

Memorandum 2012-46

2012-2013 Annual Report (Staff Draft)

At the Commission's October meeting, the staff presented a draft of the Commission's *2012-2013 Annual Report* for review and approval. See Memorandum 2012-38.

After considering the draft, the Commission directed the staff to prepare a new memorandum on the topic for the upcoming December meeting, presenting stylistic edits to the draft proposed by Commissioner Miller-O'Brien. See Minutes (Oct. 2012), p. 3. The Commission further directed that the memorandum discuss the possibility of including the following material in the Annual Report:

- Brief statements (one or two sentences in length), from those Commissioners who choose to submit them to the staff, about their outside activities that are relevant to the Commission's current work.
- An appendix containing biographical information on current Commissioners.

Id.

Attached to this memorandum is a new draft of the Annual Report, incorporating stylistic edits proposed by Commissioner Miller-O'Brien. The memorandum also discusses the possible additions noted above.

In the interest of saving photocopying and mailing costs, the attached draft report does not include the Annual Report's standard appendices (e.g., text of the Commission's governing statute, calendar of topics, cumulative table of legislative action on Commission recommendations, and Commission publications). Once the Commission approves the main text of the Annual Report, the staff will add these appendices.

CONTINGENT TEXT

Some portions of the draft, temporarily flagged with [light shading and brackets], remain contingent on decisions that will be made at the upcoming December meeting:

- The disposition of two pending studies, *Third Decennial Review of Exemptions from Enforcement of Judgments* and *Nonresidential Subdivisions*. See pages 4, 11-12. Although the draft indicates the Commission will continue its work on these studies in 2013, it remains theoretically possible the Commission could conclude its work on either or both studies in 2012, by approving a final recommendation at the December meeting.
- The Commission's new topics and priorities for 2013. See pages 4, 11-12. The presented discussion of these items in the draft report could require minor adjustment, based on decisions the Commission makes when these items are discussed at the December meeting.

However, any needed revision of the Annual Report relating to the above items would be purely technical in nature. Therefore, unless the Commission directs otherwise, once the Commission makes its final decisions about these matters, the staff would make any necessary revisions to the report at the staff level, pursuant to the staff's granted discretion to make editorial changes of that character. See *CLRC Handbook of Practice and Procedures*, Rule 2.7.4 (Dec. 2010).

Is that acceptable?

SUGGESTED EDITORIAL REVISIONS

Commissioner Miller-O'Brien invited the staff to work with her on how to incorporate her proposed stylistic edits into the draft Annual Report. The end result of that process is presented in the attached draft, in strikeout and underscore. See pp. 3, 10, 12, 21.

The staff believes that those proposed changes are improvements and recommends that they be made.

COMMISSION RELATED ACTIVITIES

As noted above, the Commission had decided to consider whether to include brief statements of Commission-related activities, submitted by individual Commissioners. Only two Commissioners pursued this possibility with the staff.

- Assembly Member Dickinson inquired whether it would be appropriate to add a statement noting that he had successfully introduced Assembly Bill 1529, which implemented four Commission recommendations in whole or part. See 2012 Cal. Stat. ch. 470. It is not our practice to add such a statement to this part of the Annual Report. Instead, Legislators who introduce Commission-recommended legislation are acknowledged and thanked elsewhere in the Annual Report. See p. 7.
- Commissioner Miller-O'Brien had considered submitting an activity statement, but later decided against doing so.

Consequently, there are no proposed activity statements that need to be considered for inclusion in this year's Annual Report.

APPENDIX CONTAINING COMMISSIONER BIOGRAPHIES

At the October meeting, the Commission also decided that it would consider adding a new appendix to the Annual Report, containing summary biographies of current Commissioners. See Minutes (Oct. 2012), p. 3. The Commission did not decide how to prepare the text of the biographies.

Based in part on a suggestion from Commissioner Miller-O'Brien, the staff has prepared an appendix that draws biographical information nearly verbatim from either (1) the Governor's press releases announcing the appointment of Commissioners, or (2) biographical information provided on the websites of the Legislative Counsel and legislative members. The draft appendix is attached, immediately following the attached draft of the Annual Report.

