

Admin.

November 17, 2020

Memorandum 2020-59

New Topics and Priorities: Commission Authority Generally

In October, the Commission directed the staff to prepare a memorandum on “the Commission’s existing scope of authority, the process of obtaining additional authority, and related matters.”¹ This memorandum addresses that topic.

The following materials are attached for the Commission to consider:

	<i>Exhibit p.</i>
• Government Code Sections 8280-8290	1
• 2020 Cal. Stat. res. ch. 96	5

Unless otherwise indicated, all further statutory references are to the Government Code.

INTRODUCTION

The Law Revision Commission was created by statute in 1953.² The governing statute has been renumbered³ and tweaked in a few respects since then (most notably, to create the new Committee on Revision of the Penal Code).⁴ For the most part, however, the governing statute (now located at Sections 8280-8298) has not changed much over the years.

Because the Commission is a creature of statute, normal rules of statutory interpretation apply in determining its duties, existing scope of authority, the

1. *Draft Minutes* (Oct. 2020), p. 3. 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.

2. See 1953 Cal. Stat. ch. 1445; former Sections 10300-10340.

3. See 1984 Cal. Stat. ch. 1335 (amending & renumbering Commission’s governing statute).

4. See 2019 Cal. Stat. ch. 25; see also 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2; 1984 Cal. Stat. ch. 1335; 1985 Cal. Stat. ch. 106, § 45; 1989 Cal. Stat. ch. 152, § 1; 2004 Cal. Stat. ch. 193, § 33.

process of obtaining additional authority, and related matters. As the California Supreme Court recently explained, the first step in interpreting a statute is to “examine the statutory language, giving it a plain and commonsense meaning.”⁵ The language of each provision should not be considered in isolation, but rather “in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment.”⁶

Thus, the analysis in this memorandum begins by focusing on the plain language of Sections 8280 to 8298. For convenient reference, those provisions are reproduced at Exhibit pages 1-4.

STATUTORY LANGUAGE

Section 8289 is the key provision specifying the duties of the Commission. It provides:

8289. The commission shall, *within the limitations imposed by Section 8293:*

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.⁷

Section 8291 directs the Commission to submit its reports and law reform recommendations to the Governor and the Legislature. Section 8292 addresses

5. Jarman v. HCR Manorcare, Inc., 10 Cal. 5th 375, 381, 471 P.3d 1001, 267 Cal. Rptr. 3d 696 (2020), *quoting* Coalition of Concerned Communities, Inc. v. City of Los Angeles, 34 Cal. 4th 733, 737, 101 P.3d 563, 21 Cal. Rptr. 3d 676 (2004).

6. Jarman v. HCR Manorcare, Inc., 10 Cal. 5th 375, 381, 471 P.3d 1001, 267 Cal. Rptr. 3d 696 (2020), *quoting* Coalition of Concerned Communities, Inc. v. City of Los Angeles, 34 Cal. 4th 733, 737, 101 P.3d 563, 21 Cal. Rptr. 3d 676 (2004).

7. Emphasis added. The Commission is also responsible for “recommend[ing] 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.” Section 8290.

the content of the reports. Like Section 8289, it is expressly subject to the limitations of Section 8293:

8292. The commission ... may, *within the limitations imposed by Section 8293*, include in [its] reports the legislative measures proposed by [it] to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission ... with a full and accurate index thereto.⁸

Section 8293 explains the process for determining which specific topics the Commission may study. The first sentence directs the Commission to “file a report at each regular session of the Legislature that shall contain a calendar of topics *selected by it for study*, including a list of the studies in progress and a list of topics intended for future consideration.”⁹

The remainder of Section 8293(a) makes clear, however, that the Commission is *only permitted to study topics that the Legislature approves* by concurrent resolution or by statute. It says:

The commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.¹⁰

Thus, the main way that the Commission obtains its study authority is to submit a request at each regular session of the Legislature, listing the topics it would like to study. The Legislature then decides whether to grant the requested authority.

However, as indicated in the second sentence quoted above, there is another way in which the Legislature can grant the Commission authority to study a topic. The Legislature is free at any time to refer a matter to the Commission for study, by concurrent resolution or statute. It can do so on its own initiative, independent of the process by which the Commission requests study authority.

