Memorandum 2020-46 (corrected)

Trial Court Restructuring Clean-Up: Completion of Studies Under Government Code Section 70219 (Comments on Tentative Recommendation)

In July, the Commission released a tentative recommendation on Trial Court Restructuring Clean-Up: Completion of Studies Under Government Code Section 70219. The tentative recommendation proposes to repeal Government Code Section 70219 because the Commission and the Judicial Council have completed all of the studies assigned to them under that section. The tentative recommendation was posted to the Commission’s website and circulated for comment, with a due date of September 1, 2020.

The Commission did not receive any comments on the tentative recommendation. That is not surprising, because the topic seems noncontroversial and the staff consulted with a contact at the Judicial Council before presenting the proposal for the Commission’s approval.

Attached is a draft of a final recommendation. The staff corrected a typographical error in the tentative recommendation and made routine changes to convert the tentative recommendation into a final recommendation. We did not make any other changes. Commissioners and other interested persons should review the attached draft and consider whether any other revisions are advisable.

Comments on the proposal are still welcome and encouraged. After considering any input received at or before the upcoming meeting, the Commission should decide whether to approve the attached draft as a final

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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.
recommendation (with or without revisions), for publication and submission to the Legislature and the Governor.

Respectfully submitted,

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CALIFORNIA LAW

REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Trial Court Restructuring Clean-Up: Completion of Studies Under Government Code Section 70219

October 2020

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
<commission@clrc.ca.gov>
SUMMARY OF RECOMMENDATION

Government Code Section 70219 directs the Judicial Council and the Law Revision Commission to undertake certain studies relating to judicial administration. The Judicial Council and the Commission have completed those studies as assigned. Section 70219 is thus obsolete and the Commission recommends that it be repealed.

This recommendation was prepared pursuant to Government Code Section 71674 and Resolution Chapter 158 of the Statutes of 2018.
TRIAL COURT RESTRUCTURING CLEAN-UP:
COMPLETION OF STUDIES UNDER
GOVERNMENT CODE SECTION 70219

In its 1998 report on revision of the codes to implement trial court unification, the Law
Revision Commission identified a number of topics for future study.\(^1\) The Legislature
subsequently enacted Government Code Section 70219, which directs the Judicial
Council and the Commission to undertake those studies and share responsibility for them
in the manner suggested in the Commission’s report.\(^2\)

The Judicial Council and the Commission conducted the assigned studies as directed
and all of the work is complete. Section 70219 thus appears to be obsolete and ready for
repeal, as explained in more detail below.

Assigned Studies and Work Performed

The studies assigned by Section 70219 fall into the following categories:

- A reexamination of the three-track system for civil cases, to be jointly
  conducted by the Judicial Council and the Commission.
- Studies primarily assigned to the Judicial Council, to conduct in consultation
  with the Commission.
- Studies primarily assigned to the Commission, to conduct in consultation
  with the Judicial Council.

Each category is described and discussed in order.

Joint Study of the Three-Track System for Civil Cases

In its report on revision of the codes to implement trial court unification, the
Commission sought to preserve existing procedural distinctions between traditional

1. See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm’n Reports 51 (1998)
   (hereafter, “TCU: Revision of Codes”). The Commission prepared that recommendation pursuant to 1997

2. Government Code Section 70219 provides:

   70219. On submission by the California Law Revision Commission of its report to the Governor
   and the Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending
   statutory changes that may be necessitated by court unification, the Judicial Council and the
   California Law Revision Commission shall study and make recommendations to the Governor
   and the Legislature on the issues identified in the report as appropriate for future study, including
   consideration of the experience in counties in which the courts have unified. Each agency shall
   assume primary or joint responsibility for the studies and recommendations as outlined in the
   report, and each agency shall consult with the other in the studies and recommendations. This
   section does not limit any authority of the Judicial Council or the California Law Revision
   Commission to conduct studies and make recommendations authorized or directed by law.
   (Emphasis added.) This provision was first enacted in 1998. See 1998 Cal. Stat. ch. 931, § 257. It was
   inadvertently repealed by 2001 Cal. Stat. ch. 745, § 113, but reenacted without substantive change by 2002
superior court cases (now known as unlimited civil cases), traditional municipal court cases (now known as limited civil cases), and small claims cases (a special category of limited civil cases). The Commission “strongly recommended,” however, that the Legislature “direct a study reexamining this three-track system and its underlying policies in light of unification.”