The staff took that drafting approach for the following reasons:

- *It promotes uniformity.* By following the standard approach used in the Governor's press releases, we were able to prepare an appendix that had a uniform and cohesive character to it. In the absence of a standardized approach, the appendix could become a stylistic hodgepodge, with biographies diverging sharply as to substance and form.

- *It simplifies future administration.* If the Commission decides to add the appendix, the chosen drafting approach would make the new content much easier to create and maintain.
- *It avoids potential problems.* The fairly minimalist approach used by the Governor will help to limit the risk that any of the biographical content could be seen as political or self-promotional.

The Commission should decide whether it wishes to include a biographical appendix in the Annual Report. If so, the staff recommends that it be in roughly the form proposed. If Commissioners wish to supplement or correct their portions of the attached draft, they can provide proposed changes to the staff or raise them at the meeting.

Respectfully submitted,

Steve Cohen
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

2012-2013 Annual Report

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SUMMARY OF WORK OF COMMISSION

Community Redevelopment Law Clean-Up

In 2011, a statute was enacted that required the Commission to prepare Community Redevelopment Law clean-up legislation, for submission to the Legislature and Governor by January 1, 2013. The Commission began its work on that topic on February 1, 2012, when the statutory mandate first operated. Nearly all of the Commission's resources were dedicated to that study until June 27, 2012, when the statute that required and authorized the study was repealed. As a result, the Commission ~~had to cease~~ ended its work on the topic. Although the study was not completed, substantial progress was made and it is likely that the Commission's work ~~on the topic would~~ will be useful in ~~any~~ future efforts to reform or clean up community redevelopment law.

Recommendations to the 2012 Legislature

In 2012, bills effectuating six Commission recommendations and part of a seventh were enacted, relating to the following subjects:

- Statutory clarification and simplification of CID law
- 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 "Tort Claims Act"
- Ownership of amounts withdrawn from a joint account

In 2012, the Commission also submitted a report to the Legislature on the following subject, which did not recommend introduction of legislation:

- Charter schools and the Government Claims Act

Recommendations to the 2013 Legislature

In 2013, the Commission expects that the Legislature will consider legislation recommended by the Commission on the following subjects:

- Commercial and industrial common interest developments
- Statutory clarification and simplification of CID law (clean-up legislation)

Commission Activities Planned for 2013

During 2013, the Commission intends to work on the following major topics: the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), mediation confidentiality, [commercial and industrial subdivisions,] revision of the Fish and Game Code[, and exemptions from enforcement of judgments: third decennial review]. The Commission will work on other topics as time permits.

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December 13, 2012

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 2012 and its plans for 2013.

Six Commission recommendations considered by the Legislature in 2012, and part of a seventh, were enacted into law, in whole or in substantial part.

The Commission is grateful to the members of the Legislature who carried Commission-recommended legislation in 2012:

- Assembly Member Norma Torres (Statutory Clarification and Simplification of CID Law)
- Assembly Member Roger Dickinson (Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1), Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture, Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case, and part of Statutes Made Obsolete by Trial Court Restructuring: Part 5)

- Assembly Committee on Judiciary (Statutory Cross-References to “Tort Claims Act”)
- Assembly Member Mike Gatto (Ownership of Amounts Withdrawn from Joint Account)

The Commission held six one-day meetings in 2012. Meetings were held in Sacramento, Los Angeles, San Diego, and Davis.