An example of this is Section 8298, which was added to the governing statute in 1989. It provides that the Commission “may study and recommend revisions

8. Emphasis added.

9. Section 8292 (a) (emphasis added).

10. *Id.* (emphasis added). Section 8293(b) relates to the Committee on Revision of the Penal Code and is not relevant here.

to correct *technical or minor substantive defects* in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.”¹¹ However, the authority granted by that statute is quite limited. It only authorizes work on miscellaneous minor and technical matters.

Under either of the processes discussed above, the authority of the Commission to study a particular topic must be approved by the Legislature, by concurrent resolution of statute.

LANGUAGE IN LEGISLATIVE RESOLUTIONS

In compliance with Section 8293, the Commission has submitted a proposed Calendar of Topics at each regular session of the Legislature, which the Legislature has reviewed.¹² In some instances, the Legislature has approved the proposed Calendar of Topics without any modifications.¹³ On other occasions, the Legislature has made revisions to the list of topics.¹⁴

The most recent legislative resolution, just approved in September, is attached at Exhibit pages 5-8 for the Commission’s consideration. It is typical of its many predecessors, and its language is consistent with the approval process described above.

The resolution begins with two clauses that describe the approval process:

WHEREAS, The California Law Revision Commission is authorized to study topics set forth in the calendar contained in its report to the Governor and the Legislature *that have been or are thereafter approved for study* by concurrent resolution of the Legislature, and topics that have been referred to the commission for study by concurrent resolution of the Legislature or by statute; and

WHEREAS, The commission, in its annual report covering its activities for 2018 and 2019, recommends continued study of 13 topics, all of which the Legislature has previously authorized or

11. Emphasis added.

12. See, e.g., 2009 Cal. Stat. res. ch. 98; 2012 Cal. Stat. res. ch. 108; 2016 Cal. Stat. res. ch. 150; 2018 Cal. Stat. res. ch. 158.

13. For example, compare ACR 123 (Wayne), as introduced, *with* 2002 Cal. Stat. res. ch. 166.

14. In 2018, for example, the proposed resolution was amended to include a study on recodification of the laws governing toxic substances, which the Commission is currently conducting. *Cf.* SCR 91 (Roth), as introduced, *with* 2018 Cal. Stat. res. ch. 158. Similarly, the proposed resolution was amended in 2001 to slightly revise the description of the proposed study on the Subdivision Map Act. *Cf.* SCR 13 (Morrow), as introduced, *with* 2001 Cal. Stat. res. ch. 91.

directed the commission to study, and the removal of 11 topics that were previously approved for study¹⁵

After those recitals comes the substance of the resolution, which consists of three components: (1) a list of 13 topics that “the Legislature approves for continued study by the California Law Revision Commission,”¹⁶ (2) a list of 11 topics that the Legislature “approves [for] removal from the calendar of the California Law Revision Commission,”¹⁷ and (3) a clause that elaborates on the previously described approval process. In particular, the clause in question says:

*Resolved. That before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, the commission shall submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction over the subject matter of the study, and if during the course of the project there is a major change to the scope of work, submit a description of the change*¹⁸

The extra procedural steps described in that clause underscore that the Legislature wants to keep close control over what the Commission is studying.

LEGISLATIVE HISTORY

“If a statute’s language is clear, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.”¹⁹ As explained above, the Commission’s governing statute clearly specifies the process for determining which topics it may study; there does not seem to be any ambiguity on this point. Nonetheless, it may be instructive to examine the legislative history and other considerations often used in statutory interpretation.

History of the Governing Statute

The Law Revision Commission is the successor to the Code Commission, which was created in 1929.²⁰ For over twenty years, the Code Commission

15. Exhibit p. 5 (emphasis added).

16. *Id.*

17. Exhibit p. 7.

18. Emphasis added.

19. *Kizer v. Hanna*, 48 Cal. 3d 1, 8, 767 P.2d 679, 255 Cal. Rptr. 412 (1989).

