

September 7, 1973

Time

Place

September 20 - 7:00 p.m. - 10:00 p.m.
September 21 - 9:00 a.m. - 5:00 p.m.
September 22 - 9:00 a.m. - 5:00 p.m.

International Hotel
6211 West Century Blvd.
Los Angeles 90045

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

September 20-22, 1973

Note: Items listed on agenda will be taken up in order indicated.

1. Minutes of July 12-13, 1973, Meeting (sent 8/29/73)
2. Administrative Matters

Time and place of October 1973 Meeting

The October 1973 meeting is scheduled for San Francisco for October 18-20. The State Bar Building in San Francisco is unavailable for these dates. We suggest that the meeting be held at the International Hotel in Los Angeles on the same dates as now scheduled.

Commission Output for 1973-74 and 1974-75

Memorandum 73-60 (enclosed)

Budget for 1974-75 Fiscal Year

Memorandum 73-69 (enclosed)

Annual Report

Memorandum 73-74 (to be sent)

New Topics

Memorandum 73-76 (enclosed)

Unconstitutional Statutes

Memorandum 73-77 (enclosed)

3. Study 36 - Condemnation

Note: Please submit your editorial revisions on the following chapters to the staff at the meeting so they can be taken into account in preparing the chapters for printing if they are approved for printing.

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Consideration of Comments of State Bar Committee; Approval for Printing

Chapter 9 - Compensation

Memorandum 73-66 (enclosed)
Draft of Chapter 9 (attached to Memorandum)

Chapter 10 - Divided Interests

Memorandum 73-67 (enclosed)
Draft of Chapter 10 (attached to Memorandum)
Memorandum 73-55 (sent 6/29/73; additional copy sent 8/29/73)

Approval for Printing

Chapter 5 - Commencement of Proceeding
Chapter 8 - Procedures for Determining Right to Take and
 Compensation
Chapter 11 - Postjudgment Proceedings

Memorandum 73-68 (enclosed)
Draft of Chapters 5, 8, 11 (attached to Memorandum)

Chapter 12 - Arbitration

Memorandum 73-71 (enclosed)
Draft of Chapter 12 (attached to Memorandum)

Conforming Amendments and Repeals

Memorandum 73-70 (sent 9/6/73)

Approval for Sending to State Bar Committee for Comment

Chapter 7 - Discovery; Exchange of Valuation Data

Memorandum 73-72 (sent 8/29/73)
Draft of Chapter 7 (attached to Memorandum)

Evidence Code Provisions--Conforming Changes and Revisions

Memorandum 73-73 (enclosed)
First Supplement to Memorandum 73-73 (enclosed)

4. 1974 Legislative Program

Review of Comments on Tentative Recommendation; Approval for Printing

Note: Please submit your editorial revisions on the following recommendations to the staff at the meeting so they can be taken into account in preparing the recommendations for printing if they are approved for printing.

September 7, 1973

Inheritance Rights of Nonresident Aliens

Memorandum 73-62 (sent 8/29/73)
Tentative Recommendation and Study (attached to Memorandum)

Erroneously Ordered Disclosure of Privileged Information

Memorandum 73-63 (sent 8/29/73)
Tentative Recommendation (attached to Memorandum)

Evidence Code Section 999--The "Criminal Conduct" Exception to
the Physician-Patient Privilege

Memorandum 73-64 (enclosed)
Tentative Recommendation (attached to Memorandum)

Enforcement of Sister State Money Judgments

Memorandum 73-65 (enclosed)
Tentative Recommendation (attached to Memorandum)

5. Study 78 - Landlord-Tenant Relations

Memorandum 73-75 (enclosed)
Draft of Tentative Recommendation (attached to Memorandum)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 20, 21, AND 22, 1973

Los Angeles

A meeting of the California Law Revision Commission was held in Los Angeles on September 20, 21, and 22, 1973.

Present: John D. Miller, Chairman, Thursday and Friday
Marc W. Sandstrom, Vice Chairman, Thursday and Friday
Noble K. Gregory
John N. McLaurin
Thomas E. Stanton, Jr.
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
John J. Balluff
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, and Stan G. Ulrich, members of the Commission's staff, also were present. Mr. Thomas M. Dankert, Commission consultant on condemnation law and procedure, was present on Thursday and Friday, September 20 and 21.

