

Memorandum 2012-9

2012 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's 2012 legislative program. The staff will supplement that information orally, if necessary, at the April meeting.

The remainder of this memorandum discusses (1) possible amendments to the Commission's resolution of authority, (2) a bill that would withdraw the statutory directive to prepare redevelopment clean-up legislation, and (3) a bill that would eliminate the Law Revision Commission.

ACR 98 (WAGNER) — RESOLUTION OF AUTHORITY

Assembly Member Donald Wagner has introduced ACR 98 to reauthorize the Commission's existing "calendar of topics" for study.

At its February 2012 meeting, the Commission decided to seek the following two amendments to the resolution:

- (1) Delete the existing authority to study special assessments for public improvements.
- (2) Add authority to conduct a comprehensive technical review of the Fish and Game Code.

See Minutes (Feb. 2012), p. 4. Regarding the possible new study of Fish and Game law:

The Commission asked the staff to draft appropriate language to include in the pending resolution on the Commission's Calendar of Topics (ACR 98 (Wagner)), and to present the draft to the Commission for review at its next meeting. The Commission also expressed interest in receiving submissions that demonstrate the need for this type of study.

Id.

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 Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

In response to the Commission's request for more information about the need for the study of Fish and Game law, Diane Colborn (Chief Consultant for the Assembly Water, Parks & Wildlife Committee) and William Craven (Chief Consultant for the Senate Committee on Natural Resources and Water) have submitted a new memorandum to supplement the information previously provided by Senator Pavley and Assembly Member Huffman (see Memorandum 2012-5, at Exhibit p. 32).

The supplemental memorandum from Ms. Colborn and Mr. Craven, which has also been reviewed by Thomas Gibson (General Counsel for the Department of Fish and Game), is attached as an Exhibit to this memorandum.

In consultation with Assembly Member Wagner, Ms. Colborn, Mr. Craven, and Mr. Gibson, the staff has developed the following language that could be added to ACR 98 to authorize the requested study of Fish and Game law:

Resolved, That the Legislature approves for study by the California Law Revision Commission the new topic listed below:

Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law;

The staff recommends that the Commission approve this language for inclusion in ACR 98.

Assembly Member Wagner also received a suggestion, from the Los Angeles District Attorney's Office, that ACR 98 be amended to broaden an existing requirement that the Commission consult with the Judiciary Committee of each house before beginning the study of a topic authorized in the resolution. The proposed revision would require that the Commission *also* consult with other policy committees, if those other committees have jurisdiction over the subject matter of a Commission study. Thus:

Resolved, That before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, the commission shall submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary ~~and~~ the Senate Committee on Judiciary, and any other policy committee that has jurisdiction over the subject matter of the study, and if during the course of the project there is a major change to the scope of work, submit a description of the change;

The existing requirement makes sense because it is generally the Judiciary Committees that hear the Commission’s resolution of authority, and so function as a gate-keeper over the matters authorized for Commission study. However, it also makes sense for the Commission to consult with other relevant committees, when the subject matter of a study falls outside of the jurisdiction of the Judiciary Committees. In the past, the Commission has consulted with the staff of relevant policy committees when starting a major new study. It would not be too burdensome to instead consult with the Chair and Vice Chair of the committee, as the proposed language would require.

AB 1585 (PÉREZ) — REDEVELOPMENT LAW

Assembly Bill 1585 (Pérez) would make a number of changes to redevelopment law, on an urgency basis. Most notably, the bill would repeal Health and Safety Code Section 34189(b), which is the provision that requires the Commission to “draft a Community Redevelopment Law cleanup bill for consideration by the Legislature no later than January 1, 2013.”

If this bill is approved by the Legislature and signed by the Governor, the Commission’s duty (and authority) to prepare redevelopment clean-up legislation would be withdrawn. At that point, the staff would cease all work on the redevelopment study and shift its resources to other pending studies.

However, it is not certain that the repeal of Section 34189(b) will be enacted into law. Therefore, the Commission must continue its work on redevelopment, with a commitment of resources sufficient to ensure completion of the study by the existing statutory deadline.

AB 2328 (OLSEN) — ELIMINATION OF CALIFORNIA LAW REVISION COMMISSION

Assembly Bill 2328 (Olsen) would statutorily eliminate the Commission. A fact sheet prepared by Assembly Member Olsen’s office, explains the purpose of the bill as follows:

THE ISSUE

The Law Revision Commission serves a function that many other entities already handle, like the Commission on Uniform State Laws.

Part of the mission of the Law Revision Commission is to make recommendations to the Governor, yet the Governor has been

recommending over the past two years that it be eliminated or at least consolidated.

The Law Revision Commission is not an efficient or widely enough used service for the expenditure of our fleeting government dollars.

EXISTING LAW

The California Law Revision Commission is responsible for reviewing California statutory and decisional law and recommending legislative revisions. The Commission on Uniform State Laws recommends to the Legislature uniform laws recommended by the National Conference of Commissioners on Uniform State Laws.