The Commission explained that such a study “may entail elimination of unnecessary procedural distinctions, reassessment of the jurisdictional limits for small claims procedures and economic litigation procedures, and reevaluation of which procedures apply to which type of case.” The Commission recommended that this study be jointly conducted by the Judicial Council and the Commission.

By enacting Section 70219, the Legislature approved that approach. The section specifically directs the Judicial Council and the Commission to conduct the studies identified in the Commission’s report, assume primary or joint responsibility for those studies as outlined in that report, and consult with each other in conducting the assigned studies.

As directed, the Judicial Council and the Commission jointly reexamined the three-track system for civil cases. In particular, they conducted a project in which they identified and proposed to eliminate some unnecessary procedural differences between limited civil cases and unlimited civil cases. The proposed legislation was enacted.

The Judicial Council and the Commission also jointly studied the jurisdictional limits for a small claims case and a limited civil case. As a first step, the Judicial Council hired a consulting firm to conduct empirical research and prepare a background study summarizing its findings. Upon consideration of the consultant’s 2002 report, the Commission prepared and widely circulated a tentative recommendation proposing to increase the jurisdictional limits for both types of cases. The Commission received extensive input, but consensus among the stakeholders proved difficult to reach and work on the joint study stopped in early 2004.

3. See TCU: Revision of Codes, supra note 1, at 64-65, 82.
4. Id. at 82.
5. Id. at 82-83.
6. Id. at 83.
7. For the text of Section 70219, see supra note 2.
12. See CLRC Staff Memorandum 2004-3; First Supplement to CLRC Staff Memorandum 2004-3; CLRC Staff Memorandum 2004-40; CLRC Minutes (Feb. 2004), pp. 7-8; see also CLRC Staff Memorandum 2014-41, p. 9 (explaining that project was tabled a decade earlier, circumstances warranting reactivation of the project had not materialized, and “it seems reasonable to consider the matter closed.”).
Several bills modifying the jurisdictional limits for a small claims case have since been enacted.\textsuperscript{13} The joint study by the Judicial Council and the Commission helped pave the way for those bills and related improvements (such as reforms relating to temporary judges, self-represented litigants, and litigants who do not speak English).\textsuperscript{14} The Judicial Council took positions on and helped to shape the jurisdictional bills,\textsuperscript{15} but the Commission stayed on the sidelines as required by its governing statute.\textsuperscript{16}

The jurisdictional limit for a limited civil case remains unchanged.\textsuperscript{17} Although some recent Judicial Council subgroups re-explored the possibility of revising that limit, they did not find sufficient support for such a reform.\textsuperscript{18}

\textbf{Studies Primarily Assigned to the Judicial Council}

Under Section 70219, the following studies were primarily assigned to the Judicial Council, to conduct in consultation with the Commission: \textsuperscript{19}

\textit{Obsolete statutes relating to prior court and personnel restructurings.} The Commission’s 1998 report cited two code sections to illustrate this problem.\textsuperscript{20} Both of those provisions have since been repealed.\textsuperscript{21}

