A meeting of the California Law Revision Commission was held in Sacramento on February 7, 2019.

Commission:

Present: Jane McAllister, Chairperson
         Victor King, Vice-Chairperson
         Diane F. Boyer-Vine, Legislative Counsel
         Thomas Hallinan
         Olga Mack
         Crystal Miller-O’Brien

Absent: Assembly Member Ed Chau
        Senator Richard D. Roth
        Susan Duncan Lee

Staff:

Present: Brian Hebert, Executive Director
         Barbara Gaal, Chief Deputy Counsel
         Kristin Burford, Staff Counsel
         Steve Cohen, Staff Counsel
         Antonio Carrejo, Law Student Extern
         Alexxis Frost, Law Student Extern

Other Persons:

Rick Brausch, Department of Toxic Substances Control
Unless otherwise indicated, the Commission decisions noted in these Minutes were approved by all members present at the meeting. If a member who was present at the meeting voted against a particular decision, abstained from voting, or was not present when the decision was made, that fact will be noted below.

The Commission considered Memorandum 2019-1, presenting draft Minutes for the December 7, 2018 meeting.

The Commission approved the Minutes without change. (Commissioners Boyer-Vine and King abstained.)

The Executive Director reported on the following matters:

- The approved meeting schedule for the December 2019 meeting contained a typographical error regarding the day of the meeting. The Commission approved correcting the error by scheduling the meeting for December 6, 2019.
- The Governor’s proposed budget for 2019-20 would increase the Commission’s funding by $576,000 and would authorize three new positions (an Attorney IV, Attorney III, and Secretary). The Commission would be assigned a new study of the Penal Code. The Department of Finance website indicates that a budget trailer...
bill will be introduced related to the Commission’s budget. The language of the bill has not yet been publicly released.

- The Executive Director suggested that a closed session be scheduled for the Commission’s April 4, 2019 meeting, to discuss personnel matters. The Commission concurred.

**Commissioner Suggestions**

No Commissioner suggestions were made.

**Open Government Laws**

The Commission considered Memorandum 2019-2 and its First Supplement, discussing “open government” laws applicable to the Commission. The Commission made the following decisions:

- The Commission revised Section 380(a) of its Handbook of Practices and Procedures, as shown on page 2 of the First Supplement to Memorandum 2019-2. *(Commissioner Mack was not present for this decision.)*

- The staff will spend a modest amount of time investigating the cost of live-streaming audio of its meetings. *(Commissioner Mack was not present for this decision; Commissioner King voted against the decision.)*

**2019 Legislative Program**

The Commission considered Memorandum 2019-3, discussing the Commission’s 2019 Legislative Program.

The Commission decided to suspend further efforts to find an author for legislation to implement its recommendation on *Homestead Exemption: Dwelling* (2017).

**Study E-200 — Recodification of Toxic Substance Statutes**

The Commission considered Memorandum 2019-10, discussing a proposed work plan for this study, an organizational structure for the recodification of Chapter 6.8 of Division 20 of the Health and Safety Code, and draft legislation to recodify the initial provisions of that chapter.

The Commission made the following decisions:

- Work on Chapter 6.8 will proceed first, followed by work on Chapter 6.5 of Division 20 of the Health and Safety Code.
• The recodified Chapter 6.8 should be located in a new Division 45 of the Health and Safety Code.

• New Division 45 will be organized as proposed on pages 5 and 6 of the memorandum.

• The existing short title for Chapter 6.8 will be preserved. The short title for the legislation that recodifies Chapter 6.8 will be the “Hazardous Substance Account Recodification Act of 2020.” (Commissioner Boyer-Vine was not present when these decisions were made.)

• As a general rule, definitions that are currently distributed throughout Chapter 6.8 will not be aggregated. (Commissioner Boyer-Vine was not present when this decision was made.)

• The existing definition of “director,” in Section 25313, will be preserved.

• The following issues will be added to the list of substantive issues for possible future study:
  • Should the definition of “release authorized or permitted pursuant to state law” (continued in proposed Section 68110) be restated for clarity?
  • Should the definition of “remedy” (continued in proposed Section 68125) be restated for clarity?
  • Should the provision that governs the application of certain definitions (continued in proposed Section 68035) be revised to add an express exception to allow for a different meaning where appropriate (e.g., “unless the context requires otherwise”)?

(Commissioner Hallinan was not present for any of the decisions relating to this study.)

STUDY G-400 — CALIFORNIA PUBLIC RECORDS ACT CLEAN-UP

Current Version of California Public Records Act (Memorandum 2019-11)

The Commission considered Memorandum 2019-11, which presents the text of the California Public Records Act (“CPRA”) as of January 1, 2019. No Commission action was required or taken.