Respectfully submitted,

Xochitl Carrion
Chairperson

2012-2013 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 399 recommendations to the Legislature, of which 366 (more than 90%) have been enacted in whole or in substantial part.⁵ Commission recommendations have resulted in the enactment of legislation affecting 24,730 sections of California law: 4,953 sections amended, 10,844 sections added, and 8,933 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

Community Redevelopment Law Clean-Up

In 2011, a statute was enacted that required the Commission to prepare Community Redevelopment Law clean-up legislation, for submission to the Legislature and Governor by January 1, 2013.⁷ The Commission began its work on that topic on February 1, 2012, when the statutory mandate first operated.⁸ Nearly all of the Commission's resources were dedicated to that study until June 27, 2012, when the statute that required and authorized the study was repealed.⁹ As a result, the Commission ~~had to cease~~ ended its work on the topic. Although the study was not completed, substantial progress was made and it is likely that the Commission's work ~~on the topic would~~ will be useful in any future efforts to reform or clean up community redevelopment law.

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

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

7. See former Health & Safety Code § 34189(b); 2011 Cal. Stat. ch. 5, § 7.

8. By court order, the operation of the statute was deferred until February 1, 2012. *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 275, 267 P.3d 580, 135 Cal. Rptr. 3d 683 (2011).

9. See 2012 Cal. Stat. ch. 26, § 31.

2013 Legislative Program

In 2013, the Commission plans to seek the introduction of legislation effectuating Commission recommendations on the following subjects:

- Commercial and industrial common interest developments
- Statutory clarification and simplification of CID law (clean-up legislation)

Major Studies in Progress

During 2013, the Commission intends to work on the following major topics: the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA), mediation confidentiality, [commercial and industrial subdivisions,] revision of the Fish and Game Code[, and exemptions from enforcement of judgments: third decennial review]. The Commission will work on other topics as time permits.

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.

Mediation Confidentiality

The Commission will analyze the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, including the purposes for and impact of mediation confidentiality on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, the effectiveness of mediation, and other relevant issues.¹⁰

10. See 2012 Cal. Stat. res. ch. 108.

[Commercial and Industrial Subdivisions

The Commission will continue to study 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.]

Revision of the Fish and Game Code

The Commission will study revision of the Fish and Game Code and related statutory law to improve organization, clarify 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.¹¹

[Exemptions from Enforcement of Judgments: Third Decennial Review

As directed by the Legislature,¹² the Commission will continue its review of the existing exemptions from enforcement of judgments, and will 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 2013. As time permits, the Commission will continue its work on trial court restructuring and consider other subjects authorized for study.

Calendar of Topics for Study

The Commission's calendar includes 23 topics authorized by the Legislature for study.¹³

11. See *id.*

12. See Code Civ. Proc. § 703.120.

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

Function and Procedure of Commission

The principal duties of the Commission are to:¹⁴

- (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,¹⁵ 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.¹⁶

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.¹⁷ However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a

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

15. 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.

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

17. 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.

prior concurrent resolution.¹⁸ Additionally, a concurrent resolution¹⁹ or statute²⁰ may directly confer authority to study a particular subject.

Background Studies

The Commission's work on a recommendation typically begins after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field who is retained as a consultant.²¹ 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

18. Gov't Code § 8298.

19. 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).

20. 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 uncodified. See, e.g., 2005 Cal. Stat. ch. 422 (beneficiary deeds).

21. 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; 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.

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.²² When the Commission has reached a conclusion on the matter,²³ 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.²⁴

22. 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 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).

23. 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.

24. 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*:

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.²⁵

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

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).

For a list of background studies published in law reviews before 2003, see 32 Cal. L. Revision Comm'n Reports 585 n.14 (2002); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971).

25. 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.

Governor.²⁶ Receipt of a recommendation by the Legislature is noted in the legislative journals, and the recommendation is referred to the appropriate policy committee.²⁷

The bill introduced to effectuate a Commission recommendation is assigned to legislative committees charged with study of the matter in depth.²⁸ 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.²⁹

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

26. 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").

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

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

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

intent in approving the bill.³⁰ 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.³¹

The Legislature has discontinued the former practice due to increased committee workloads and an effort to decrease the volume of material reprinted in the legislative journals. Under current practice, a legislative committee relies on Commission materials in its analysis of a bill, but does not separately adopt the materials. Instead, the Commission makes a report detailing the legislative history of the bill, including any revised Comments. Bill reports are published as appendices to the Commission's annual reports.³²

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,³³ and are entitled to great weight in

30. 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).

