

Second Supplement to Memorandum 2021-14

2021 Legislative Program (Status Report): Trial Court Restructuring

The staff recently identified four code sections that cross-refer to provisions proposed for repeal in the Commission's recent recommendations on trial court restructuring ("TCR").¹ This supplement discusses conforming revisions to address those cross-references.

The relevant TCR recommendations would be implemented by Assembly Bill 414 (Maienschein). The staff has notified Assemblymember Maienschein's office about this issue and is working with them to determine how these changes might be implemented.

The staff has prepared a draft of proposed legislation to make the necessary conforming revisions (see Exhibit pages 1-4). **The staff proposes that these conforming revisions be approved as consent items (i.e., approved without discussion or vote, unless a Commissioner requests otherwise).**

The attached draft also includes Commission Comments and Notes, as appropriate. **The staff recommends that the conforming revisions be incorporated into the corresponding Commission recommendations, which have not yet been published.**

Unless otherwise indicated, all statutory citations refer to the Government Code.

CONFORMING REVISIONS FOR *TRIAL COURT RESTRUCTURING CLEAN-UP: REGIONAL JUSTICE FACILITIES ACTS*

In its recommendation on *Trial Court Restructuring Clean-up: Regional Justice Facilities Acts*, the Commission recommends repealing three acts relating to

1. See Pre-Print Recommendation on *Trial Court Restructuring Clean-Up: Regional Justice Facilities Acts* (Sept. 2020); Pre-Print Recommendation on *Statutes Made Obsolete by Trial Court Restructuring (Part 7): Completion of Studies Under Government Code Section 70219* (Oct. 2020).

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.

regional justice facilities, because those acts contain obsolete material and have never been used for their intended purposes.²

Sections 53721.5 and 53721.6 pertain to taxes adopted pursuant to those regional justice facilities acts.³ Because the acts have not been used to adopt taxes, there appears to be no reason to retain Sections 53721.5 and 53721.6 in the code.

To conform to the proposed repeal of the regional justice facilities acts, the attached draft proposes to repeal Sections 53721.5 and 53721.6.⁴

CONFORMING REVISIONS FOR *STATUTES MADE OBSOLETE BY TRIAL COURT
RESTRUCTURING (PART 7): COMPLETION OF STUDIES UNDER GOVERNMENT CODE
SECTION 70219*

In its recommendation on *Statutes Made Obsolete by Trial Court Restructuring (Part 7): Completion of Studies Under Government Code Section 70219*, the Commission recommends repealing Section 70219.⁵

Sections 70601 and 70614 cross-refer to “Sections 70210 to 70219, inclusive.”⁶
To conform to the proposed repeal of Section 70219, the attached draft proposes to amend these sections to cross-refer to “Sections 70210 to 70218, inclusive.”⁷

COMMISSION DECISION

Does the Commission approve the attached conforming revisions and the inclusion of those conforming revisions in the corresponding recommendations?

Respectfully submitted,

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2. Pre-Print Recommendation on *Trial Court Restructuring Clean-Up: Regional Justice Facilities Acts* (Sept. 2020).

3. See Exhibit pp. 1-2 (reproducing Sections 53721.5 and 53721.6).

4. See *id.*

5. See Pre-Print Recommendation on *Statutes Made Obsolete by Trial Court Restructuring (Part 7): Completion of Studies Under Government Code Section 70219* (Oct. 2020).

6. See Exhibit pp. 3 (lines 21-22), 4 (line 20).

7. In addition, Section 70601 would be amended to remove gendered language, consistent with legislative drafting practices. See Exhibit p. 3.

CONFORMING REVISIONS

Conforming Revisions for *Trial Court Restructuring Clean-Up:* *Regional Justice Facilities Acts*

1 **Gov't Code § 53721.5 (repealed). Tax adopted pursuant to San Joaquin County Regional**
2 **Justice Facility Financing Act**

3 SEC. __. Section 53721.5 of the Government Code is repealed.

4 ~~53721.5. A transactions and use tax imposed by an ordinance adopted pursuant~~
5 ~~to Chapter 13.6 (commencing with Section 26290) of Part 2 of Division 2 of Title~~
6 ~~3 shall be deemed to be a general tax for the purposes of this article, unless the~~
7 ~~transactions and use tax ordinance, or an amendment thereto, either declares the~~
8 ~~tax to be a special tax or requires the proceeds of the tax to be placed in a fund~~
9 ~~other than the general fund of the San Joaquin County Regional Justice Facilities~~
10 ~~Financing Agency, or a similar fund, and irrevocably restricts the use of the~~
11 ~~proceeds to specific purposes of more limited scope and type than the general~~
12 ~~governmental purposes of the San Joaquin County Regional Justice Facilities~~
13 ~~Financing Agency set forth in Section 26291.7. The receipt or retention of the~~
14 ~~proceeds of the transactions and use tax, imposed by an ordinance adopted~~
15 ~~pursuant to Chapter 13.6 (commencing with Section 26290) of Part 2 of Division 2~~
16 ~~of Title 3 by a bond trustee for bonds secured by the proceeds of the tax shall not~~
17 ~~cause a general tax to become a special tax.~~