\begin{itemize}
  \item \textsuperscript{14} See, e.g., 2005 Cal. Stat. ch. 600, § 1 (legislative findings referring to consultant’s report for joint study); 2005 Cal. Stat. ch. 618, § 1 (same); Assembly Committee on Judiciary Analysis of AB 1459 (April 26, 2005), pp. 5-6 (referring to joint study); Assembly Committee on Judiciary Analysis of SB 411 (June 28, 2005), pp. 5-6 (same); CLRC Staff Memorandum 2004-40 (describing Judicial Council projects addressing concerns expressed in joint study); CLRC Staff Memorandum 2005-41 (discussing 2005 bills and impact of joint study).
  \item \textsuperscript{15} See, e.g., Senate Committee on Judiciary Analysis of AB 1459 (June 28, 2005), pp. 1, 5-6; Senate Committee on Judiciary Analysis of SB 221 (April 12, 2011), pp. 3-6.
  \item \textsuperscript{16} See Gov’t Code § 8288; see also CLRC Staff Memorandum 99-85, p. 2 (“The Commission does not take positions on bills; it speaks to the Legislature through its own recommendations and bills.”).
  \item \textsuperscript{17} See Code Civ. Proc. §§ 85, 86, 86.1.
  \item \textsuperscript{18} See, e.g., https://www.courts.ca.gov/documents/SPR18-11.pdf (Judicial Council’s invitation to comment on proposal by its Civil and Small Claims Advisory Committee to increase jurisdictional limit for limited civil cases from $25,000 to $50,000, as recommended by its Commission on Future of California’s Court System); CLRC Staff Memorandum 2011-36, p. 4 & Exhibit p. 1 (describing ideas being explored by Judicial Council’s Small Civil Cases Working Group).
  \item \textsuperscript{19} See TCU: Revision of Codes, supra note 1, at 84-85.
  \item \textsuperscript{20} See id. at 84 n.116 (citing Gov’t Code §§ 71003, 71040.5).
  \item \textsuperscript{21} See 2002 Cal. Stat. ch. 784 § 341 (SB 1316 (Committee on Judiciary)) (repealing Gov’t Code § 71003); 2001 Cal. Stat. ch. 824, § 24 (AB 1700 (Steinberg)) (repealing Gov’t Code § 71040.5); see also Statutes Made Obsolete by Trial Court Restructuring: Part I, 32 Cal. L. Revision Comm’n Reports 1, 308-09 (2002) (hereafter, “TCR: Part I”) (recommending repeal of article containing Gov’t Code § 71003).
\end{itemize}
Superior court sessions, both general and special. The Commission studied and made
recommendations on this topic, with input from the Judicial Council and other
stakeholders. The proposed legislation was enacted.

Number of authorized commissioners and referees in a county in which the courts have
unified. In 2000, the Judicial Council co-sponsored the enactment of the Trial Court
Employment Protection and Governance Act (“TCEPGA”). Among other things, this
legislation includes a code section that governs appointment of subordinate judicial
officers (“SJOs”) after trial court unification. Later, the Judicial Council studied the
balance between judges and SJOs and made recommendations on conversion of SJO
positions to judgeships. Legislation on the matter was enacted.

Reorganization of statutes governing court fees. The statutes governing court fees were
standardized and reorganized through the enactment of the Uniform Civil Fees and
Standard Fee Schedule Act of 2005. They are now consolidated in a single chapter of
the Government Code.

Eligibility of judges to serve on the small claims advisory committee. This topic was
addressed in a 1999 clean-up bill on trial court unification. Among other things, that bill
amended the provision governing the composition of the small claims advisory
committee.

22. See Statutes Made Obsolete by Trial Court Restructuring: Part 2, 33 Cal. L. Revision Comm’n
Reports 169, 175-76 (2003) (hereafter “TCR: Part 2”); see also CLRC Staff Memorandum 2001-2, Exhibit
pp. 2-3 (AOC memorandum reporting on Judicial Council activities).
25. See Gov’t Code § 71622; see also TCR: Part 1, supra note 20, at 12 (TCEPGA “has established far-
reaching provisions relating to subordinate judicial officers that eclipse much of existing law relating to
authorization and appointment of subordinate judicial officers.”).
26. See Judicial Council, Update of the Judicial Workload Assessment and New Methodology for
Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships (Feb. 23, 2007); Judicial
Council, Subordinate Judicial Officer Working Group, Subordinate Judicial Officers: Duties and Titles
(July 2002).
27. 2007 Cal. Stat. ch. 722, § 3 (AB 159 (Jones)) (adding Section 69615 to Gov’t Code); see also 2010
Cal. Stat. ch. 690, § 2 (AB 2763 (Committee on Judiciary)) (amending Gov’t Code § 69615);
28. See 2005 Cal. Stat. ch. 75 (AB 145 (Committee on Budget)).
29. See Gov’t Code §§ 70600-70678.
30. See 1999 Cal. Stat. ch. 344, § 5 (SB 210 (Committee on Judiciary)); see also Trial Court
Annual Report, 29 Cal. L. Revision Comm’n Reports 579 (1999)) (hereafter, “TCU Follow-Up”); CLRC
Staff Memorandum 2001-2, Exhibit p. 5 (AOC memorandum reporting on Judicial Council activities).
Catalogue of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995. With the exception of death penalty cases, the courts of appeal have appellate jurisdiction “when superior courts have original jurisdiction in causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995, and in other causes prescribed by statute.” To aid in interpretation of this constitutional requirement, the Commission’s 1998 report raised the possibility of creating a catalogue of the types of cases that were within the appellate jurisdiction of the courts of appeal on June 30, 1995.

