

Memorandum 2012-19

2012 Legislative Program (Status Report)

This memorandum provides a status report on two bills that relate to the Commission's future work.

A supplement to this memorandum will be prepared at a later time, to provide a status report on pending Commission-recommended legislation.

ACR 98 (WAGNER) — RESOLUTION OF AUTHORITY

On April 10, Assembly Concurrent Resolution 98, authored by Assembly Member Donald Wagner, was passed by the Assembly Committee on Judiciary, with the amendments discussed in Memorandum 2012-9. As amended, the bill would authorize the Commission to study Fish and Game law.

The resolution was passed unanimously, on the Committee's consent calendar.

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

Assembly Bill 2328, authored by Assembly Member Kristin Olsen, would have eliminated the Law Revision Commission. On April 10, the bill failed passage in the Assembly Committee (on a 2-7 vote). The Committee's analysis of the bill is attached for reference.

Respectfully submitted,

Brian Hebert
Executive Director

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.

Date of Hearing: April 10, 2012

ASSEMBLY COMMITTEE ON JUDICIARY
Mike Feuer, Chair
AB 2328 (Olsen) – As Introduced: February 24, 2012

SUBJECT: CALIFORNIA LAW REVISION COMMISSION: ELIMINATION

KEY ISSUE: SHOULD THE CALIFORNIA LAW REVISION COMMISSION BE ELIMINATED?

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

SYNOPSIS

This bill is completely inconsistent with ACR 98 (Wagner, 2012). That measure, authored by this Committee's Vice Chair, reauthorizes 21 substantive areas of law that the Commission expertly studies, often at the specific request of the Legislature, to improve California law. The Commission was created over half a century ago to help the Legislature discover defects and anachronisms in California law and recommend legislation to make needed reforms. Reflecting the Vice Chair's authorship of ACR 98 this year (placed on the Committee's consent calendar reflecting its bi-partisan support), the Commission has had a remarkable record of helping to improve the state's legal framework. Since its creation in 1953, it has made 389 reform recommendations, ranging from the creation of entire codes to the repeal of a single section. More than 90% of those recommendations have been enacted in whole or in substantial part, affecting more than 24,000 sections of the California codes. Major enactments include: the Evidence Code, the Family Code, the Probate Code, the Government Claims Act (also known as the "Tort Claims Act"), the Enforcement of Judgments Law, the Trust Law, the Power of Attorney Law, the Durable Power of Attorney for Healthcare, the Guardianship-Conservatorship Law, the Marketable Title Act, the Eminent Domain Law, implementation of Trial Court Unification and Restructuring, Administrative Adjudication, recodification of Deadly Weapons Law, and the recodification of Mechanics Lien Law. This Committee has supported on a bi-partisan basis the annual reauthorization of the Commission's work for many decades.

Notwithstanding the Commission's long and consistent record of accomplishment, this measure seeks to eliminate it.

SUMMARY: Seeks to eliminate the California Law Revision Commission ("Commission"). Specifically, this bill:

- 1) Eliminates Section 703.120 of the Code of Civil Procedure, relating to the Commission's ability to decennially review exemptions to certain monetary civil damages.
- 2) Eliminates Sections 70219, 71674 and 8280 *et seq.* of the Government Code, relating to the operation and structure of the Commission.

EXISTING LAW authorizes the California Law Revision Commission to study topics approved by concurrent resolution of the Legislature. (Government Code Section 8293.)

COMMENTS: This bill seeks to eliminate the California Law Revision Commission. In support, the author states:

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.

The Commission Provides an Important Public Service, and Assists the Legislature Directly On Many Important Law Reform Issues: The Commission was created in 1953 as a permanent law reform body. The Commission serves as an impartial body of law reform experts tasked with undertaking substantive review of the law and making recommendations for potential improvements. The Commission primarily focuses on large or technically complex areas of law that are not easily addressed through the normal legislative process. The Commission recommends important reforms that lack the natural constituencies to independently develop and sponsor legal improvements.

The Commission has had a remarkable record of helping to improve the state's legal framework. Since its creation in 1953, it has made 389 reform recommendations, ranging from the creation of entire codes to the repeal of a single section. More than 90% of those recommendations have been enacted in whole or in substantial part, affecting more than 24,000 sections of the California codes. Major enactments include: the Evidence Code, the Family Code, the Probate Code, the Government Claims Act (also known as the "Tort Claims Act"), the Enforcement of Judgments Law, the Trust Law, the Power of Attorney Law, the Durable Power of Attorney for Healthcare, the Guardianship-Conservatorship Law, the Marketable Title Act, the Eminent Domain Law, implementation of Trial Court Unification and Restructuring, Administrative Adjudication, recodification of Deadly Weapons Law, and the recodification of Mechanics Lien Law.

This Committee has supported on a bi-partisan basis the annual reauthorization of the Commission's work for many decades. The fact that the Commission continues to receive numerous requests from the Legislature (see, e.g., ACR 98 (Wagner) this year) appears to undermine the author's assertion that the Commission has purportedly outlived its usefulness.