18 **Comment.** Section 53721.5 is repealed to reflect the repeal of former Chapter 13.6
19 (commencing with Section 26290) of Part 2 of Division 2 of Title 3. See *Trial Court*
20 *Restructuring Clean-Up: Regional Justice Facilities Acts*, 47 Cal. L. Revision Comm'n Reports
21 __ (2020).

22 **Note.** Section 53721.5 is in Article 3.7 of Chapter 4 of Part 1 of Division 2 of Title 5 of the
23 Government Code. That article was added to the codes by Proposition 62, approved by the voters
24 on Nov. 4, 1986. To maintain voter control over its content, Proposition 62 included a section
25 (Section 53729) that states: "This Article may only be amended by vote of the electorate of the
26 State of California." However, Section 53721.5 was not part of Proposition 62. Section 53721.5
27 was added to the codes later, through the normal legislative process. See 1988 Cal. Stat. ch. 1634,
28 § 2. Thus, a vote of the electorate is not necessary to repeal Section 53721.5.

29 **Gov't Code § 53721.6 (repealed). Tax adopted pursuant to Orange County Regional Justice**
30 **Facilities Act or County Regional Justice Facilities Financing Act**

31 SEC. __. Section 53721.6 of the Government Code is repealed.

32 ~~53721.6. (a) A retail transactions and use tax imposed by an ordinance adopted~~
33 ~~pursuant to Chapter 13.7 (commencing with Section 26295) or 13.8 (commencing~~
34 ~~with Section 26299.000) of Part 2 of Division 2 of Title 3 shall be deemed to be a~~
35 ~~general tax for the purposes of this article unless the transactions and use tax~~
36 ~~ordinance, or an amendment thereto, either declares the tax to be a special tax or~~
37 ~~requires the proceeds of the tax to be placed in a fund other than the general fund~~

1 of the county regional justice facilities financing agency, or a similar fund, and
2 irrevocably restricts the use of the proceeds to specific purposes of more limited
3 scope and type than the general governmental purposes of the county regional
4 justice facilities financing agency set forth in Section 26298.18 or 26299.031.

5 (b) The receipt or retention of the proceeds of the transactions and use tax,
6 imposed by an ordinance adopted pursuant to Chapter 13.7 (commencing with
7 Section 26295) or 13.8 (commencing with Section 26299.000) of Part 2 of
8 Division 2 of Title 3 by a bond trustee for bonds secured by the proceeds of the tax
9 shall not cause a general tax to become a special tax.

10 **Comment.** Section 53721.6 is repealed to reflect the repeals of former Chapters 13.7
11 (commencing with Section 26295) and 13.8 (commencing with Section 26299.000) of Part 2 of
12 Division 2 of Title 3. See *Trial Court Restructuring Clean-Up: Regional Justice Facilities Acts*,
13 47 Cal. L. Revision Comm'n Reports __ (2020).

14 **Note.** Section 53721.6 is in Article 3.7 of Chapter 4 of Part 1 of Division 2 of Title 5 of the
15 Government Code. That article was added to the codes by Proposition 62, approved by the voters
16 on Nov. 4, 1986. To maintain voter control over its content, Proposition 62 included a section
17 (Section 53729) that states: "This Article may only be amended by vote of the electorate of the
18 State of California." However, Section 53721.6 was not part of Proposition 62. Section 53721.6
19 was added to the codes later (and subsequently amended), through the normal legislative process.
20 See 1989 Cal. Stat. ch. 1335, § 2; 1990 Cal. Stat. ch. 527, § 4. Thus, a vote of the electorate is not
21 necessary to repeal Section 53721.6.

Conforming Revisions for *Statutes Made Obsolete by Trial Court
Restructuring (Part 7): Completion of Studies Under Government
Code Section 70219*

22 **Gov't Code § 71601 (amended). Definitions**

23 SEC. __. Section 71601 of the Government Code is amended to read:

24 71601. For purposes of this chapter, the following definitions shall apply:

25 (a) "Appointment" means the offer to and acceptance by a person of a position
26 in the trial court in accordance with this chapter and the trial court's personnel
27 policies, procedures, and plans.

28 (b) "Employee organization" means either of the following:

29 (1) Any organization that includes trial court employees and has as one of its
30 primary purposes representing those employees in their relations with that trial
31 court.

32 (2) Any organization that seeks to represent trial court employees in their
33 relations with that trial court.