Prior to the 2010 Budget Act, these Commissions were funded from their own General Fund appropriations. Since then, these Commissions have been funded by the Legislative Counsel Bureau.

THE SOLUTION

Eliminating the Law Revision Commission would save the State's General Fund over half a million dollars and alleviate responsibility from the Legislative Counsel Bureau.

The staff will follow the progress of AB 2328 but will be careful to abide by Government Code Section 8288, which broadly prohibits Commissioners and staff from taking any official position on any bill:

8288. ... In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2012 Commission Legislative Program

As of March 14, 2012

	AB 805	AB 806	AB 1529	ACR 98					
Introduced Last Amended	2/17/11	2/17/11	1/23/12	2/2/12					
First House									
Policy Committee	4/6/11	4/6/11	3/20/12						
Second Committee	4/26/11	4/26/11							
Passed House	5/2/11	5/2/11							
Second House									
Policy Committee	1/10/12	1/10/12							
Second Committee									
Passed House									
Concurrence									
Governor									
Received									
Approved									
Secretary of State									
Date									
Chapter #									

Bill List:

AB 805 (Torres): Statutory Clarification and Simplification of CID Law
 AB 806 (Torres): Statutory Clarification and Simplification of CID Law (Conforming Revisions)
 AB 1529 (Dickinson): Trial Court Restructuring
 ACR 98 (Wagner): Resolution of Authority

Also of Interest:

AB 1585 (Perez, et al.): Redevelopment
 AB 2328 (Olsen): Elimination of CLRC
 SB 1213 (Walters): Charter schools and the Gov't Claims Act

Other redevelopment-related bills include: AB 343 (Atkins), AB 1235 (Hernandez), AB 1555 (Norby), AB 1644 (Carter), AB 1692 (Wieckowski), AB 2146 (Mansoor), AB 2314 (Carter), SB 77 (Committee on Budget & Fiscal Review), SB 314 (Vargas), SB 659 (Padilla & Rubio), SB 986 (Dutton), SB 1056 (Hancock), SB 1151 (Steinberg), SB 1156 (Steinberg), SB 1157 (Berryhill), SB 1335 (Pavley), SB 1439 (Huff), SB 1472 (Pavley & DeSaulnier)

KEY

Italics: Future or speculative

"—": Not applicable

*: Double referral, not fiscal

[date]: Deadline

Description of the Problem

The Fish and Game Code, and the responsibilities of the Department of Fish and Game and the Fish and Game Commission have evolved and changed considerably over the past 140 years. While there have been some updates to the Code in recent years, it has been many years since a thorough and comprehensive review of the entire code has been conducted. The Department, Commission and stakeholders have frequently complained about inconsistencies and ambiguities in the code, unfunded or obsolete mandates, and a lack of clarity in the organization of the code. The Legislature and the effective implementation of California's fish and wildlife laws would benefit significantly from a comprehensive, thorough, technical and independent review of the code.

Proposed Solution

As chairs of the Senate and Assembly policy committees with subject matter jurisdiction over fish and wildlife policy issues, Senator Fran Pavley and Assembly Member Jared Huffman have requested that the Law Revision Commission (LRC) consider undertaking the project of conducting a thorough review of the Fish and Game Code for purposes of making recommendations to the Legislature on changes to update, clarify and improve the Code. The LRC is well equipped to do this work and to make recommendations for revisions to improve the Code's organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, and make other improvements, without making any significant substantive change to the effect of the law.

As part of the LRC's review, it would also be helpful if the LRC could identify mandates and responsibilities of the Department of Fish and Game and the Fish and Game Commission, identify areas where particular mandates and responsibilities may overlap with the mandates and responsibilities of other agencies, and identify programs that lack identified funding sources. In addition, it would be helpful if the LRC could identify areas where there may be a lack of clarity regarding the roles of the Department and the Fish and Game Commission, with recommendations as to how such lack of clarity might be addressed. Where correction of an inconsistency or ambiguity would require a substantive change in the effect of the law, it is recognized that it is beyond the scope of the LRC's authority, but it would nevertheless be helpful if the LRC could make note of those issues and identify potential options for addressing them where appropriate.

Argument in Support of Proposed Solution

As a result of the passage of AB 2376 (Huffman) in 2010, the State Natural Resources Agency over the past year has been facilitating a strategic visioning process for the Department of Fish and Game and the Fish and Game Commission. The process has involved the appointment of a state executive committee, a blue ribbon citizen's commission, and a broad-based stakeholder advisory group process. These groups have

met for several months and are finalizing recommendations to the Legislature and Governor. Given the strategic visioning process that is currently underway, the Law Revision Commission's undertaking of this project would be particularly timely and of great assistance to the Legislature and the Administration as they work to implement recommendations coming out of the strategic visioning process.

