

Memorandum 2016-21

2016 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's¹ 2016 legislative program. The staff will supplement that information orally, if necessary, at the upcoming meeting.

The remainder of this memorandum discusses the Commission's Resolution of Authority and a bill affecting the Commission's pending study of the revocable transfer on death deed.

ACR 148 (CHAU & ROTH). RESOLUTION OF AUTHORITY

Assembly Member Chau has introduced Assembly Concurrent Resolution 148, with Senator Roth as co-author. The resolution sets out the Commission's calendar of topics authorized for study.

At the request of the Assembly Committee on Judiciary, the resolution was amended to assign the Commission a new study:

[T]he Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning the revision of the portions of the Government Code relating to public records, and that this legislation shall accomplish all of the following objectives:

- (1) Reduce the length and complexity of current sections.
- (2) Avoid unnecessary cross-references.
- (3) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.
- (4) To the extent compatible with (3), use terms with common definitions.

1. 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

(5) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.

(6) Eliminate duplicative provisions.

(7) Clearly express legislative intent without any change in the substantive provisions;

...

At the April meeting, Commissioners asked whether that language would encompass public record inspection laws that are located outside the Government Code.

The staff raised that question with Assembly Member Chau's staff and with the staff of the Assembly Committee on Judiciary. We also asked whether the resolution was intended to authorize Commission study of public record laws in the Government Code other than the California Public Records Act.²

In response to those inquiries, it became clear that the intention was for the Commission to study only the California Public Records Act and related provisions (without regard for whether those related provisions are located in the Government Code).

The staff expects that the resolution will be amended to make that meaning clearer, with a change along these lines:

Resolved, That the Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning the revision of the ~~portions of the Government Code relating to public records~~ California Public Records Act and related provisions, and that this legislation shall accomplish all of the following objectives:

The staff will update the Commission once the amendment has been made.

AB 1779 (GATTO). REVOCABLE TRANSFER ON DEATH DEED

Assembly Member Gatto successfully authored 2015 legislation that largely implemented the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).³

2. See, e.g., Gov't Code §§ 6200-6203 (crimes relating to public records); 12220-12237 (State Archives); 12270-12279 (state records management).

3. See 2015 Cal. Stat. ch. 293 (AB 139).

This year, Assembly Member Gatto introduced Assembly Bill 1779, which would have made a small number of refinements to the new law on revocable transfer on death deeds.

The bill has since been amended, to remove the substantive changes affecting the operation of the revocable transfer on death deed and instead require that the Commission's pending study of the deed include two specific issues, thus:

Section 21 of Chapter 293 of the Statutes of 2015 is amended to read:

SEC. 21. (a) The California Law Revision Commission shall study the effect of California's revocable transfer on death deed set forth in Part 4 (commencing with Section 5600) of Division 5 of the Probate Code and make recommendations in this regard. The commission shall report all of its findings to the Legislature on or before January 1, 2020.

(b) In the study required by subdivision (a), the commission shall address all of the following:

(1) Whether the revocable transfer on death deed is working effectively.

(2) Whether the revocable transfer on death deed should be continued.

(3) Whether the revocable transfer on death deed is subject to misuse or misunderstanding.

(4) What changes should be made to the revocable transfer on death deed or the law associated with the deed to improve its effectiveness and to avoid misuse or misunderstanding.

(5) Whether the revocable transfer on death deed has been used to perpetuate financial abuse on property owners and, if so, how the law associated with the deed should be changed to minimize this abuse.

(6) Whether it is feasible and appropriate to expand the revocable transfer on death deed to include the following:

(A) The transfer of stock cooperatives or other common interest developments.

(B) Transfers to a trust or other legal entity.

(c) (1) The report required by subdivision (a) shall comply with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2024.

The staff will continue to monitor the progress of this bill.

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2016 Commission Legislative Program

As of May 23, 2016

		AB 2881	ACR 148		SB 1473						
First House	Introduced	2/25/16	3/3/16		2/29/16						
	Last Amended	4/12/16			3/30/16						
	Policy Committee	4/19/16	4/19/16		4/12/16						
	Second Committee	5/4/16	5/4/16		4/26/16						
	Passed House	5/12/16	5/9/16		4/28/16						
Second House	Policy Committee										
	Second Committee										
	Passed House										
Concurrence											
Governor	Received										
	Approved										
Secretary of State	Date										
	Chapter #										

Bill List: AB 2881 (Committee on Judiciary). Notice Publication Districts
 ACR 148 (Chau). Resolution of Authority
 SB 1473 (Committee on Natural Resources and Water). Fish and Wildlife Clean-Up (Part 2)

Also of Interest:
 AB 1779 (Gatto). Revocable Transfer on Death Deed

KEY

Italics: Future or speculative
 “—”: Not applicable
 *: Double referral, not fiscal
[date]: Deadline