20. See 1929 Cal. Stat. ch. 750.

worked on recodifying “the entire body of statute law” in California.²¹ In undertaking that work, the Code Commission revised the laws “as a matter of form, that is, as a matter of codification *without substantive change*.”²² The Code Commission very deliberately refrained from proposing any substantive revisions, “so that the Legislature could say — this is a Code Commission bill, it makes no substantive change in the law and a great deal of voluminous legislation would go through without a great deal of questioning and debate and careful checking because the Legislature knew that when it came before them for action it did not contain substantive changes.”²³

As its recodification work drew to a close, the Code Commission “recommend[ed] that the work of continued codification be turned over to the Legislative Counsel, and that *the Code Commission itself be reconstituted as a ‘law revision commission’* with power to work closely with law schools, bar associations and other groups in recommending *substantive* changes in the law to the Legislature.”²⁴ In the early 1950’s, a subcommittee of the Assembly Interim Committee on Judiciary (the Subcommittee on Uniform Acts and Code Commission) investigated that idea. It took testimony,²⁵ considered written materials,²⁶ and “had a draft statute prepared which was modeled upon the statute under which the New York Law Revision Commission operate[d].”²⁷

The New York Law Revision Commission was selected as a model because its work on “simplifying and unifying” the substance of statutory law was considered “outstanding,”²⁸ and because it was the only entity in the country

21. Report of the Subcommittee on Uniform Acts and Code Commission of the Assembly Interim Committee on Judiciary (March 1953) (hereafter, “1953 Subcommittee Report”), p. 5.

22. *Id.* (emphasis added).

23. Assembly Interim Committee on Judiciary, Subcommittee on Uniform Acts & Codes, Transcript of Hearing on Jan. 22, 1952 (hereafter, “1952 Subcommittee Transcript”), p. 23 (testimony of Tom Stanton on behalf of Code Commission); see also 1953 Subcommittee Report, *supra* note 21, at 4.

24. 1953 Subcommittee Report, *supra* note 21, at 4 (emphasis added); see also Report of the California Code Commission to the Governor and the Legislature of the State of California at the Legislative Session of 1949 (hereafter “1949 Code Commission Report”), p. 12 (“It is the firm belief of the [Code Commission] that, as the codification program draws near its close, definite provision should be made for the study and revision of the laws from the standpoint of simplifying and unifying their operation, rather than their form.”).

25. See 1952 Subcommittee Transcript, *supra* note 23.

26. For example, the subcommittee cited the 1949 Code Commission Report, *supra* note 24. See 1953 Subcommittee Report, *supra* note 21, at 4.

27. 1953 Subcommittee Report, *supra* note 21, at 5.

28. 1949 Code Commission Report, *supra* note 24, at 12; see also 1953 Subcommittee Report, *supra* note 21, at 5.

actually assisting a Legislature in “policy-making substantive revision” — i.e., substantive revision based on significant policy considerations, as opposed to “mechanical substantive revision,” which entails “minor substantive changes in the law of a non-controversial nature and involving little research and study.”²⁹

The duties of the New York Law Revision Commission were (and are) much like those of this Commission:

It shall be the duty of the law revision commission:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

2. To receive and consider proposed changes in the law recommended by the American law institute, the commissioners for the promotion of uniformity of legislation in the United States, any bar association or other learned bodies.

3. To receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

5. To report its proceedings annually to the legislature on or before February first, and, if it deems advisable, to accompany its report with proposed bills to carry out any of its recommendations.³⁰

Notably, however, the New York Law Revision Commission had essentially a free hand in selecting topics for study.³¹ The same approach was originally contemplated for the law reform entity being created in California. As Assemblyman Dolwig said in a 1952 hearing on the proposed new commission, “it would be *entirely within the discretion of the Commission* as to what particular subject they would undertake to examine and make recommendations on.”³²

When the subcommittee of the Assembly Interim Committee on Judiciary prepared its report on the proposed commission a year later, however, the

29. Ralph Kleps & Ray Whitaker, Report on Substantive Revision of the Law: Submitted to California Code Commission, and its Committee on Continuous Revision of the Law (1950) (hereafter, “Kleps & Whitaker”), at 3-4.