As directed by the Legislature, the Judicial Council investigated this topic, in consultation with the Commission. In mid-1999, the Appellate Advisory Committee of the Judicial Council concluded that “rather than constructing a catalogue in the abstract, it was best to wait for the issue to be ripe and better defined.”

In 2001, the Commission revisited the concept of creating a catalogue. This concept faded from consideration as the Judicial Council and the Commission explored broader ideas relating to appellate and writ review under trial court unification.

The Commission circulated a tentative recommendation on the subject, which proposed a set of constitutional and statutory reforms, including deletion of the constitutional reference to “causes of a type within the appellate jurisdiction of the courts of appeal on June 30, 1995.” The Judicial Council’s Ad Hoc Task Force on the Superior Court Appellate Divisions developed its own proposal, which took a different approach.

Neither approach gained traction and the efforts were eventually set aside.

The Commission is not aware of any current interest in developing a catalogue of cases within the appellate jurisdiction of the courts of appeal on June 30, 1995. The lack of interest is likely due to the possibility of transferring, rather than dismissing, an appeal brought in the wrong court.

33. See TCU: Revision of Codes, supra note 1, at 84.
34. See, e.g., CLRC Staff Memorandum 99-31; First Supplement to CLRC Staff Memorandum 99-31; CLRC Staff Memorandum 99-73; CLRC Minutes (June 1999), p. 11; CLRC Minutes (Oct. 1999), p. 9.
35. CLRC Staff Memorandum 99-73, Exhibit p. 1.
36. See CLRC Staff Memorandum 2001-56, pp. 2-6.
40. See CLRC Minutes (Nov. 2003), p. 8; see also CLRC Staff Memorandum 2003-38.
41. See, e.g., People v. Nickerson, 128 Cal. App. 4th 33, 26 Cal. Rptr. 3d 563 (2005) (ordering transfer of case from court of appeal to appellate division); Gov’t Code § 68915 (“No appeal taken to the Supreme Court or to a court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein, as if regularly appealed thereo.”); see also CLRC Staff
Consolidation of jury commissioner functions for the courts in each county. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders. The proposed legislation was enacted.

Magistrate as judicial officer of the state or judicial officer of a particular court. Statutory clarification of this point was deemed unnecessary. The Commission is not aware of any current concerns relating to this matter.

Correction of county-specific statutes after unification in that county. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders. The proposed legislation was enacted.

Pursuant to other sources of authority, the Commission is continuing to review and make recommendations relating to statutes made obsolete by trial court restructuring, including county-specific statutes. Section 70219’s directive to study and correct county-specific statutes is no longer necessary.

Reexamination of the statutes governing jury selection. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders. The proposed legislation was enacted.

Studies Primarily Assigned to the Commission

Under Section 70219, the following studies were primarily assigned to the Commission, to conduct in consultation with the Judicial Council:

Memorandum 2001-56, pp. 5-6 (discussing authority to transfer); CLRC Staff Memorandum 2001-2, Exhibit p. 6 (AOC memorandum reporting existence of consensus that “any problems occurring in this area could be resolved by transfer of an appeal filed in the wrong court to the appropriate court.”).