The following persons were present as observers on days indicated:

Thursday, September 20

Jesse M. Bethel, Dept. of Water Resources, Sacramento
Anthony J. Ruffolo, Dept. of Transportation, Los Angeles

Friday, September 21

S. Robert Ambrose, County Counsel, Los Angeles
Jesse M. Bethel, Dept. of Water Resources, Sacramento
Ronald P. Denitz, Tishman Realty & Construction Co., Los Angeles
John M. Morrison, Attorney General's Office, Sacramento
Anthony J. Ruffolo, Dept. of Transportation, Los Angeles
James H. Weinecke, Attorney General's Office, Sacramento

Saturday, September 22

Jesse M. Bethel, Dept. of Water Resources, Sacramento
Ronald P. Denitz, Tishman Realty & Construction Co., Los Angeles

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ADMINISTRATIVE MATTERS

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The Minutes of the July 12 and 13, 1973, meeting of the Law Revision Commission were approved as submitted by the staff.

October Meeting

The October meeting will be held at a hotel located at the San Francisco Airport. (The meeting will be held on October 18 (7:00 p.m. - 10:00 p.m.) and October 19 (9:00 a.m. - 4:30 p.m.).)

Staff Members Will Attend Meetings of State Bar Committee

The Executive Secretary reported that members of the staff had attended the last meeting of the State Bar Committee on Governmental Liability and Condemnation. The State Bar Committee had requested that staff members be present and has requested that staff members be present at future meetings until the work on the comprehensive eminent domain statute is completed. The Executive Secretary indicated that he planned to comply with this request to the extent that staff resources permitted.

Commission Output

The Commission considered Memorandum 73-60 and set the following as the goals for the 1974 and 1975 legislative programs. It was recognized that these are ambitious goals and that the output estimates for the 1974-75 budget submitted to the Department of Finance should take into account that not all of the topics listed for the 1975 legislative program are likely to be achieved.

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1974 Legislative Program

1. Recommendation Relating to Prejudgment Attachment
2. Recommendation Relating to Enforcement of Sister State Judgments
3. Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information
4. Recommendation and Study Relating to Inheritance Rights of Non-resident Aliens
5. Recommendation Relating to Evidence Code Section 999--The "Criminal Conduct" Exception to the Physician-Patient Privilege

1975 Legislative Program

1. Recommendation Proposing the Eminent Domain Law

(A Tentative Recommendation will be printed early in 1974 and a Recommendation will be approved for printing for submission to the 1975 Legislature.)
2. Recommendation Relating to Condemnation Authority of State Agencies

(A Tentative Recommendation will be printed early in 1974 and the proposed legislation will be submitted to the 1975 session. The Tentative Recommendation will not be reprinted as a recommendation unless the Commission makes substantial revisions in its recommended legislation when it considers the comments on the Tentative Recommendation.)
3. Recommendation Relating to Conforming Changes in the Special District Statutes

(A Tentative Recommendation will be printed early in 1974 and the proposed legislation will be submitted to the 1975 session. The Tentative Recommendation will not be reprinted as a recommendation unless the Commission makes substantial revisions in its recommended legislation when it considers the comments on the Tentative Recommendation.)
4. Recommendation Relating to Conforming Revisions in Improvement Acts

(A Tentative Recommendation will be printed early in 1974 and the proposed legislation will be submitted to the 1975 session. The Tentative Recommendation will not be reprinted as a recommendation unless the Commission makes substantial revisions in its recommended legislation when it considers the comments on the Tentative Recommendation.)

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5. Recommendation Relating to Liquidated Damages
6. Recommendation Relating to Landlord-Tenant Relations
7. Recommendation Relating to Partition Procedure
8. Recommendation and Study Relating to Oral Modification of a Written Contract
9. Recommendation or Recommendations Relating to Selected Aspects of Debtor-Creditor Remedies

The following are major projects planned for active study during 1974-75 and are possible topics on which recommendations will be submitted to the 1976 Legislature:

Child Custody and Adoption

Execution

The following is a major project planned for active study during 1975-76 and a possible topic upon which a recommendation will be submitted to the 1977 session:

Nonprofit Corporations

The Executive Secretary is to investigate the possibility of retaining a consultant to prepare a background study on experience under the arbitration statute with a view to the Commission submitting any necessary corrective legislation to a future session of the Legislature.