30. N.Y. Legislative Law § 72; see also Kleps & Whitaker, *supra* note 29, at 5 & Appendix D.

31. See Kleps & Whitaker, *supra* note 29, at 6-7; see also Report to Governor Goodwin J. Knight on the California Law Revision Commission (1954) (hereafter, “Report to Governor Knight”), pp. 6-7; 1952 Subcommittee Transcript, *supra* note 21, at 38-39.

32. 1952 Subcommittee Transcript, *supra* note 21, at 39-40 (emphasis added).

thinking had changed. A bill had already been introduced to convert the Code Commission into the Law Revision Commission (Assembly Bill No. 35). The subcommittee supported that concept, but considered it important to “give the Legislature a determinative role in specifying the fields in which the new commission is to operate.”³³ Thus, the subcommittee “recommend[ed] the enactment into law of Assembly Bill No. 35, but suggest[ed] that it be amended to make it clear that the Legislature retains control over the new commission’s agenda so that the work can be integrated with the work of the various interim committees of the Legislature.”³⁴

The bill was amended as recommended and enacted into law.³⁵ The legislative history of the Commission’s governing statute thus reinforces the conclusion drawn from its plain language: The Legislature controls the Commission’s agenda and the Commission “is required to confine its study to those topics set forth in the Calendar which are thereafter approved for its study by concurrent resolution of the Legislature.”³⁶

History of the Legislative Resolutions

The legislative history of the numerous resolutions on the Commission’s Calendar of Topics is also consistent with the above analysis. There are too many resolutions, bill analyses, amendments, and other legislative developments to discuss in any detail, but two points are worth mentioning here.

First, the proposed resolution on the Commission’s Calendar of Topics is typically introduced by one of the legislative members of the Commission.³⁷ The resolution proceeds through the normal legislative process, being referred to the judiciary committee of each house for analysis and approval before going to a vote on the floor. Importantly, the bill analyses often state that “[t]he CLRC may study only topics that the Legislature has authorized” or other words to that effect.³⁸ The resolution becomes effective upon approval of both houses of the Legislature; the Governor’s assent is not required.³⁹

33. 1953 Subcommittee Report, *supra* note 21, at 7.

34. *Id.* (emphasis added).

35. See 1953 Cal. Stat. ch. 1445.

36. Report to Governor Knight, *supra* note 31, at 5.

37. See, e.g., 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wayne)); 2007 Cal. Stat. res. ch. 100 (ACR 35 (Evans)); 1996 Cal. Stat. res. ch. 38 (SCR 43 (Kopp)).

38. See, e.g., Senate Judiciary Committee Analysis of SCR 15 (June 21, 2005), p. 2; Assembly Judiciary Committee Analysis of SCR 15 (Aug. 25, 2005), p. 2; Assembly Judiciary

Second, the previously-discussed language requiring the Commission to submit “a detailed description of the scope of work” to the judiciary committees and any relevant policy committees before starting a new project is of relatively recent origin. The requirement was first introduced in 2005 and initially limited to the judiciary committees. The bill analyses emphasized that the requirement is intended to “promote communications between [the] commission and the Legislature”⁴⁰ and ensure that the Commission uses its limited resources in a productive manner, rather than wasting effort in a manner the Legislature considers unwise:

In light of the generally broad grant of authority to the CLRC for some of the [topics listed in its Calendar], e.g., study and make recommendations for Probate Code revisions, *concern was expressed that the Commission might undertake on its own initiative and without legislative input a study that goes beyond the CLRC’s traditional role of studying and developing recommended non-controversial changes to the law* that are primarily of a cleanup, consolidation, or restatement nature. Given the limited resources of the Commission which has suffered budget cuts in past years, early communication to the Senate and Assembly Judiciary Committee Chairs and Vice-Chairs of proposed topics of study would allow legislative input on whether a particular proposed topic would likely be controversial and thus perhaps avoided by the Commission so that it may devote its limited resources to other, more productive studies.⁴¹

In 2012, the requirement was expanded beyond the judiciary committees to “further requir[e] the CLRC to submit [a] description of the scope of work to any other policy committee that has jurisdiction over the subject matter of the study.”⁴² As the Senate Judiciary Committee explained, “[t]hat enhanced requirement for early communication *would further facilitate legislative input on whether a particular proposed topic is consistent with what has been authorized.*”⁴³ Here

Committee Analysis of ACR 17 (May 11, 1999), p. 1; Senate Judiciary Committee Analysis of SCR 43 (April 16, 1996), p. 3.