31. 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).

32. 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).

33. 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.").

construing statutes.³⁴ The materials are a key interpretive aid for practitioners as well as courts,³⁵ and courts may judicially notice and rely on them.³⁶ Courts at all levels of the state³⁷ and federal³⁸ judicial systems depend on Commission materials to construe statutes enacted on Commission recommendation.³⁹ Appellate

34. 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].)

35. *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).

36. 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).

37. 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).

38. 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).

39. 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.*

courts have cited Commission materials in more than a thousand published opinions.⁴⁰

Commission materials have been used as direct support for a court's interpretation of a statute,⁴¹ as one of several indicia of legislative intent,⁴² to explain the public policy behind a statute,⁴³ and on occasion to demonstrate (by their silence) the Legislature's intention not to change the law.⁴⁴ The Legislature's failure to adopt a Commission recommendation may be used as evidence of legislative intent to reject the proposed rule.⁴⁵

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).

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

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

42. 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).

43. 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).

44. 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).

45. 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).

Commission materials are entitled to great weight, but they are not conclusive.⁴⁶ 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,⁴⁷ nor can it anticipate judicial conclusions as to the significance of existing case authorities.⁴⁸ 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.⁴⁹

Some types of Commission materials ~~may~~ are not properly ~~be~~ relied on as evidence of legislative intent. ~~Courts have on occasion~~ On occasion, courts have cited preliminary Commission materials such as tentative recommendations, correspondence, and staff memoranda and drafts in support of their construction of a

46. 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).

47. 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).

48. 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).

49. 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.

statute.⁵⁰ 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.⁵¹ Unless preliminary Commission materials were placed before the Legislature during its consideration of the legislation, those materials are not legislative history and are not relevant in determining the Legislature's intention in adopting the legislation.⁵²

A Commission study prepared after enactment of a statute that analyzes the statute is not part of the legislative history of the statute.⁵³ 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.⁵⁴

50. 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).

51. *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).

52. 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.

53. 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).

54. 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

Publications

Commission publications are distributed to the Governor, the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel.⁵⁵ 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. About half of the hardcover volumes are out of print, but others are available for purchase.⁵⁶ Publications that are out of print are available as electronic files.⁵⁷

Electronic Publication and Internet Access

Since 1995, the Commission has provided a variety of information on the Internet, including online material and downloadable files.⁵⁸ 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.⁵⁹

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).

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

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

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

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

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

Electronic Mail

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

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

MCLE Credit

The Commission is approved by the State Bar of California as a minimum continuing legal education provider. Participants and attendees at Commission meetings may be eligible to receive MCLE credit. To receive credit for participation or attendance at a meeting, a person must register at the meeting. Meeting materials are available free of charge on the Internet⁶⁰ or may be purchased in advance from the Commission.

Personnel of Commission

As of December 13, 2012, the following persons were members of the Law Revision Commission:

Legislative Members⁶¹

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

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

61. 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.

Members Appointed by Governor⁶²*Term Expires*

Xochitl Carrion, San Francisco <i>Chairperson</i>	October 1, 2015
Damian Capozzola, Hermosa Beach <i>Vice Chairperson</i>	October 1, 2013
Judge Patricia Cowett (ret.), San Diego	October 1, 2015
Taras Kihiczak, Pacific Palisades	October 1, 2013
Victor King, La Crescenta	October 1, 2015
Susan Duncan Lee, San Francisco	October 1, 2015
Crystal Miller-O'Brien, Los Angeles	October 1, 2013

Legislative Counsel⁶³

Diane F. Boyer-Vine, Sacramento

On July 25, 2012, Damian Capozzola was reappointed to the Commission.

On October 1, 2012, Taras Kihiczak was appointed to the Commission, and Susan Duncan Lee was reappointed to the Commission.

62. 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).