Both the Blue Ribbon Citizen's Commission and the Stakeholder Advisory Group appointed as part of the AB 2376 fish and wildlife strategic visioning process have recommended that the assistance of the Law Revision Commission be sought in reviewing and updating the Fish and Game Code. The Stakeholder Advisory Group's recommendation is included in an appendix to both the draft and Interim Strategic Vision Reports presented to the Executive Committee in November 2011 and adopted at its February 2012 meeting.

The Blue Ribbon Citizen's Commission's recommendation is included in a memorandum to Natural Resources Secretary John Laird and members of the Executive Committee dated February 9, 2011 (see attached) and states in relevant part:

"Perform a Comprehensive Review and Update of the California Fish and Game Code and Related Laws

The BRCC recommends that a comprehensive review of state statutes, constitutional provisions and regulations concerning DFG and F&GC be undertaken. That review, which should be of a technical, nonpartisan nature, should be initiated without further delay. The independent California Law Revision Commission is an ideal body to undertake the constitutional and statutory review, and to then make recommendations for curative amendments to the California State Legislature for consideration and enactment. After that process is completed, DFG and the Secretary for Natural Resources should undertake a conforming review process of California's regulations implementing those constitutional and statutory mandates.

California statutes affecting DFG and F&GC have evolved over 140 years. During that period, new and sometimes inconsistent legal mandates have been imposed via legislation. A technical, nonpartisan review would provide recommendations for curative amendments to address the inconsistencies."

Examples of issues with Fish and Game Code

1. The Department of Fish and Game has identified a list of unfunded or underfunded mandates in the Fish and Game Code. The Stakeholder Advisory Group is in the process of reviewing those mandates and determining whether there is a subset of that list that stakeholders agree are obsolete mandates. That process is expected to be completed by mid-March. That list has not been reviewed by the Legislature since the process has not yet been completed.
2. **Inspections of dams and payment for screening of conduits:** Fish and Game Code Section 5930, which was enacted in 1957, requires DFG to, from time to time, examine *all* dams in *all* rivers and streams in this State naturally frequented by fish. [How many such dams were in existence in 1957 is uncertain, but the number is certainly in the tens of thousands today. This section has never been funded by the Legislature and has rarely if ever been enforced.]

Section 5981, also adopted in 1957, mandates that DFG examine *all* conduits (with maximum flow over 250 cubic feet) and order the owner to install fish screens if DFG determines screens are necessary to prevent fish from passing into the conduit. This section also requires DFG to pay for half of the cost of the screens out of the Fish and Game Preservation Fund, and for the owner to pay for the other half. Section 6021 similarly requires DFG to examine all new or existing conduits with a maximum flow of less than 250 cubic feet, and provides if DFG determines that screens are necessary that DFG shall pay the full cost of installing the screens. [These sections if they were implemented today would probably bankrupt the FGPF, and in any case appear to have been superseded, at least in part, by Section 6100. Section 6100 (enacted in 1971) requires that notwithstanding the 2 above sections, on or after the effective date of this article, any new diversion of water determined by DFG to be deleterious to salmon and steelhead shall be screened by the owner at the owner's cost.]

Note: These articles contain other sections which continue to be relevant and important, specifically Section 5937 which requires owners of dams to allow sufficient water to pass through a fishway or around dams for fish, so the entire articles are not by any means obsolete.

3. **Inconsistency in statutes on Role of Fish and Game Commission:** There is a lack of clarity regarding the role of the Fish and Game Commission in setting policies to guide the Department of Fish and Game. Specifically, Section 703 of the Fish and Game Code provides that "General policies for the conduct of the Department shall be formulated by the Commission. The director shall be guided by those policies and shall be responsible to the Commission for the administration of the department in accordance with those policies." However, Section 104 provides that neither the Commission nor its staff shall have or be given any powers in relation to the administration of the department.
4. **Organization of the Code and consistency, clarification and applicability of definitions:** Statutes governing marine fisheries are located in different parts of the code and not necessarily easy to find. For example, the Marine Life Management Act is located at Sections 7050 et seq, and the Marine Life Protection Act is located at Sections 2850 et seq.

While some of the generally applicable definitions are found in Division 1, Chapter 1, others are located in different parts of the code and could be consolidated into one article.

There is a general need for clarification of the definitions at the beginning of the code and their applicability through various parts of the code. For example, in recent litigation it was argued that the definition of "person" in Section 67 meant that the Department of Water Resources was not subject to the California Endangered Species Act. Through statutory analysis the courts were able to show that position was incorrect. Similar analysis to clarify other definitions and their applicability is also needed. For example, the definition of "Fish" in Section 45 raises questions throughout the code. Mammal is defined in Section 67 to exclude "burros," which may have some historical significance but appears to defy logic and biological fact. "Adaptive Management" is a frequently used concept in wildlife management, and is used in numerous places in the code, but the definition in the general definitions section of the code (Section 90.1) only defines the term with regard to marine fisheries. While another definition of adaptive management is provided in Section 2805 for purposes of the Natural Communities Conservation Program, the term also appears elsewhere in the code without definition.