

First Supplement to Memorandum 2012-19

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) The status of our efforts to find a vehicle for further clean-up legislation relating to the nonsubstantive reorganization of the deadly weapon statutes that was enacted in 2010.
- (2) Possible amendments to a pending Commission-recommended bill (Assembly Bill 805 (Torres)).
- (3) A bill that would withdraw the statutory directive to prepare redevelopment clean-up legislation (Assembly Bill 1585 (Pérez)).
- (4) A bill that would assign a new study to the Commission, relating to mediation confidentiality (Assembly Bill 2025 (Gorell)).
- (5) A bill that would set a deadline for completion of the Commission's study of *Charter Schools and the Government Claims Act* (Senate Bill 1213 (Walters)).

NONSUBSTANTIVE REORGANIZATION OF DEADLY WEAPON STATUTES:
FURTHER CLEAN-UP LEGISLATION

As previously reported in Memorandum 2012-6, further clean-up legislation is necessary to fully implement the nonsubstantive reorganization of the deadly weapon statutes that was enacted on Commission recommendation in 2010. The staff had hoped that the remaining clean-up could be achieved in this year's omnibus public safety bill, but that did not work out. However, most of the statutory cross-references that still need to be corrected to reflect the relocation of statutory material would be corrected by this year's maintenance of the codes bill (SB 1171 (Harman)), which is likely to be enacted. The remaining clean-up is minor and the staff will seek a vehicle for it next year.

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.

AB 805 (TORRES) — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

Assembly Bills 805 and 806 were introduced by Assembly Member Norma Torres in 2011 to implement the Commission's recommendation to recodify the Davis-Stirling Common Interest Development Act. See *Statutory Clarification and Simplification of CID Law* (Feb. 2011). (A "common interest development" is a real property development in which each owner owns a "separate interest" and a shared interest in some "common area." Examples include "planned developments" and condominiums. See Civil Code Section 1351.)

AB 805 would repeal the existing Davis-Stirling Act and replace it with a reorganized and improved new statute. AB 806 would correct all statutory cross-references to provisions that would be repealed by AB 805.

Because of the size and complexity of those bills, it was planned from the outset that they would proceed on a slow track, as two-year bills. Both bills were approved by the Assembly on May 2, 2011. On January 11, 2012, both bills were approved by the Senate Committee on Transportation and Housing, as consent items. They are now awaiting hearing by the Senate Committee on Judiciary.

In 2011, a number of bills were enacted that made changes to provisions contained within AB 805. On January 4, 2012, AB 805 was amended to conform to the 2011 legislation and to make a number of minor substantive and technical improvements. See Memorandum 2012-6, pp. 5-10.

On February 29, 2012, SB 880 (Corbett) was enacted, on an urgency basis. That bill made further changes to the Davis-Stirling Act, which now need to be incorporated into AB 805. The staff has been working with Senator Corbett's staff and the staff of the Assembly Committee on Housing and Community Development to prepare amendment language to achieve that result. In addition, the staff has worked to prepare amendments to make a small number of minor technical improvements to the bill.

Because the timing of those amendments could require that they be submitted to the Legislature before the Commission's June 14, 2012, meeting, the staff contacted the Commission's Chair to determine whether she had any concerns about the amendments. With the understanding that the amendments would be submitted to the full Commission at the earliest opportunity, the Chair indicated that she had no objection to the proposed amendments. Those amendments are presented below, with a brief explanation of each.

Following the proposed amendments, the staff has presented a draft of a revised Comment to proposed Civil Code Section 4205. When the Commission approved a clarifying amendment to that section, it instructed the staff to prepare revised Comment language for approval. See Minutes (Feb. 9, 2012), p. 5.

Proposed Amendments

Proposed Civil Code Section 4090. Board Meetings

In its recommendation, the Commission attempted to standardize terminology to the extent feasible, by defining key terms and then using the defined terms in place of equivalent language. Proposed Civil Code Section 4090 should have been amended to use the defined term “director,” but the matter was overlooked. The following amendment would correct that oversight:

4090. “Board meeting” means either of the following:

(a) A congregation, at the same time and place, of a sufficient number of directors to establish a quorum of the board, to hear, discuss, or deliberate upon any item of business that is within the authority of the board.