39. See, e.g., https://www.senate.ca.gov/sites/senate.ca.gov/files/the_legislative_process.pdf (defining “concurrent resolution”).

40. Senate Judiciary Committee Analysis of SCR 15 (June 21, 2005), p. 4; Assembly Judiciary Committee Analysis of SCR 15 (Aug. 25, 2005), p. 4.

41. Senate Judiciary Committee Analysis of SCR 15 (June 21, 2005), p. 5 (emphasis added); see also Assembly Judiciary Committee Analysis of SCR 15 (Aug. 25, 2005), p. 5.

42. Senate Judiciary Committee Analysis of ACR 98 (June 12, 2012), p. 4.

43. *Id.* (emphasis added); see also Assembly Judiciary Committee Analysis of ACR 98 (April 10, 2012), p. 3.

again, the focus is on ensuring that the Commission directs its efforts to projects that the Legislature deems advisable.

POLICY ANALYSIS AND EFFECTUATION OF PURPOSE

In interpreting a statute, it can also be helpful to consider “the statute’s purpose ... and public policy.”⁴⁴ The Commission’s purpose is to *assist the Legislature and the Governor* by making sound recommendations to them for statutory reform.⁴⁵ The actual law-making function remains in the hands of elected representatives (the Legislature and the Governor), as opposed to an entity comprised primarily of persons who are not directly responsible to the electorate.

As the Commission’s former Executive Secretary John DeMouly wrote in a 1969 memorandum, “the Commission owes its continued existence to the good will of the Legislature which, I believe, looks on the Commission as an agency created to assist the Legislature.”⁴⁶ Mr. DeMouly further explained:

The fear was expressed when the Commission was created that it might become a “super-legislature” and that the Legislature would merely rubberstamp its recommendations. It was for this reason that a group of legislators — led by then Assemblyman Weinberger — amended the Commission’s enabling statute to restrict the Commission’s studies to those that were previously approved for study by the Legislature by concurrent resolution and to eliminate any possibility that the Commission would exert any pressure on the Legislature or its members to obtain approval of its recommendations. Because of this background, the Commission has been careful in the past not to give the appearance of being anything more than a body that prepares recommendations for legislative consideration.... Perhaps because we have been so careful, we have substantially eliminated the fear that Mr. Weinberger and others expressed. The Legislature now looks to the Commission as a group of objective experts who prepare carefully drafted legislation after consideration of the views of all interested groups and takes the view that the Commission’s recommendations are designed to assist the Legislature — the elected representatives of the people — in resolving legislative policy questions.⁴⁷

44. *Jarman v. HCR Manorcare, Inc.*, 10 Cal. 5th 375, 381, 471 P.3d 1001, 267 Cal. Rptr. 3d 696 (2020), quoting *Coalition of Concerned Communities, Inc. v. City of Los Angeles*, 34 Cal. 4th 733, 737, 101 P.3d 563, 21 Cal. Rptr. 3d 676 (2004).

45. See generally Sections 8289, 8291.

46. Memorandum 1969-124, p. 1.

47. Memorandum 1969-124, pp. 2-3.

In other words, legislative control over the Commission's Calendar of Topics helps to keep true legislative power where it belongs in a democratic form of government — with the directly-elected representatives of the public. At the same time, the legislative approval process serves to ensure that the Commission's limited resources are spent in an effective manner — on projects that the Legislature considers useful, which generate well-reasoned advice that the Legislature is generally inclined to follow.

Respectfully submitted,

Barbara Gaal
Chief Deputy Director

GOVERNMENT CODE SECTIONS 8280-8298

8280. (a) There is created in the State Government the California Law Revision Commission.

(b) Commencing January 1, 2020, there exists within the California Law Revision Commission the Committee on Revision of the Penal Code.

