Annual Report*, 41 Cal. L. Revision
Comm'n Reports 1 (2011).

SUMMARY OF WORK OF COMMISSION

Recommendations to the 2011 Legislature

In 2011, bills effectuating four Commission recommendations were enacted, relating to the following subjects:

- Record notice of option to purchase real property
- Obsolete cross-references to former Code of Civil Procedure Section 116.780(d)
- Nonsubstantive reorganization of deadly weapon statutes (clean-up legislation)
- Reorganization of mechanics lien law (clean-up legislation)

Two bills that were introduced in 2011 were held over for further consideration by the Legislature in 2012.

Recommendations to the 2012 Legislature

In 2012, the Commission expects that the Legislature will consider new legislation recommended by the Commission, and continue consideration of Commission-recommended legislation introduced in 2011, on the following subjects:

- Statutory clarification and simplification of CID law
- Commercial and industrial common interest developments
- Trial court restructuring:
 - Rights and responsibilities of the county as compared to the superior court
 - Appellate jurisdiction of bail forfeiture
 - Writ jurisdiction in a small claims case
 - Compensation under Evidence Code Sections 731, 752, and 753
- Statutory cross-references to the “Tort Claims Act”

Commission Activities Planned for 2012

During 2012, the Commission intends to work on the following major topics: Community Redevelopment Law (clean-up legislation), the Uniform Adult Guardianship and Protective

Proceedings Jurisdiction Act (UAGPPJA), commercial and industrial subdivisions, and exemptions from enforcement of judgments. The Commission will work on other topics as time permits.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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November 29, 2011

To: The Honorable Edmund G. Brown, Jr.
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 2011 and its plans for 2012.

Four of the five Commission recommendations considered by the Legislature in 2010 were enacted into law, in whole or in substantial part. The fifth recommendation would be enacted by a two-year bill that remains pending in the Legislature.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2011:

- Senator Tom Harman (Record Notice of Option to Purchase Real Property)
- Senator Alan Lowenthal (Mechanics Lien Law: Clean-Up Legislation)
- Senate Committee on Judiciary (Obsolete Cross-References to Former Code Civ. Proc. § 116.780(d))
- Assembly Committee on Public Safety (Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation)

- Assembly Member Norma Torres (Statutory Clarification and Simplification of CID Law)

The Commission held five one-day meetings in 2011. Meetings were held in Sacramento and Davis.

Respectfully submitted,

Associate Justice
John Zebrowski (ret.)
Chairperson

2011-2012 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,¹ with responsibility for a continuing substantive review of California statutory and decisional law.² 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:³

- 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.⁴

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

2. 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).

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

4. 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 395 recommendations to the Legislature, of which 361 (more than 90%) have been enacted in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 24,329 sections of California law: 4,819 sections amended, 10,652 sections added, and 8,868 sections repealed.

The Commission's recommendations, reports, and other selected materials are published annually in hardcover volumes. Recent materials are also available through the Internet. A list of past publications and information on obtaining printed or electronic versions of Commission material can be found at the end of this Annual Report.⁶

2012 Legislative Program

In 2012, the Commission plans to seek the introduction or continued consideration of legislation effectuating Commission recommendations on the following subjects:

- Statutory clarification and simplification of CID law
- Commercial and industrial common interest developments
- Trial court restructuring:
 - Rights and responsibilities of the county as compared to the superior court
 - Appellate jurisdiction of bail forfeiture
 - Writ jurisdiction in a small claims case
 - Compensation under Evidence Code Sections 731, 752, and 753
- Statutory cross-references to the "Tort Claims Act"

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

6. See *Commission Publications*, Appendix 4 *infra*.

Major Studies in Progress

During 2012, the Commission intends to work on the following major topics: Community Redevelopment Law (clean-up legislation), the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), commercial and industrial subdivisions, and exemptions from enforcement of judgments (third decennial review). The Commission will work on other topics as time permits.

Community Redevelopment Law Clean-Up Legislation

The Legislature has directed the Commission to draft a clean-up bill relating to the Community Redevelopment Law (Health and Safety Code §§ 33000-33855), for consideration by the Legislature no later than January 1, 2013.⁷

However, the statute that authorizes the Commission to study redevelopment law has been stayed by the California Supreme Court, pending resolution of a suit challenging the statute's constitutionality.⁸ The Commission will begin work on this study once the Court has made its decision in that case.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

The Commission will continue to study whether the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) should be adopted in California, and, if so, in what form it should be adopted.

Commercial and Industrial Subdivisions

The Commission is studying whether to clarify the application of two related provisions, Business and Professions Code Section 11010.3 and Civil Code Section 1373, which exempt commercial and industrial subdivisions from the Subdivided Lands Act and portions of the Davis-Stirling Common Interest Development Act.

7. 2011 Cal. Stat. ch. 5 (AB 1X 26, § 7 (Blumenfeld)).

8. *California Redevelopment Association v. Matosantos*, Case No. S194861.