(b) A teleconference, where a sufficient number of directors to establish a quorum of the board, in different locations, are connected by electronic means, through audio or video, or both. A teleconference meeting shall be conducted in a manner that protects the rights of members of the association and otherwise complies with the requirements of this act. Except for a meeting that will be held solely in executive session, the notice of the teleconference meeting shall identify at least one physical location so that members of the association may attend, and at least one ~~member of the board~~ director shall be present at that location. Participation by directors in a teleconference meeting constitutes presence at that meeting as long as all directors participating are able to hear one another, as well as members of the association speaking on matters before the board.

Proposed Civil Code Sections 4600 & 4745. Electric Vehicle Charging Stations

The following amendments to proposed Civil Code Sections 4600 and 4745 are required to implement changes made by SB 880:

4600. (a) Unless the governing documents specify a different percentage, the affirmative vote of members owning at least 67 percent of the separate interests in the common interest development shall be required before the board may grant exclusive use of any portion of the common area to a member.

(b) Subdivision (a) does not apply to the following actions:

(1) A reconveyance of all or any portion of that common area to the subdivider to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report.

(2) Any grant of exclusive use that is in substantial conformance with a detailed plan of phased development submitted to the Real Estate Commissioner with the application for a public report or in accordance with the governing documents approved by the Real Estate Commissioner.

(3) Any grant of exclusive use that is for any of the following reasons:

(A) To eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.

(B) To eliminate or correct encroachments due to errors in construction of any improvements.

(C) To permit changes in the plan of development submitted to the Real Estate Commissioner in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.

(D) To fulfill the requirement of a public agency.

(E) To transfer the burden of management and maintenance of any common area that is generally inaccessible and not of general use to the membership at large of the association.

(F) To accommodate a disability.

(G) To assign a parking space, storage unit, or other amenity, that is designated in the declaration for assignment, but is not assigned by the declaration to a specific separate interest.

(H) To install and use an electric vehicle charging station in an owner's garage or a designated parking space that meets the requirements of Section 4745, where the installation or use of the charging station requires reasonable access through, or across, the common area for utility lines or meters.

(I) To install and use an electric vehicle charging station through a license granted by an association under Section 4745.

(J) To comply with governing law.

(c) Any measure placed before the members requesting that the board grant exclusive use of any portion of the common area shall specify whether the association will receive any monetary consideration for the grant and whether the association or the transferee will be responsible for providing any insurance coverage for exclusive use of the common area.

4745. (a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a common interest development, and any provision of a governing document, as defined in Section 4150, that either effectively prohibits or

unreasonably restricts the installation or use of an electric vehicle charging station in an owner's designated parking space, including, but not limited to, a deeded parking space, a parking space in an owner's exclusive use common area, or a parking space that is specifically designated for use by a particular owner, or is in conflict with the provisions of this section is void and unenforceable.

(b)(1) This section does not apply to provisions that impose reasonable restrictions on electric vehicle charging stations. However, it is the policy of the state to promote, encourage, and remove obstacles to the use of electric vehicle charging stations.

(2) For purposes of this section, "reasonable restrictions" are restrictions that do not significantly increase the cost of the station or significantly decrease its efficiency or specified performance.

(c) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local ~~permitting~~ authorities as well as all other applicable zoning, land use or other ordinances, or land use permits.

(d) For purposes of this section, "electric vehicle charging station" means a station that is designed in compliance with the California Building Standards Code and delivers electricity from a source outside an electric vehicle into one or more electric vehicles. An electric vehicle charging station may include several charge points simultaneously connecting several electric vehicles to the station and any related equipment needed to facilitate charging plug-in electric vehicles.

(e) If approval is required for the installation or use of an electric vehicle charging station, the application for approval shall be processed and approved by the association in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed. The approval or denial of an application shall be in writing. If an application is not denied in writing within 60 days from the date of receipt of the application, the application shall be deemed approved, unless that delay is the result of a reasonable request for additional information.

(f) If the electric vehicle charging station is to be placed in a common area or an exclusive use common area, as designated in the common interest development's declaration, the following provisions apply:

(1) The ~~homeowner~~ owner first shall obtain approval from the ~~common interest development~~ association to install the electric vehicle charging station and the ~~common interest development~~ association shall approve the installation if the ~~homeowner~~ owner agrees in writing to do all of the following:

(A) Comply with the ~~common interest development's~~ association's architectural standards for the installation of the charging station.

(B) Engage a licensed contractor to install the charging station.

(C) Within 14 days of approval, provide a certificate of insurance that names the common interest development association as an additional insured under the homeowner's owner's insurance policy in the amount set forth in paragraph (3).

(D) Pay for the electricity usage associated with the charging station.