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

The following persons are on the Commission's staff:

Legal

BRIAN HEBERT
Executive Director

BARBARA S. GAAL
Chief Deputy Counsel

STEVE COHEN
Attorney

Administrative-Secretarial

DEBORA LARRABEE
*Associate Governmental
Program Analyst*

VICTORIA V. MATIAS
Secretary

Mina Choi, Hart Ku, Lynn Kirshbaum, Liana Mayilyan, Robert Semones, and Courtney Taylor, all students at the University of California, Davis, School of Law, also worked for the Commission during 2012.

Commission Budget

The Commission's operations for the 2012-13 fiscal year have been funded through a reimbursement from the California Office of Legislative Counsel, in the amount of \$651,000.

That reimbursement is supplemented by \$15,000 budgeted for income generated from the sale of documents to the public, to recover the 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.⁶⁴

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.⁶⁵ 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 May 2012, an article on the Secondary Evidence Rule, co-authored by Professor Edward Imwinkelried, Professor Miguel Méndez, and the Chief Deputy Counsel, was published as the MCLE feature in California Lawyer magazine.⁶⁶

On June 7, 2012, the Executive Director made an informational presentation on the Commission's function and work to a delegation from the Bangladesh Ministry of Law Justice and Parliamentary Affairs. The delegation was headed by Qamrul Islam, the Honorable State Minister.

Legislative History of Recommendations in the 2012 Legislative Session

In 2012, bills to effectuate six Commission recommendations and part of a seventh were introduced. The Legislature also

64. Gov't Code § 8296.

65. Gov't Code § 8289.

66. Edward J. Imwinkelried, Miguel A. Méndez & Barbara S. Gaal, Document Summaries in Court, Cal. Lawyer 37 (May 2012).

continued consideration of a two-year bill to effectuate an additional Commission recommendation. All of the proposals were enacted, in whole or substantial part.

A resolution relating to the Commission's calendar of topics was also passed by the Legislature in the 2012-2013 session.

Statutory Clarification and Simplification of CID Law

The Legislature continued consideration of Assembly Bills 805 (2012 Cal. Stat. ch. 180) and 806 (2012 Cal. Stat. ch. 181), introduced by Assembly Member Norma Torres in 2011, 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 enacted, with amendments. See *Report of the California Law Revision Commission on Chapter 180 of the Statutes of 2012 (Assembly Bill 805)*, 42 Cal. L. Revision Comm'n Reports [redacted] (2012) (Appendix 4 *infra*).

Trial Court Restructuring

Assembly Bill 1529 (2012 Cal. Stat. ch. 470) was introduced by Assembly Member Roger Dickinson to effectuate the Commission's recommendations on *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm'n Reports 157 (2009), *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture*, 41 Cal. L. Revision Comm'n Reports 265 (2011), *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case*, 41 Cal. L. Revision Comm'n Reports 313 (2011), and part of *Statutes Made Obsolete by Trial Court Restructuring: Part 5*, 39 Cal. L. Revision Comm'n Reports 109 (2009).

The measure was enacted. See *Report of the California Law Revision Commission on Chapter 470 of the Statutes of 2012 (Assembly Bill 1529)*, 42 Cal. L. Revision Comm'n Reports [redacted] (2012) (Appendix 5 *infra*).

Statutory Cross-References to "Tort Claims Act"

Assembly Bill 2690 (2012 Cal. Stat. ch. 759) was introduced by the Assembly Committee on Judiciary to effectuate the

Commission's recommendation on *Statutory Cross-References to "Tort Claims Act,"* 41 Cal. L. Revision Comm'n Reports 285 (2011).

The measure was enacted.

Ownership of Amounts Withdrawn From Joint Account

Assembly Bill 1624 (2012 Cal. Stat. ch. 235), introduced by Assembly Member Gatto, effectuates the Commission's recommendation on *Ownership Of Amounts Withdrawn From Joint Account*, 34 Cal. L. Revision Comm'n Reports 199 (2004).

The measure was enacted, with amendments.