Exemptions from Enforcement of Judgments: Third Decennial Review

As directed by the Legislature,⁹ the Commission will review the existing exemptions from enforcement of judgments and recommend any needed revisions in those provisions.

Other Subjects

The major studies in progress described above will dominate the Commission's time and resources during 2012. As time permits, the Commission will consider other subjects authorized for study.

Calendar of Topics for Study

The Commission's calendar includes 22 topics authorized by the Legislature for study.¹⁰

Function and Procedure of Commission

The principal duties of the Commission are to:¹¹

- (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,¹² 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.¹³

9. See Code Civ. Proc. § 703.120.

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

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

12. 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.

13. 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 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.¹⁴ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.¹⁵ Additionally, a concurrent resolution¹⁶ or statute¹⁷ may directly confer authority to study a particular subject.

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*.

14. 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.

15. Gov't Code § 8298.

16. 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).

17. 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).

Background Studies

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.¹⁸ 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.¹⁹ When

18. 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 School of Law; 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, UC Davis School of Law; Nathaniel Sterling, former Executive Secretary, California Law Revision Commission, Palo Alto; Professor Gregory S. Weber, McGeorge School of Law.

19. 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 Gaal, *Evidence Legislation in California*, 36 S.W.U. L. Rev. 561, 563-69 (2008); Quillinan, *The Role and*

the Commission has reached a conclusion on the matter,²⁰ 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.²¹

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).

20. 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.

21. For recent background studies published in law reviews, see Méndez, *California Evidence Code - Federal Rules of Evidence*, IX. General Provisions, 44 U.S.F. L. Rev. 891 (2010); Méndez, *California Evidence Code - Federal Rules of Evidence*, VIII. Judicial Notice, 44 U.S.F. L. Rev. 141 (2009); Méndez, *California Evidence Code - Federal Rules of Evidence*, VII. Relevance: Definition and Limitations, 42 U.S.F. L. Rev. 329 (2007); 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 (2003); 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

Official Comments

The Commission ordinarily prepares an official Comment explaining each section it recommends for enactment, amendment, 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.²²

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.²³ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁴

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁵ 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.²⁶

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).

22. Commission Comments are published by LexisNexis and Thomson Reuters 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, Westlaw Next, and LexisNexis.

23. 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").

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

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

26. 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.

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.²⁷ 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.²⁸

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

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

27. 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).

28. 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).

reports are published as appendices to the Commission's annual reports.²⁹

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,³⁰ and are entitled to great weight in construing statutes.³¹ The materials are a key interpretive aid for practitioners as well as courts,³² and courts may judicially notice

29. 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).

30. 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.").

31. See, e.g., *Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 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. S. 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].)

32. 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).

and rely on them.³³ Courts at all levels of the state³⁴ and federal³⁵ judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.³⁶ Appellate courts alone have cited Commission materials in several thousand published opinions.³⁷

33. 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; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

34. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt Services, Inc. v. Fid. Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 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).

35. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman (In re Hilde)*, 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell (In re McDonell)*, 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

36. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 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), overruled on other grounds by *Privette v. Superior Court*, 5 Cal. 4th 689, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *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).

37. 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.

Commission materials have been used as direct support for a court's interpretation of a statute,³⁸ as one of several indicia of legislative intent,³⁹ to explain the public policy behind a statute,⁴⁰ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.⁴¹ The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴²

Commission materials are entitled to great weight, but they are not conclusive.⁴³ 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,⁴⁴ nor can it anticipate judicial

App. 4th 1006, 1010 n.2, 33 Cal. Rptr. 2d 158, 160 n.2 (1994) (Law "Review" Commission).

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

39. 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).

40. 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).

41. 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).

42. 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).

43. 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).

44. *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).

conclusions as to the significance of existing case authorities.⁴⁵ 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.⁴⁶

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.⁴⁷ 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.⁴⁸ Unless preliminary Commission materials were placed before the

45. 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).

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

47. 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).

48. 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).

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.⁴⁹

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵⁰ However, documents prepared by or for the Commission may be used by the courts for their analytical value, apart from their role in statutory construction.⁵¹

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵² 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 published 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.

49. 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.

50. 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).

51. 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).

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

About half of the hardcover volumes are out of print, but others are available for purchase.⁵³ Publications that are out of print are available as electronic files.⁵⁴

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁵ Interested persons with Internet access can find the current agenda, meeting minutes, background studies, 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.⁵⁶

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

53. See *Commission Publications*, Appendix 4 *infra*.

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

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

56. See *Commission Publications*, Appendix 4 *infra*.

meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁵⁷ or may be purchased in advance from the Commission.

Personnel of Commission

As of November 29, 2011, the following persons were members of the Law Revision Commission:

Legislative Members⁵⁸

Senator Tom Harman, Costa Mesa
Assembly Member Roger Dickinson, Sacramento

Members Appointed by Governor⁵⁹

Term Expires

Associate Justice John Zebrowski (ret.), Glendale	October 1, 2011
<i>Chairperson</i>	
Sidney Greathouse, Calabasas Hills	October 1, 2011
Pamela L. Hemminger, Los Angeles	October 1, 2011
Susan Duncan Lee, San Francisco	October 1, 2011
<i>Vacant</i>	October 1, 2013
<i>Vacant</i>	October 1, 2013
<i>Vacant</i>	October 1, 2013

Legislative Counsel⁶⁰

Diane F. Boyer-Vine, Sacramento

57. See “Electronic Publication and Internet Access” *supra*.

58. 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.