(2) The homeowner owner and each successive homeowner owner of the parking stall on which or near where the electric vehicle charging station is placed shall be responsible for all of the following:

(A) Costs for damage to the charging station, common areas area, exclusive use common areas area, or adjacent units separate interests resulting from the installation, maintenance, repair, removal, or replacement of the charging station.

(B) Costs for the maintenance, removal, repair, and replacement of the electric vehicle charging station until it has been removed from the common area or exclusive use common area and for the restoration of the common area after removal.

(C) The cost of electricity associated with the charging station.

(D) Disclosing to prospective buyers the existence of any electric vehicle charging station of the owner and the related responsibilities of the homeowner owner under this section.

(3) The homeowner owner and each successive homeowner owner of the charging station, at all times, shall maintain an umbrella a homeowner liability coverage policy in the amount of one million dollars (\$1,000,000) covering the obligations of the owner under paragraph (2), and shall name the common interest development association as an a named additional insured under the policy with a right to notice of cancellation.

(4) A homeowner shall not be required to maintain a homeowner liability coverage policy for an existing National Electrical Manufacturers Association standard alternating current power plug.

(g) Except as provided in subdivision (h), installation of an electric vehicle charging station for the exclusive use of an owner in a common area, that is not an exclusive use common area, shall be authorized by the association only if installation in the owner's designated parking space is impossible or unreasonably expensive. In such cases, the association shall enter into a license agreement with the owner for the use of the space in a common area, and the owner shall comply with all of the requirements in subdivision (f).

(h) The association or owners may install an electric vehicle charging station in the common area for the use of all members of the association and, in that case, the association shall develop appropriate terms of use for the charging station.

(i) An association may create a new parking space where one did not previously exist to facilitate the installation of an electric vehicle charging station.

(j) An association that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

~~(h)~~ (k) In any action to enforce compliance with this section, the prevailing plaintiff shall be awarded reasonable attorney's fees.

Proposed Civil Code Section 4910. Board Action

Proposed Civil Code Section 4910(b)(2) should have used the defined term "board meeting." The following amendment would correct that oversight:

4910. (a) The board shall not take action on any item of business outside of a board meeting.

(b)(1) Notwithstanding Section 7211 of the Corporations Code, the board shall not conduct a meeting via a series of electronic transmissions, including, but not limited to, electronic mail, except as specified in paragraph (2).

(2) Electronic transmissions may be used as a method of conducting an emergency board meeting if all directors, individually or collectively, consent in writing to that action, and if the written consent or consents are filed with the minutes of the board meeting. These written consents may be transmitted electronically.

Proposed Civil Code Section 4935. Executive Session

Last year, SB 563 (Committee on Transportation and Housing) amended the provision requiring that CID board meetings be open to the membership, except in specified circumstances where a closed executive session is permitted (Civil Code Section 1363.05). One of the amendments made clear that a CID board can either adjourn from an open meeting to an executive session or can "meet solely" in executive session (to address only executive session matters).

In AB 805, Section 1363.05 is divided into two separate sections (proposed Civil Code Sections 4925 and 4935). Section 4925 was amended to incorporate the "meet solely" language. A parallel amendment should have been made to Section 4935, but was not. Proposed Section 4935 should now be amended to correct that oversight, as follows:

4935. (a) The board may ~~meet in, or~~ adjourn to, or meet solely in, executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 5665.

(b) The board shall ~~meet in adjourn to, or meet solely in,~~ executive session to discuss member discipline, if requested by the member who is the subject of the discussion. That member shall be entitled to attend the executive session.

(c) The board shall ~~meet in adjourn to, or meet solely in,~~ executive session to discuss a payment plan pursuant to Section 5665.

(d) The board shall ~~meet in adjourn to, or meet solely in,~~ executive session to decide whether to foreclose on a lien pursuant to subdivision (b) of Section 5705.

(e) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

Staff Recommendation

The staff recommends that the Commission approve the technical amendments described above.

Revised Comment

Proposed Civil Code Section 4205 was recommended in order to provide guidance regarding the relative authority of the law and the most common types of CID governing documents. It was then amended to delete language that might have implied that the section imposed an affirmative duty to amend governing documents in order to delete superseded material, thus:

~~4205. (a) The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.~~

~~(b) The articles of incorporation may not include a provision that is inconsistent with the declaration. To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.~~

~~(c) The bylaws may not include a provision that is inconsistent with the declaration or the articles of incorporation. To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.~~

~~(d) The operating rules may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws. To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.~~

At its February 2012 meeting, the Commission directed the staff to prepare conforming revisions to the Commission's Comment to proposed Section 4205. See Minutes (Feb. 9, 2012), p. 5.