Index for Volume 11

The Executive Secretary was directed to find a person to prepare an index for Volume 11, preferably Mrs. Margaret Wyman, who indexed Volumes 9 and 10. The Executive Secretary was directed to execute a contract on behalf of the Commission with such person. The compensation is to be fixed by the Executive Secretary at an amount that will be approximately \$1. per page based on the

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number of pages the Executive Secretary estimates will be contained in
Volume 11.

Annual Report

The Commission considered Memorandum 73-74 (and the attached draft of the Annual Report for the year 1973) and Memorandum 73-76 and the First Supplement to Memorandum 73-76. The draft of the Annual Report was approved subject to the revisions necessary to reflect events occurring prior to December 1 and the decisions made as to Commission output (see above). Also, the Annual Report is to contain a paragraph indicating that the Comments to statute sections proposed by the Commission do not necessarily cite every case inconsistent with the recommended sections and that the Comments should not be relied on to ignore the clear language of the statute section. This portion of the Annual Report is to be presented to the Commission for discussion and approval before it is included in the Annual Report.

Specifically, the Commission made the following decisions with respect to the Annual Report:

(1) The following topics are to be dropped from the Agenda of Topics:
(1) Powers of Appointment, (2) Counterclaims and Cross-Complaints, and (3) Joinder of Causes of Action.

(2) The Commission will not request that any new topics be added to its Agenda of Topics. However, when the Commission considers its Annual Report for the calendar year 1974, the staff should again present for consideration as possible new topics the following: (1) Class Actions and (2) Discovery.

Unconstitutional Statutes

The Commission considered Memorandum 73-77 and the attached staff draft of the report on statutes repealed by implication or held unconstitutional. The Commission decided that footnote 2 (concerning Roe v. Wade, 410 U.S. 113 (1973)) and 3 (concerning In re Bozorg, 9 Cal.3d 612, 510 P.2d 1017, 108 Cal. Rptr. 465 (1973)) should be deleted. With these revisions, the staff draft was approved for inclusion in the Annual Report.

Budget for 1974-75 Fiscal Year

The Commission considered Memorandum 73-69 and the draft of the proposed budget for the 1974-75 fiscal year. The estimated expenditures for 1973-74 were approved as set out in Exhibit I to Memorandum 73-69. The Executive Secretary reported that he had discussed the obvious inadequacy of the budget for 1974-75 with the Department of Finance and was advised that a budget that did not total more than \$199,508 for 1974-75 would be approved. The excess money would be put into operating expenses, substantially all of it being added to printing. Even with this addition, it was recognized that the budget may still be so inadequate as to require some reduction in the level of Commission production.

Printing Program

The Commission again indicated its dissatisfaction with the delay that has occurred in the publication of Commission publications as a result of the delay occurring in the State Printing Plant. After considerable discussion, the Commission again directed that the Executive Secretary discuss this matter with the legislators who are members of the Commission. Also, it was agreed that the Mag Card II typewriter appeared to be a means of improving the delivery of printed reports if the technical bugs are worked out.

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STUDY 36.350, 36.380, AND 36.410 -- CONDEMNATION (COMPREHENSIVE STATUTE:
CHAPTERS 5, 8, AND 11--PROCEDURAL CHAPTERS)

The Commission considered Memorandum 73-68 and the attached drafts of Section 1230.040 and Chapters 5, 8, and 11. The Commission approved sending these statutory provisions to the printer subject to the following action.

Section 1230.040. The Comment to this section was approved, subject to any revision needed to conform it to the changes made in Chapters 5, 8, and 11.

Section 1250.120. In subdivision (b), the word "summons" was changed to "publication" in order to make clear that the summons itself need not contain a description of the property.