59. 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).

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

On February 15, 2011, Assembly Member Roger Dickinson was appointed to the Commission, replacing Assembly Member Noreen Evans.

On July 7, 2011, Commissioners Stephen Murphy and Mark Dundee ended their service as Commissioners.

On November 14, 2011, Commissioner Damian Capozzola ended his service as Commissioner.

The following persons are on the Commission's staff:

Legal

BRIAN HEBERT
Executive Director

BARBARA S. GAAL
Chief Deputy Counsel

STEVE COHEN
Staff Counsel

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

VICTORIA V. MATIAS
Secretary

Heather Cantua, Errol Daus, Christopher Magana, Vishtasp Soroushian, and Louis Wai, students at the University of California, Davis, School of Law, and Benjamin Lee, a student at the University of Virginia School of Law, also worked for the Commission during 2011.

Commission Budget

The Commission's operations for the 2011-12 fiscal year have been funded through reimbursements from the California Legislature. The amount appropriated to the Commission is \$650,000.

The Commission's reimbursement allocation is supplemented by \$15,000 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 Reuters. In addition, the Commission receives benchbooks from the California Center for Judicial Education and Research (CJER). 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 law libraries at the University of California, Davis, School of Law and at Stanford Law School. 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.⁶¹

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.⁶² Legislative Counsel and Commission member Diane F. Boyer-Vine is a member of the California Commission on Uniform State Laws and the National Conference. The Commission's Executive Secretary, Brian Hebert, is an associate member of the National Conference.

Other Staff Activities

In 2011, the Chief Deputy Counsel continued to serve as the Commission's liaison to the Judicial Counsel's Small Civil Cases Working Group. The group completed its work on expedited jury trials and began to re-examine jurisdictional limits, economic litigation procedures, small claims procedures, and related matters.

61. Gov't Code § 8296.

62. Gov't Code § 8289.

The Chief Deputy Counsel also co-authored an article on the Secondary Evidence Rule with Prof. Edward Imwinkelried and Prof. Miguel Mendez, both of the University of California, Davis, School of Law. The article has not yet been published.

Legislative History of Recommendations in the 2011 Legislative Session

In 2011, bills to effectuate five Commission recommendations were introduced. Four of the recommendations were enacted.

Marketable Record Title: Notice of Option

Senate Bill 284 (2011 Cal. Stat. ch. 46) was introduced in 2011 by Senator Tom Harman to effectuate the Commission's recommendation on *Marketable Record Title: Notice of Option*, 39 Cal. L. Revision Comm'n Reports 99 (2009). The measure was enacted, with amendments.

Obsolete Cross-References to Former Code Civ. Proc. § 116.780(d)

Senate Bill 647 (2011 Cal. Stat. ch. 308) was introduced by the Senate Judiciary Committee to, among other things, effectuate the Commission's recommendation on *Obsolete Cross-References to Former Code of Civil Procedure Section 116.780(d)*, 39 Cal. L. Revision Comm'n Reports 223 (2009). The measure was enacted.

Deadly Weapons Clean-Up Legislation

Assembly Bill 1402 (2011 Cal. Stat. ch. 285) was introduced by the Assembly Committee on Public Safety to effectuate the Commission's recommendation on *Nonsubstantive Reorganization of Deadly Weapons Statutes: Clean-Up Legislation*, 41 Cal. L. Revision Comm'n Reports ____ (2011). The measure was enacted.

Mechanics Lien Law Clean-Up Legislation

Senate Bill 190 (2010 Cal. Stat. ch. 44) was introduced in 2011 by Senator Alan Lowenthal to effectuate the Commission's recommendation on *Mechanics Lien Law: Clean-Up Legislation*, 41 Cal. L. Revision Comm'n Reports ____ (2011). The measure was enacted.

Statutory Clarification and Simplification of CID Law

Assembly Bills 805 and 806 were introduced by Assembly Member Norma Torres to effectuate the Commission's recommendation on *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010). Both measures were held for further consideration in 2012.

**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 prepared⁶³ and has the following to report:

- No decision holding a state statute repealed by implication has been found.
- One decision of the United States Supreme Court holding a state statute unconstitutional has been found, as described below.
- No decision of the California Supreme Court holding a state statute unconstitutional has been found.

In *Brown v. Entertainment Merchants Association*, __ U.S. __, 131 S. Ct. 2729 (2011), the United States Supreme Court held that Civil Code Sections 1746-1746.5, which prohibit the sale or rental of a "violent video game" to a minor, violate the First Amendment of the United States Constitution.

63. This study has been carried through opinions published on or before November 14, 2011.

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁶⁴

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.

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

