

Memorandum 2021-54

**California Public Records Act Clean-Up:
Follow-Up Legislation**

As previously reported, the bill to implement the Commission's proposed recodification of the California Public Records Act ("CPRA") was enacted.¹ The companion bill consisting of conforming revisions was also enacted.²

The latter bill amended 462 code sections that cross-refer to the CPRA. It updated each such cross-reference to reflect the recodification.

To prevent those technical revisions from overriding proposed substantive reforms of the same code sections, the bill included the following subordination clause:

Any section of any act enacted by the Legislature during the 2021 calendar year, other than a section of the annual maintenance of the codes bill or another bill with a subordination clause, that takes effect on or before January 1, 2022, and that amends, amends and renumbers, amends and repeals, adds, repeals and adds, or repeals a section that is amended, amended and renumbered, amended and repealed, added, repealed and added, or repealed by this act, *shall prevail over this act, whether that act is chaptered before or after this act.*³

That made it unnecessary to prepare numerous bill coordination amendments, which would have been unworkable in a bill of this size.

1. See 2021 Cal. Stat. ch. 614 (AB 473 (Chau)); see also *California Public Records Act Clean-Up*, 46 Cal. L. Revision Comm'n Reports 207 (2019).

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 2021 Cal. Stat. ch. 615 (AB 474 (Chau)); see also *California Public Records Act Clean-Up: Conforming Revisions*, 46 Cal. L. Revision Comm'n Reports 563 (2019).

3. 2021 Cal. Stat. ch. 615, § 465 (emphasis added).

Due to the subordination clause, about fifty of the CPRA conforming revisions⁴ appear to have been chaptered out (i.e., nullified) by other bills.⁵ The staff is still double-checking this tally.

That is an anticipated consequence of using a subordination clause. In this context, it should not create any serious problems, because (1) the CPRA recodification will not become operative until January 1, 2023, and (2) the CPRA recodification includes a provision that says: “A reference in a statute to a previously existing provision that is restated and continued in this division, or in any other provision of the CPRA Recodification Act of 2021, shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.”⁶

However, the chaptered-out conforming revisions will have to be reintroduced in 2022. The staff will prepare the necessary follow-up legislation, which will incorporate the statutory changes enacted in 2021. That process should be simple and straightforward. We will notify the Commission if we encounter any significant drafting issues.

In addition, some provisions that cross-refer to the CPRA were omitted from this year’s bill consisting of conforming revisions, because they were scheduled to be repealed before the operative date of the CPRA recodification. In two of those instances, the Legislature recently enacted a bill that extended the repeal date beyond the operative date of the CPRA recodification.⁷ Conforming revisions of those provisions are thus necessary. The staff will include them the follow-up legislation.

Finally, the Legislature might have added some new statutory cross-references to the CPRA in 2021. The staff has not yet searched for such new cross-references. We will do so and prepare conforming revisions as needed, for

4. The problematic conforming revisions identified so far are: Bus. & Prof. Code §§ 27, 655, 5070, 5070.5, 6056, 10083.2, 10166.07, 10232.2, 22979.24, 26067, 26162; Civ. Code §§ 1798.24, 1798.29, 1798.82, Elec. Code §§ 2194, 2267, 13300.7; Food & Agric. Code § 9269; Gov’t Code §§ 925.6, 3558, 11019.7, 11549.3, 12271, 53398.51.1, 54953, 62001, 65913.4; Health & Safety Code §§ 1324.22, 1798.200, 25200.3, 25501, 25538, 50220.6, 127673.81, 128735, 128736, 128737, 128745, 130060, 131052; Ins. Code §§ 1215.8, 1666.5, 12921.2; Labor Code § 138.7; Penal Code §§ 832.5, 832.7; Pub. Res. Code § 41821.5; Rev. & Tax. Code § 18410.2; Veh. Code § 40240; Welf. & Inst. Code § 14105.22, 14301.1.

5. See Gov’t Code § 9605.

6. Gov’t Code § 7920.105(b) (2021 Cal. Stat. ch. 614, § 2, operative Jan. 1, 2023).

7. See Pub. Cont. Code §§ 20665.24 (previously scheduled to sunset on Jan. 1, 2022, pursuant to Pub. Cont. Code § 20665.33; sunset date was extended to Jan. 1, 2027, by 2021 Cal. Stat. ch. 303, § 2 (AB 846)), 20919.24 (previously scheduled to sunset on Jan. 1, 2022 pursuant to Pub. Cont. Code § 20919.33; sunset date was extended to Jan. 1, 2027, by 2021 Cal. Stat. ch. 303, § 4 (AB 846)).

inclusion in the follow-up legislation. We will keep the Commission posted as work on the follow-up legislation progresses.

Respectfully submitted,

Barbara Gaal
Chief Deputy Director