(c) For purposes of this article, the following terms have the following meanings:

(1) "Commission" means the California Law Revision Commission.

(2) "Committee" means the Committee on Revision of the Penal Code, unless otherwise specified.

8281. (a) The commission consists of one Member of the Senate appointed by the Senate Committee on Rules, one Member of the Assembly appointed by the Speaker of the Assembly, and seven members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel is an ex officio member of the commission.

(b) The Members of the Legislature appointed to the commission serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective public offices as Members of the Legislature. For the purposes of this article, those Members of the Legislature constitute a joint interim investigating committee on the subject of this article and, as a joint interim investigating committee, have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

(c) The members appointed by the Governor shall be appointed for a term of four years. The terms of the members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, the Governor shall appoint a person to the office, who shall hold office for the balance of the unexpired term of the person's predecessor.

8281.5. (a) The Committee on Revision of the Penal Code consists of one Member of the Senate appointed by the Senate Committee on Rules, one Member of the Assembly appointed by the Speaker of the Assembly, and five members appointed by the Governor.

(b) (1) The Members of the Legislature appointed to the committee serve at the pleasure of the appointing power and shall participate in the activities of the committee to the extent that the participation is not incompatible with their respective public offices as Members of the Legislature.

(2) For purposes of this article, those Members of the Legislature constitute a joint interim investigating committee on the subject of Section 8290.5 and, as a

joint interim investigating committee, have the powers and duties imposed on those committees by the Joint Rules of the Senate and Assembly.

(c) (1) The members appointed by the Governor shall be appointed for a term of four years. The terms of the members first appointed expire as follows:

(A) Three terms expire on January 1, 2022.

(B) Two terms expire on January 1, 2024.

(2) When a vacancy occurs in any office within the committee filled by appointment by the Governor, the Governor shall appoint a person to the office, who shall hold office for the balance of the unexpired term of the person's predecessor.

(d) Members of the committee shall not be members of the commission.

8282. (a) The members of the commission and committee shall serve without compensation, except that each member appointed by the Governor shall receive one hundred dollars (\$100) for each day's attendance at a meeting of the commission or committee.

(b) Each member of the commission and committee shall be allowed actual expenses incurred in the discharge of the member's duties, including travel expenses.

8283. (a) The commission shall select one of its members chairperson. Five members constitute a quorum of the commission.

(b) The Governor shall select one of the committee members to serve as chairperson. Three members constitute a quorum of the committee.

8284. The commission may appoint an executive director and fix the director's compensation, in accordance with law.

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

8286. The material of the State Library shall be made available to the commission and the committee. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission and committee full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

8287. The Board of Trustees of the State Bar shall assist the commission and the committee in any manner the commission or committee may request within the scope of its powers or duties.

8288. (a) No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor. An employee or member of the commission appointed by the Governor shall not advocate the passage or defeat of any

legislation or the approval or veto of any legislation by the Governor, in that person's official capacity as an employee or member.

(b) An employee or member of the commission may appear and testify at any legislative committee hearing on legislation to implement a commission recommendation, for the purpose of explaining the recommendation and answering questions posed by the legislative committee members, if the employee or member of the commission does not violate the restrictions described in subdivision (a).

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

8290. 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.

8290.5. (a) The committee shall study and make recommendations on revision of the Penal Code to achieve all of the following objectives:

(1) Simplify and rationalize the substance of criminal law.

(2) Simplify and rationalize criminal procedures.

(3) Establish alternatives to incarceration that will aid in the rehabilitation of offenders.

(4) Improve the system of parole and probation.

(b) In making recommendations pursuant to subdivision (a), the committee may recommend adjustments to the length of sentence terms. In making that recommendation, the committee may consider any factors, including, but not limited to, any of the following:

(1) The protection of the public.

(2) The severity of the offense.

(3) The rate of recidivism.

(4) The availability and success of alternatives to incarceration.

(5) Empirically significant disparities between individuals convicted of an offense and individuals convicted of other similar offenses.

(c) The approval by the commission of any recommendations by the committee is not required.

8291. (a) The commission and the committee shall submit their reports, and their recommendations as to revision of the laws, to the Governor and the Legislature.