Unnecessary Costs in Tight Budget Times?: In support of the measure, the author asserts that the Commission is a luxury California can no longer afford, and that all essential functions of the Commission allegedly could be performed by other state agencies. The Commission currently receives \$665,000 in annual General Fund appropriations, which is by all accounts a miniscule part of the annual California budget. Furthermore, General Fund appropriations only account for a portion of the Commission's annual operating budget. The Commission also receives almost half of its budget in annual "in kind" contributions to the Commission's work. However the Commission receives no direct monetary donations. (In-kind contributions received by the Commission include significant contributions of time by members of State Bar committees, legal scholars, and other subject matter experts; extensive library materials donated by major legal publishers; significant discounts on office space and support services provided by the U.C. Davis Law School; and a charitable fund (established by the former Executive Secretary Nathaniel Sterling) to sponsor paid summer fellowships for U.C. Davis Law students.)

Given the Commission's important function – especially for the Legislature in improving state law -- and relatively small cost, the assertion that the Commission may be an unaffordable luxury seems to ignore the important role the Commission had played and continues to play in the improvement of California law.

In short, since the Commission's creation in 1953, no legislation has ever sought to curtail or revoke the Commission's authority. Indeed, numerous resolutions have passed the Legislature expanding the areas of study the Commission oversees due to its excellent record of legislative assistance. The Commission is consistently and widely praised for its nonpartisan, professional work, and it is consistently and widely supported by both parties in the California Legislature.

Inaccurate Assertion that Other Entities Can Pick Up the Slack If the Commission Is Abolished:

In support of her measure to abolish the Commission, that author contends that "The Law Revision Commission serves a function that many other entities already handle, like the Commission on Uniform State Laws." This is not accurate. The Uniform Law Commission (ULC) has a much more narrow focus than that of the California Law Revision Commission, and the ULC has never provided the kind of helpful in-depth law reform work provided by the dedicated staff of the CLRC. This is because the missions of the two entities are different. The ULC works with other member states to create revisions on a national level – it by definition does not focus on the individual statutes of each state's laws, as does the CLRC.

ARGUMENTS IN OPPOSITION: In opposition to the bill, the Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM) states:

TEXCOM has firsthand knowledge of the superb work and value of the CLRC, as the CLRC has worked closely with TEXCOM's volunteer attorneys on such projects as the Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act, currently under study (Study L-750), Donative Transfer Restrictions (Study L-622), Presumptively Disqualified Fiduciary (Study L-623), Inheritance Involving Nonmarital Child (Study L-661), and Revision of No Contest Clause Statute (Study L-637). The CLRC consistently produces work of exceptional quality, taking a neutral, analytical, and academic approach to significant and complex issues that are difficult to resolve. Ending the CLRC's work would deprive California of a tremendous resource.

The Legislature often refers complex problems to the CLRC to review and develop a balanced legislative proposal. Often this occurs where there is no vested interest or citizen group pushing for reform, even though the law affects many people. The CLRC identifies the major policy questions, gathers the views of interested parties, and drafts recommendations. The CLRC's detailed studies enable the Legislature to focus more on significant policy questions than on the technicalities of intricate legal problems. At times, the CLRC may also recodify a body of law to improve its organization and expression, without changing substantive outcomes under that law. Often, areas of the law – such as the law of trusts – become complex, disorganized, and difficult to understand, leading to mistakes, the need for legal advice on routine matters, and litigation to resolve ambiguities. The CLRC helps the state's policy makers implement needed reforms that otherwise might not be made, and provides information that assists in making sound policy decisions.

With a small staff, the CLRC is enormously productive. The CLRC's members, consultants, State Bar sections and committees, law publishers, members of the public, and others also donate tremendous time and resources to the CLRC's operations.

The CLRC provides a unique and significant benefit to the Legislature, the Executive Branch, the court system, and the attorneys and people of the State of California. Since its inception in 1953, the CLRC has submitted more than 389 recommendations, of which more than 357, or 92 percent, the Legislature has enacted in whole or in substantial part. More than 1,600 appellate decisions have cited the CLRC reports for interpretation of the law. Legislation enacted on CLRC recommendation affects more than 24,000 sections of the California codes.

RELATED LEGISLATION: ACR 98 (Wagner, 2012) reauthorizes 21 substantive areas of law for the Commission to continue studying.

The following resolutions renewed or expanded areas of law for the Commission to study:

- ACR 49 (Evans), Res. Ch. 98, Stats. 2009
- ACR 35 (Evans), Res. Ch. 100, Stats. 2007
- SCR 15 (Morrow), Res. Ch. 1, Stats. of 2006
- SCR 42 (Campbell), Res. Ch. 122, Stats. of 2005
- SCR 4 (Morrow), Res. Ch. 92, Stats. of 2003
- ACR 125 (Papan), Res. Ch. 167, Stats. of 2002
- ACR 123 (Wayne), Res. Ch. 166, Stats. of 2002
- SCR 13 (Morrow), Res. Ch. 78, Stats of 2001
- ACR 17 (Wayne), Res. Ch. 81, Stats. of 1999
- SCR 65 (Kopp), Res. Ch. 91, Stats. of 1998
- SCR 3 (Kopp), Res. Ch. 102, Stats. of 1997
- SCR 43 (Kopp), Res. Ch. 38, Stats. of 1996

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

Executive Committee of the Trusts and Estates Section of the State Bar of California

Analysis Prepared by: Drew Liebert, Nicholas Liedtke and Kimberly Rosenberger / JUD. / (916) 319-2334