Cumulative Draft (Memorandum 2019-12)

The Commission considered Memorandum 2019-12, which presents a cumulative draft of the proposed CPRA recodification (Parts 1-4 and the beginning of Part 5). No Commission action was required or taken.
Part 5, Chapters 14-19 (Memorandum 2019-13)

The Commission considered Memorandum 2019-13, presenting a draft of Chapters 14-19 of Part 5 of proposed new Division 10 of Title 1 of the Government Code. Subject to the decisions described below, the Commission approved that draft for inclusion in a tentative recommendation.

Special Rule for Governor Who Held Office Between 1974 and 1988 (Gov’t Code § 6268(b)-(c); proposed Gov’t Code § 7928.010)

Proposed Government Code Section 7928.010 (recodifying Government Code Section 6268(b)-(c), with revisions to improve clarity and update the cross-reference to “this paragraph”) is acceptable for purposes of a tentative recommendation. The staff should add this cross-reference correction to the list of “Corrected Cross-References” at the end of the proposed recodification.

Definition of “Elected or Appointed Official” (Gov’t Code § 6254.21(f); proposed Gov’t Code § 7920.495)

As suggested at pages 5-6 of Memorandum 2019-13, Government Code Section 6254.21’s definition of “elected or appointed official” should be recodified in proposed “Chapter 2. Definitions,” as follows:

§ 7920.495. “Elected or appointed official”

7920.495. For purposes of Article 3 (commencing with Section 7928.200) of Chapter 5, “elected or appointed official” includes, but is not limited to, all of the following:

(a) A state constitutional officer.
(b) A member of the Legislature.
(c) A judge or court commissioner.
(d) A district attorney.
(e) A public defender.
(f) A member of a city council.
(g) A member of a board of supervisors.
(h) An appointee of the Governor.
(i) An appointee of the Legislature.
(j) A mayor.
(k) A city attorney.
(l) A police chief or sheriff.
(m) A public safety official.
(n) A state administrative law judge.
(o) A federal judge or federal defender.
(p) A member of the United States Congress or appointee of the President.
Comment. Section 7920.495 continues former Section 6254.3(f) without substantive change. See Section 13 (singular includes plural and vice versa).

See Section 7920.530 (“public safety official”).

Definitions of “Publicly Post” and “Publicly Display” (Gov’t Code § 6254.21(c)(1); proposed Gov’t Code § 7928.215(a))

Proposed Government Code Section 7928.215(a) (recodifying Government Code Section 6254.21(c)(1)’s definitions of “publicly post” and “publicly display”) is acceptable for purposes of a tentative recommendation.

“Person, Business, or Association” (Gov’t Code § 6254.21(c)(1), (d); proposed Gov’t Code §§ 7928.215, 7928.230)

To avoid any possibility of concern, the phrase “person, business, or association” should be retained in the provisions that would continue Government Code Section 6254.21(c)(1) and (d) — i.e., proposed Government Code Sections 7928.215 and 7928.230.

Constitutionality (Gov’t Code § 6254.21(c); proposed Gov’t Code §§ 7920.120, 7928.215, 7928.220, 7928.225)

Proposed Government Code Section 7920.120 would apply to the entire CPRA recodification, so there is no need to refer to it in the Comments to proposed Government Code Sections 7928.215, 7928.220, and 7928.225. To avoid line-drawing problems, those references should be deleted.

(Commissioner Boyer-Vine and Commissioner Mack abstained from this decision.)

Definitions of “Alternative Investment,” “Alternative Investment Vehicle,” “Portfolio Positions,” and “Public Investment Fund” (Gov’t Code § 6254.26(c); proposed Gov’t Code § 7928.710(a))

Proposed Government Code Section 7928.710(a) (recodifying Government Code Section 6254.26(c)’s definitions of “alternative investment,” “alternative investment vehicle,” “portfolio positions,” and “public investment fund”) is acceptable for purposes of a tentative recommendation.

Disciplinary Records Made Available to Department of Business Oversight Through Computer System (Gov’t Code § 6254.12; proposed Gov’t Code § 7929.005)

Proposed Government Code Section 7929.005 (recodifying Government Code Section 6254.12, with revisions to improve clarity) is acceptable for purposes of a tentative recommendation.
Document Assessing Agency’s Vulnerability to Terrorist Attack or Other Criminal Act
Intended to Disrupt Agency Operations (Gov’t Code § 6254(aa); proposed Gov’t
Code § 7929.200)

Proposed Government Code Section 7929.200 (recodifying Government Code
Section 6254(aa), with revisions to improve tentative clarity) is acceptable for purposes of a
tentative recommendation.