To reflect the purpose of that amendment, the staff recommends that the Comment be revised as follows:

Comment. Section 4205 is added to clarify the relationship between the law and the most common types of governing documents. Nothing in the section is intended to create an affirmative duty to amend a governing document to delete superseded material.

Subdivisions (a) and (b) of Section 4205 are new.

Subdivision (c) is consistent with Corporations Code Section 7151(c), providing that the bylaws shall be consistent with the articles of incorporation.

Subdivision (d) is consistent with Section 4350(c), providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 4135 ("declaration"), 4150 ("governing documents").

If the Commission approves that change, the staff will prepare a supplemental report to memorialize the revised Comment.

AB 1585 (PÉREZ) — REDEVELOPMENT CLEAN-UP

As first reported in Memorandum 2012-9, 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.

The staff has continued to monitor the progress of AB 1585. The bill was approved by the Assembly on March 26, 2012. On April 19, 2012, it was referred to two Senate policy committees (the Government and Finance Committee and Transportation and Housing Committee). It has not yet been set for a hearing.

Because the proposed repeal of Section 34189(b) is not certain to occur, 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 2025 (GORELL) — MEDIATION CONFIDENTIALITY

Assembly Bill 2025 was amended on May 10, 2012, to assign a new study to the Commission. The measure now reads:

(a) The California Law Revision Commission shall study and report to the Legislature regarding the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal.4th 113; *Porter v. Wyner* (2010) 183 Cal.App.4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137.

(b) The commission shall also consider and report on the availability and propriety of contractual waivers. In conducting its analysis, the commission shall consider the law in other jurisdictions, including the Uniform Mediation Act as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(c) The commission shall request input from experts and interested parties including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.

The bill is not an urgency measure. If enacted in this form, it would operate on January 1, 2013. This will give the Commission time to consider the effect of the bill when determining its work priorities for 2013 (at its October or December meeting).

SB 1213 (WALTERS) — CHARTER SCHOOLS AND THE GOVERNMENT CLAIMS ACT

Senate Bill 2025 was amended on April 30, 2012, to set a deadline for a Commission study that is already in progress. The measure now reads:

(a) The Legislature finds and declares that the California Law Revision Commission, pursuant to Resolution Chapter 98 of the Statutes of 2009, is analyzing the legal and policy implications of treating a charter school as a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(b) The California Law Revision Commission shall submit its analysis of the legal and policy implications of treating a charter school as a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code to the Legislature no later than January 15, 2013.

The bill is not an urgency measure. If enacted in this form, it would operate on January 1, 2013. However, as can be seen, it would require the completion of the Commission's charter school study by January 15, 2013. Realistically, compliance with that deadline would require that the Commission complete the study this year (before knowing whether the bill will be enacted in this form).

That should be possible. The Commission was on the cusp of completing the study in October 2011, when it lost its quorum and could no longer meet. The Commission would likely have taken the matter up again in February 2012, when its quorum was restored, but the Commission's Community Redevelopment Law clean-up study began at that time, with a January 1, 2013 deadline. Given the deadline assigned to that study, it took priority.

In anticipation of the possibility that SB 2025 will be enacted, the staff recommends that the charter school study be reactivated immediately.

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2012 Commission Legislative Program

As of June 5, 2012

		AB 805	AB 806	AB 1529	AB 2690	ACR 98					
Introduced Last Amended		2/17/11	2/17/11	1/23/12	2/27/12	2/2/12					
				3/21/12	4/11/12						
First House	Policy Committee	4/6/11	4/6/11	3/20/12	5/1/12	4/10/12					
	Second Committee	4/26/11	4/26/11	5/8/12	5/8/12	4/25/12					
	Passed House	5/2/11	5/2/11	5/14/12	5/14/12	4/30/12					
Second House	Policy Committee	1/10/12	1/10/12			6/12/12					
	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
 AB 2690 (Committee on Judiciary): Statutory Cross-References to "Tort Claims Act"
 ACR 98 (Wagner): Resolution of Authority

Also of Interest:
 AB 1585 (Perez, et al.): Redevelopment
 AB 2025 (Gorell): Mediation Confidentiality
 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), 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 1414 (Dutton), SB 1439 (Huff)

KEY

Italics: Future or speculative

"—": Not applicable

*: Double referral, not fiscal

[date]: Deadline