(b) Notwithstanding Section 9795, the commission and the committee may provide a copy of a recommendation to each member of a legislative committee that is hearing legislation that would implement the recommendation.

8292. The commission and the committee may, within the limitations imposed by Section 8293, include in their reports the legislative measures proposed by them to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements, and suggested enactments prepared or proposed by the commission or the committee with a full and accurate index thereto.

8293. (a) The commission shall file a report at each regular session of the Legislature that shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. The commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report that have been or are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic that the Legislature, by concurrent resolution or statute, refers to it for study.

(b) The committee shall prepare an annual report that describes its work in the prior calendar year and its expected work for the subsequent calendar year.

8294. The commission's and committee's reports, exhibits, and proposed legislative measures shall be printed by the State Printing Office under the supervision of the commission or committee, respectively. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission or committee.

8295. The commission and the committee shall confer and cooperate with any legislative committee on revision of the law and may contract with any other committee for the rendition of service, by either for the other, in the work of revision.

8296. The commission and the committee may cooperate with any bar association or other learned, professional, or scientific association, institution, or foundation in any manner suitable for the fulfillment of the purposes of this article.

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

8298. The commission may study and recommend revisions to correct technical or minor substantive defects in the statutes of the state without a prior concurrent resolution of the Legislature referring the matter to it for study.



Assembly Concurrent Resolution No. 173

RESOLUTION CHAPTER 46

Assembly Concurrent Resolution No. 173—Relative to California Law Revision Commission.

[Filed with Secretary of State September 14, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

ACR 173, Gallagher. California Law Revision Commission: studies.

Existing law requires the California Law Revision Commission to study, and limits the commission to studying, topics approved by resolution of the Legislature or by statute.

This measure would grant approval to the commission to continue its study of designated topics that the Legislature previously authorized or directed the commission to study. The measure would also grant approval to the commission to remove specified topics from its calendar of topics for study.

The measure would require the commission, before commencing work on any project within its authorized calendar of topics, to submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction, as specified. If a major change to the scope of work occurs during the course of the project, the measure would require the commission to submit a description of the change.

WHEREAS, The California Law Revision Commission is authorized to study topics set forth in the calendar contained in its report to the Governor and the Legislature that have been or are thereafter approved for study by concurrent resolution of the Legislature, and topics that have been referred to the commission for study by concurrent resolution of the Legislature or by statute; and

WHEREAS, The commission, in its annual report covering its activities for 2018 and 2019, recommends continued study of 13 topics, all of which the Legislature has previously authorized or directed the commission to study, and the removal of 11 topics that were previously approved for study; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Legislature approves for continued study by the California Law Revision Commission the topics listed below, all of which the Legislature has previously authorized or directed the commission to study:

(1) Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution,

repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.

(2) Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.

(3) Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, common interest developments, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.

(4) Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.

(5) Whether the law relating to discovery in civil cases should be revised.

(6) Whether the Evidence Code should be revised.

(7) Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.

(8) Whether there should be changes to administrative law.

(9) Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.

(10) Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.

(11) Whether the law governing the place of trial in a civil case should be revised.

(12) Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its 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.

(13) The Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law. Such revisions may include, but are not limited to, grouping

similar provisions together, reducing the length and complexity of sections, eliminating obsolete or redundant provisions, and correcting technical errors. The recommended revisions shall not make any substantive changes to the law. The commission's report shall also include a list of substantive issues that the commission identifies in the course of its work, for possible future study; and be it further

Resolved, That the Legislature approves the removal from the calendar of the California Law Revision Commission the topics listed below:

(1) Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.

(2) Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.

(3) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.

(4) Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to the formation and management of these developments and the transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.

(5) Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.

(6) Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.

(7) Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.

(8) Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.

(9) Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.

(10) Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(11) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

(a) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal.4th 113, *Porter v. Wyner* (2010) 183 Cal.App.4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137.

(b) The availability and propriety of contractual waivers.

(c) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation; and be it further

Resolved, That before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, the commission shall submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction over the subject matter of the study, and if during the course of the project there is a major change to the scope of work, submit a description of the change; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the California Law Revision Commission and to the author for appropriate distribution.

O