34 (c) "Hiring" means appointment as defined in subdivision (a).

35 (d) "Mediation" means effort by an impartial third party to assist in reconciling a
36 dispute regarding wages, hours, and other terms and conditions of employment
37 between representatives of the trial court and the recognized employee
38 organization or recognized employee organizations through interpretation,
39 suggestion, and advice.

1 (e) “Meet and confer in good faith” means that a trial court or representatives as
2 it may designate, and representatives of recognized employee organizations, shall
3 have the mutual obligation personally to meet and confer promptly upon request
4 by either party and continue for a reasonable period of time in order to exchange
5 freely information, opinions, and proposals, and to endeavor to reach agreement
6 on matters within the scope of representation. The process should include adequate
7 time for the resolution of impasses where specific procedures for resolution are
8 contained in this chapter or in a local rule, or when the procedures are utilized by
9 mutual consent.

10 (f) “Personnel rules,” “personnel policies, procedures, and plans,” and “rules and
11 regulations” mean policies, procedures, plans, rules, or regulations adopted by a
12 trial court or its designee pertaining to conditions of employment of trial court
13 employees, subject to meet and confer in good faith.

14 (g) “Promotion” means promotion within the trial court as defined in the trial
15 court’s personnel policies, procedures, and plans, subject to meet and confer in
16 good faith.

17 (h) “Recognized employee organization” means an employee organization that
18 has been formally acknowledged to represent trial court employees by the county
19 under Sections 3500 to 3510, inclusive, prior to the implementation date of this
20 chapter, or by the trial court under former Rules 2201 to 2210, inclusive, of the
21 California Rules of Court, as those rules read on April 23, 1997, Sections 70210 to
22 ~~70219~~, 70218, inclusive, or Article 3 (commencing with Section 71630).

23 (i) “Subordinate judicial officer” means an officer appointed to perform
24 subordinate judicial duties as authorized by Section 22 of Article VI of the
25 California Constitution, including, but not limited to, a court commissioner,
26 probate commissioner, child support commissioner, referee, traffic referee,
27 juvenile court referee, and juvenile hearing officer.

28 (j) “Transfer” means transfer within the trial court as defined in the trial court’s
29 personnel policies, procedures, and plans, subject to meet and confer in good faith.

30 (k) “Trial court” means a superior court.

31 (l) “Trial court employee” means a person who is both of the following:

32 (1) Paid from the trial court’s budget, regardless of the funding source. For the
33 purpose of this paragraph, “trial court’s budget” means funds from which the
34 presiding judge of a trial court, or ~~his or her~~ the presiding judge’s designee, has
35 authority to control, authorize, and direct expenditures, including, but not limited
36 to, local revenues, all grant funds, and trial court operations funds.

37 (2) Subject to the trial court’s right to control the manner and means of ~~his or her~~
38 the person’s work because of the trial court’s authority to hire, supervise,
39 discipline, and terminate employment. For purposes of this paragraph only, the
40 “trial court” includes the judges of a trial court or their appointees who are vested
41 with or delegated the authority to hire, supervise, discipline, and terminate.

42 (m) A person is a “trial court employee” if and only if both paragraphs (1) and
43 (2) of subdivision (l) are true irrespective of job classification or whether the

1 functions performed by that person are identified in Rule 10.810 of the California
2 Rules of Court. “Trial court employee” includes those subordinate judicial officers
3 who satisfy paragraphs (1) and (2) of subdivision (l). The phrase “trial court
4 employee” does not include temporary employees hired through agencies, jurors,
5 individuals hired by the trial court pursuant to an independent contractor
6 agreement, individuals for whom the county or trial court reports income to the
7 Internal Revenue Service on a Form 1099 and does not withhold employment
8 taxes, sheriffs, temporary judges, and judges whether elected or appointed. Any
9 temporary employee, whether hired through an agency or not, shall not be
10 employed in the trial court for a period exceeding 180 calendar days, except that
11 for court reporters in a county of the first class, a trial court and a recognized
12 employee organization may provide otherwise by mutual agreement in a
13 memorandum of understanding or other agreement.

14 **Comment.** Section 71601 is amended to reflect the repeal of former Section 70219, which was
15 obsolete and did not relate to representation of trial court employees.

16 This section is also amended to eliminate gendered pronouns.

17 **Gov’t Code § 71614 (amended). Effect of chapter**

18 SEC. __. Section 71614 of the Government Code is amended to read:

19 70614. Nothing in this chapter shall be construed as affecting the interpretation
20 or operation of Sections 70210 to ~~70219~~, 70218, inclusive, for purposes of
21 unification of the trial courts.

22 **Comment.** Section 71614 is amended to reflect the repeal of former Section 70219, which
23 became obsolete when the Judicial Council and the Law Revision Commission completed the
24 studies that it required them to conduct.