Resolution Authorizing Topics for Study

Assembly Concurrent Resolution 98 (2012 Cal. Stat. res. ch. 108) was introduced by Assembly Member Donald Wagner. It authorizes the Commission's continued study of 22 previously authorized topics, removes the Commission's authority to study special assessments for public improvement, and authorizes the Commission to study two new topics, the revision of the Fish and Game Code and mediation confidentiality.

The measure also directs the Commission, before commencing work on any project within the Commission's calendar of topics, to submit a detailed description of the scope of work, as well of any major change to the scope of that work that occurs during the course of the project, to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and of any other legislative policy committee that has jurisdiction over the subject matter of the study.

The measure further requests that the Commission provide a copy of a Commission recommendation to each member of a policy committee hearing a bill that would implement the recommendation.

The measure also invites the staff of the Commission to appear and testify at any committee hearing of a bill to implement a Commission recommendation, for the purpose of explaining the recommendation and answering questions posed by committee members, provided that the staff may not advocate for the passage or defeat of the legislation.

Report on Statutes Repealed by Implication or Held Unconstitutional

Government Code Section 8290 provides:

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

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

- No decision holding a state statute repealed by implication has been found.
- No decision of the United States Supreme Court holding a state statute unconstitutional has been found.⁶⁸
- Two decisions of the California Supreme Court holding a state statute unconstitutional have been found.⁶⁹

In *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 267 P.3d 580, 135 Cal. Rptr. 3d 683 (2011), the California Supreme Court held that Assembly Bill 27 (2011–2012 1st Ex.

67. This study has been carried through opinions published on or before September 17, 2012.

68. In *National Meat Ass'n v. Harris*, ___ U.S. ___, 132 S. Ct. 965 (2012), the United States Supreme Court held that Penal Code Section 599f, to the extent it governs the treatment of nonambulatory pigs in federally inspected swine slaughterhouses, is preempted by the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.).

69. In addition, in *People v. Caballero*, 55 Cal. 4th 262, 282 P.3d 291, ___ Cal. Rptr. 3d ___ (2012), the California Supreme Court held that the statutorily authorized imposition of a “de facto life sentence” on a juvenile, based on conviction of non-homicide offenses, constitutes cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution.

The court concluded its opinion by stating: “We urge the Legislature to enact legislation establishing a parole eligibility mechanism that provides a defendant serving a de facto life sentence without possibility of parole for nonhomicide crimes that he or she committed as a juvenile with the opportunity to obtain release on a showing of rehabilitation and maturity.”

Sess.) and Health and Safety Code Section 34172(a)(2), violated Article XIII, Section 25.5(a)(7)) of the California Constitution. Those provisions would have conditioned the ability of otherwise dissolved redevelopment agencies to continue operations based on making specified payments to state funds.

In *State Building & Construction Trades Council of California v. City of Vista*, 54 Cal. 4th 547, 279 P.3d 1022, 143 Cal. Rptr. 3d 529 (2012), the California Supreme Court held that the application of California's "prevailing wage law" (Labor Code §§ 1720-1861) to charter cities is barred by Article XI, section 5 of the California Constitution (California's "home rule" doctrine), notwithstanding the express inclusion of charter cities within the scope of the statutory provisions.

Recommendations

The Commission respectfully recommends that the Legislature authorize the Commission to continue its study of the topics previously authorized.⁷⁰

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

70. See discussion under "Calendar of Topics for Study" *supra*; *Calendar of Topics Authorized for Study*, Appendix 2 *infra*.

APPENDIX _

BIOGRAPHIES OF CURRENT COMMISSIONERS

Xochitl Carrion, of San Francisco, has been an attorney with the law firm of Goldfarb and Lipman LLP since 2007. She is also a member of the California La Raza Lawyers Association and the San Francisco La Raza Association. Commissioner Carrion received a Juris Doctor degree from the University of California, Hastings College of the Law.