42. See TCR: Part 2, supra note 22, at 177-78.
43. See 2003 Cal. Stat. ch. 79.
44. See generally CLRC Staff Memorandum 1997-66, p. 23.
45. See CLRC Staff Memorandum 2001-2, Exhibit pp. 6-7 (AOC memorandum reporting on Judicial Council activities).
46. See TCR: Part 2, supra note 22, at 177-78.
47. See TCR: Part 1, supra note 21, at 16-17.
49. See, e.g., Statutes Made Obsolete by Trial Court Restructuring (Part 6): Court Facilities, 46 Cal. L. Revision Comm’n Reports 25 (2019); Trial Court Restructuring Clean-Up: Obsolete References to Marshals, 46 Cal. L. Revision Comm’n Reports 105 (2019).
50. See, e.g., CLRC Staff Memorandum 2001-2, Exhibit pp. 7-8 (AOC memorandum discussing work on county-specific statutes to be done by Commission).
52. See 2002 Cal. Stat. ch. 784 (SB 1316 (Committee on Judiciary)).
53. See TCU: Revision of Codes, supra note 1, at 85-86.
Obsolete statutes relating to expired pilot projects or other expired programs. The Commission studied and made recommendations on this topic, with input from the Judicial Council and other stakeholders. The proposed legislation was enacted.

Whether to conform the statutory provisions on circumstances for appointment of a receiver. The Commission studied and made recommendations on this topic, providing opportunities for stakeholder input. The proposed legislation was enacted.

Procedure for good faith improver claims. The Commission studied and made recommendations on this topic, providing opportunities for stakeholder input. The proposed legislation was enacted.

Procedure for obtaining a stay of a mechanic’s lien foreclosure action pending arbitration. The Commission studied this topic and issued a recommendation in 2000. The following year, the proposed legislation was included in a bill with some other reforms, but later deleted to permit further study in light of a new court decision. Thereafter, the Commission approved a revised recommendation. A bill to implement the revised recommendation was introduced in 2003. To address concerns raised in the legislative process, the bill was amended to implement the substance of the original recommendation instead. It was enacted as so amended.

Clarification of provisions relating to obtaining counsel for a defendant in a criminal case. The Commission’s 1998 report pointed out that certain statutes on appointment of counsel for a criminal defendant “appear to be somewhat dated, and their interrelation is unclear.” The report suggested that a “clearer statutory statement of the governing rules may be appropriate.”

55. See 2001 Cal. Stat. ch. 115 (SB 153 (Knight)).
56. See Authority to Appoint Receivers, 30 Cal. L. Revision Comm’n Reports 291 (2000).
57. See 2001 Cal. Stat. ch. 44 (SB 562 (Morrow)).
59. See 2000 Cal. Stat. ch. 688, § 7 (AB 1669 (Committee on Judiciary)).
62. See CLRC Staff Memorandum 2001-93.
64. See AB 113 (Ackerman), as introduced on Feb. 3, 2003.
66. TCU: Revision of Codes, supra note 1, at 85 n.128 (referring to Penal Code §§ 859, 859a, 859b, 860).
67. Id.
Upon further study as directed by the Legislature, the Commission became concerned
that some of the statutes might conflict with a defendant’s constitutional right of self-representation. The Commission decided not to propose legislation in this area, because
such a proposal would entail analysis beyond the scope of the technical clean-up
originally envisioned when the Legislature authorized the study.

Role of court reporter in a county in which the courts have unified, particularly in a
criminal case. Citing several statutes, the Commission’s 1998 report noted that
“[e]xisting statutes governing functions of court reporters may be problematic as applied
in a county in which the courts have unified, particularly in criminal cases.” The
Commission studied this matter and recommended statutory revisions to address the
problems identified. The proposed legislation was enacted.

Appealability of order of recusal in a criminal case. The Commission studied and
proposed legislation on the appealability of an order of recusal in a criminal case. The
proposed legislation was enacted.