Definition of “Voluntarily Submitted” (Gov’t Code § 6254(ab); proposed Gov’t Code §
7929.205(a))

Proposed Government Code Section 7929.205(a) (recodifying Government
Code Section 6254(ab)'s definition of “voluntarily submitted”) is acceptable for
purposes of a tentative recommendation. As a general rule, a definition that
applies only to a single code section should remain in close proximity to that
code section. There is no need for the staff to flag those instances, only instances
in which a definition would be separated from substantive material to which it
pertains.

State Compensation Insurance Fund (Gov’t Code § 6254(ad); proposed Gov’t Code §§
7929.400-7929.430)

“Chapter 18. State Compensation Fund” (proposed Gov’t Code §§ 7929.400-
7929.430) is acceptable for purposes of a tentative recommendation. The material
in that chapter should not be relocated to “Chapter 5. Health Care.”

Definition of “Fully Executed” (Gov’t Code § 6254(ad)(7); proposed Gov’t Code §
7929.430(a))

Proposed Government Code Section 7929.430(a) (recodifying Government
Code Section 6254(ad)(7)'s definition of “fully executed”) is acceptable for
purposes of a tentative recommendation.

(Commissioner Hallinan was not present for any of the decisions relating to this
study.)

STUDY J-1405 — STATUTES MADE OBSOLETE BY
TRIAL COURT RESTRUCTURING: PART 6

The Commission considered Memorandum 2019-7, which presents a draft of
a tentative recommendation relating to court facilities.

On page 20 of the draft, lines 5 to 9 should read:
Apparently, however, there is an unresolved issue regarding this matter and there are ongoing discussions about it between the county and the Judicial Council. To allow for resolution of that issue while ensuring that Section 70624 is eventually repealed, the Commission tentatively proposes to add a five-year sunset clause to the section.

Subject to that revision, the Commission approved the draft as a tentative recommendation, to be broadly circulated for comment.

(Commissioner Hallinan was not present for these decisions; Commissioner Boyer-Vine abstained from the decision to approve the tentative recommendation.)

STUDY J-1405.2 — TRIAL COURT Restructuring CLEAN-UP:
   Task Force on Trial Court Employees

The Commission considered Memorandum 2019-9, which presents a draft of a recommendation proposing to repeal the article that created and governed the Task Force on Trial Court Employees. The Commission approved that draft as a final recommendation, for publication and submission to the Legislature and the Governor.

(Commissioner Hallinan was not present for this decision.)

STUDY L-3032.1 — Revocable Transfer on Death Deed: Follow-Up Study

The Commission considered Memorandum 2019-4, and its First and Second Supplements, discussing whether the law should permit designating a trust as beneficiary of a revocable transfer on death deed (“RTODD”). The Commission decided that, for the purposes of a tentative recommendation, the law should be reformed to allow a trust to be named as beneficiary of an RTODD. The statutory RTODD form should be revised to make clear that when designating a trust as beneficiary, the transferor must state the trustee’s name, the name of the trust, and the date of execution of the trust.

STUDY L-4130 — Disposition of Estate Without Administration

The Commission considered Memorandum 2019-5 and its First Supplement, presenting a staff draft of proposed legislation regarding the liability of a person who takes property outside of probate under the affidavit procedure for real property of small value (Prob. Code §§ 13200-13210).
The Commission approved the proposed legislation for inclusion in a tentative recommendation. The staff will use that proposed legislation as a model for reform of the other procedures at issue in this study (Prob. Code §§ 13100-13116 (affidavit procedure for personal property of small value), 13500-13660 (surviving spouse)).

STUDY R-100 — FISH AND GAME LAW

The Commission considered Memorandum 2019-6, presenting a draft tentative recommendation proposing conforming revisions relating to the Commission’s proposed recodification of the Fish and Game Code.

The Commission approved the draft for circulation as a tentative recommendation.

(Commissioner Hallinan was not present for this decision.)

STUDY T-100 — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS

The Commission considered Memorandum 2019-14, presenting public comment on a tentative recommendation to make technical corrections to Health and Safety Code Section 131052. The Commission made the following decisions:

• The Commission will not make a final recommendation on this topic.
• The staff will notify the Office of Legislative Counsel of a possible erroneous reference to Government Code Section “551017.1” in Section 131052.
• In its study of the California Public Records Act, the staff will consider whether a reference to the “Department of Health Care Services” in Government Code Section 6254(s) is erroneous.
• In its study of Fish and Game Law, the staff will update obsolete references to the former Department of Health Services.

(Commissioners Boyer-Vine and Hallinan were not present for these decisions.)