Damian Capozzola, of Hermosa Beach, has been a partner with the law firm of Crowell and Moring LLP since 2011. He was previously an attorney with the law firm of Epstein Becker and Green P.C. from 2007 to 2011, and an attorney with the law firm of Kirkland and Ellis LLP from 1996 to 2007. Commissioner Capozzola received a Juris Doctor degree from the University of Virginia School of Law.

Diane Boyer-Vine, of Sacramento, has been Legislative Counsel for the State of California since 2002. She was previously a deputy and thereafter a chief deputy in the Legislative Counsel's office from 1988 to 2002, and before that an associate with the law firm of Martorana and Stockman. She also serves as a member of the California Commission on Uniform State Laws. Commissioner Boyer-Vine received a Juris Doctor degree from the University of California, Davis School of Law.

Judge Patricia Cowett (ret.), of San Diego, has been a mediator with Alternative Dispute Resolution Services, Inc. since 2009. She was previously a judge on the San Diego Superior Court from 1998 to 2008, a judge on the San Diego Municipal Court from 1979 to 1998, and presiding judge of the San Diego Municipal Court in 1991. Commissioner Cowett received a Juris Doctor degree from the University of California, Davis School of Law.

Assembly Member Roger Dickinson, of Sacramento, has been a member of the Assembly since 2010. He previously helped form the law firm of Kemnitzer, Dickinson, Anderson & Barron. He also served on the Sacramento County Board of Supervisors from 1994 to 2010, was a member and board chair of the Sacramento Housing and Redevelopment Commission, a board member and president of the American Lung Association of Sacramento, chair of the Sacramento Transportation Coalition, president of the Friends of Light Rail, board member of the Sacramento Tree Foundation, and member of the Regional Transit Board of Directors, the Sacramento County Air Pollution Control Advisory Board, and the North Sacramento Community Plan Citizens Advisory Committee. Commissioner Dickinson received a Juris Doctor degree from the University of California, Los Angeles School of Law.

Senator Tom Harman, of Costa Mesa, served as a member of the Senate from 2006 to 2012. He was previously a member of the Assembly from 2000 to 2006, and before that was a member of the law firm of Lucas & Deukmejian. He also served on the Huntington Beach City Council, and was president of the Huntington Youth Shelter and Huntington Beach Rotary Club. Commissioner Harman received a Juris Doctor degree from Loyola Law School.

Taras Peter Kihiczak, of Pacific Palisades, has been a lawyer with and shareholder of The Kick Law Firm APC since 1991. He was previously a lawyer with the law firm of Thelen Marrin Johnson and Bridges from 1989 to 1990. Commissioner Kihiczak received a Juris Doctor degree from the University of Pennsylvania Law School.

Victor King, of La Crescenta, has been university legal counsel for California State University, Los Angeles since 2002. He was previously a partner with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 2001 to 2002, an associate with the law firm of Lewis Brisbois Bisgaard and Smith LLP from 1999 to 2001, an

associate with the law firm of Bottum and Feliton from 1996 to 1999, and an associate with the law firm of Ochoa and Sillas from 1991 to 1995. He was also a trustee of the Glendale Community College District from 1997 to 2009. Commissioner King received a Juris Doctor degree from the University of Michigan Law School.

Susan Lee, of Tiburon, has been a deputy attorney general and thereafter a supervising deputy attorney general with the California Department of Justice since 1989. Commissioner Lee received a Juris Doctor degree from the University of California, Hastings College of the Law.

Crystal Miller-O'Brien, of Los Angeles, has been corporate counsel for Medical Management Consultants, Inc. since 2006. She was previously an associate with the law firm of Anderson McPharlin and Connors LLP from 2005 to 2006, an associate with the law firm of Robie and Matthai PC from 2003 to 2005, and an associate with the law firm of Bullivant Houser Bailey PC from 2002 to 2003. She has also served on the board of directors of the Conference of California Bar Associations since 2009, is a member of the Black Women Lawyers Association of Los Angeles, and a member of the National Association of Women Business Owners. Commissioner Miller-O'Brien received a Juris Doctor degree from Willamette University College of Law.