Publication of legal notice in a county with a unified superior court. The Commission
studied and made recommendations on this topic, with input from the Judicial Council
and other stakeholders. The proposed legislation was enacted.

Resolving the numbering conflict in the two Chapters 2.1 (commencing with Section
68650) of Title 8 of the Government Code. The Legislature fixed this problem by
enacting the 1998 bill on maintenance of the codes. There was no need for the
Commission to do anything further.

68. See CLRC Staff Memorandum 1999-12.
69. See id.; see also CLRC Minutes (June 1999), p. 9.
70. TCU: Revision of Codes, supra note 1, at 86 n.129 (referring to Code Civ. Proc. § 274c, Gov’t Code
§ 72194.5 & Penal Code § 869).
72. See 2002 Cal. Stat. ch. 71 (SB 1371 (Morrow)). Although the court reporter issues assigned by
Section 70219 have been resolved, the statutes governing court reporter compensation still contain material
made obsolete by trial court restructuring. See CLRC Staff Memorandum 2020-15. The Commission is
authorized to study those statutes pursuant to other sources of authority. See Gov’t Code § 71674; 2018
Cal. Stat. res. ch. 158 (item #12). The situation is complicated and the Commission will proceed with the
statutory clean-up when it appears feasible to do so.
73. See 1999 Cal. Stat. ch. 344, § 25 (conforming Penal Code § 1238 to Penal Code § 1424(a)(2)); TCU
Follow-Up, supra note 28, at 664.
74. See Trial Court Unification: Publication of Legal Notice, 44 Cal. L. Revision Comm’n Reports 385
75. See 2016 Cal. Stat. ch. 2881 (AB 2881 (Committee on Judiciary)).
76. See 1998 Cal. Stat. ch. 485, §§ 94-100.5 (AB 2803 (Committee on Judiciary)).
**Default in an unlawful detainer case.** The Commission studied and proposed legislation on default in an unlawful detainer case. The proposed legislation was enacted.\textsuperscript{77}

**Whether to make revisions regarding the repository for the duplicate of an affidavit pursuant to Fish and Game Code Section 2357.** The Commission studied and made recommendations on this topic, providing opportunities for stakeholder input.\textsuperscript{78} The proposed legislation was enacted.\textsuperscript{79}

**Recommendation**

Because all of the studies required by Government Section 70219 are done, there is no need to retain it in the codes. The Commission recommends that the section be repealed as obsolete.\textsuperscript{80}

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\textsuperscript{77} See 1999 Cal. Stat. ch. 344, § 19 (correcting cross-references in Code Civ. Proc. § 1167.3); TCU Follow-Up, supra note 28, at 663.

\textsuperscript{78} See Trout Affidavit, 30 Cal. L. Revision Comm’n Reports 319 (2000).

\textsuperscript{79} See 2000 Cal. Stat. ch. 167, § 1 (SB 1487 (Knight)).

\textsuperscript{80} See proposed repeal of Gov’t Code § 70219 & Comment infra.
PROPOSED LEGISLATION

Gov’t Code § 70219 (repealed). Judicial Council and Law Revision Commission studies and recommendations

SECTION 1. Section 70219 of the Government Code is repealed.

70219. On submission by the California Law Revision Commission of its report to the Governor and the Legislature pursuant to Resolution Chapter 102 of the Statutes of 1997 recommending statutory changes that may be necessitated by court unification, the Judicial Council and the California Law Revision Commission shall study and make recommendations to the Governor and the Legislature on the issues identified in the report as appropriate for future study, including consideration of the experience in counties in which the courts have unified. Each agency shall assume primary or joint responsibility for the studies and recommendations as outlined in the report, and each agency shall consult with the other in the studies and recommendations. This section does not limit any authority of the Judicial Council or the California Law Revision Commission to conduct studies and make recommendations authorized or directed by law:

Comment. Section 70219 is repealed as obsolete. All of the assigned studies have been completed. See Trial Court Restructuring Clean-Up: Completion of Studies Under Government Code Section 70219, __ Cal. L. Revision Comm’n Reports __ (202x).