Sections 1250.150 and 1250.220. The Comments to these sections should be revised to eliminate any discussion relating to the effect of these sections in situations for which actual case examples do not exist.

Section 1250.320. The Comment to this section should indicate that the defendant's claims for compensation will be revealed by the discovery process.

Section 1260.020. Subdivisions (a) and (b) were combined to read:

(a) If proceedings to acquire the same property are consolidated, the court shall first determine

Subdivision (c) was renumbered (b) and subdivision (d) was deleted. The Comment to this section should make clear that nothing in this section limits the authority of the court to consolidate proceedings or sever issues for trial under Section 1048.

Section 1260.120. Subdivision (d) and the last sentence of subdivision (b) were deleted. The Comment should indicate that the section does not affect the rules relating to whether an appeal may or may not be taken, i.e., it is

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left to the courts to determine the proper method for appellate review of determinations made pursuant to this section.

Section 1260.220. The Comment to this section should incorporate the substance of the discussion contained in the Comment to Section 1265.010 (which section was disapproved at this meeting).

Section 1260.240. The last clause of the Comment to this section was deleted. The Comment should explain that the former limitation on the court's power to fix fees is deleted because it would prevent the court from obtaining an expert from out of the area and paying such expert's reasonable fee in the event there is no expert available in the immediate area.

Section 1268.120. The staff was directed to make sure that the order for possession includes an appropriate reference to the amount deposited under Section 1268.110 if service of such an order remains sufficient compliance with this section.

STUDY 36.370 - CONDEMNATION (COMPREHENSIVE STATUTE:
CHAPTER 7--DISCOVERY)

The Commission considered Memorandum 73-72 and the First Supplement to Memorandum 73-72 and the attached copy of Memorandum 73-61 and staff draft of Chapter 7 relating to discovery in eminent domain. The Commission approved the substance of the staff draft of Chapter 7 for printing with the following changes:

§ 1258.020. Discovery following exchange of valuation data. The portion of this section permitting discovery to within 10 days of trial following exchange of valuation was changed to permit discovery to within 20 days of trial.

§ 1258.210. Demand for exchange. The time for making a demand for exchange should be changed to 60 days after the filing of an answer or the date on which a trial date is selected, whichever is earlier. The section should be revised to make clear that a plaintiff may file and serve a demand on the defendant during the same period of time that a defendant may file and serve a demand on the plaintiff.

§ 1258.220. Date of exchange. This section was amended to provide a fixed date of exchange of 40 days prior to trial unless the parties agree otherwise or the court orders otherwise after a hearing on noticed motion of either party and a showing of good cause.

§ 1258.230. Exchange of lists and statements. The portion of the Comment to this section discussing use of reports by the court to prohibit admission of data not exchanged should be altered to delete the language indicating that the trial court may rule under Section 1258.280 "upon admissibility of opinions not supported by data."

§ 1258.240. Contents of list of expert witnesses. A reference should be added to the Comment noting Government Code Section 68092.5 (costs of deposition of expert witness).

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STUDY 36.390 - CONDEMNATION (COMPREHENSIVE STATUTE:
CHAPTER 9--COMPENSATION)

The Commission considered Memorandum 73-66 reviewing the comments of the State Bar Committee on Governmental Liability and Condemnation relating to the compensation chapter (Chapter 9) of the Eminent Domain Law. The Commission made the following decisions with regard to the compensation chapter:

Applicability of chapter and title. The Commission considered the comment of the State Bar Committee that it should be made clear by statute that the compensation chapter and the Eminent Domain Law itself are not intended to affect the law of inverse condemnation. The Commission determined that a Comment should be added to the general provisions of the Eminent Domain Law that makes clear that the title is drafted with the intent to provide rules for eminent domain and that the title is neutral with respect to the applicability of any of its provisions to inverse condemnation actions.

§ 1263.010. Right to compensation. The Commission determined that the portion of this section denying double recovery should be further explained by addition of the following Comment:

The second sentence of subdivision (b) applies only to statutes that purport to compensate for the same loss. Thus, for example, a person who suffers a business loss would not be entitled to compensation for that loss under both Section 1263.510 (loss of goodwill) and Government Code Section 7262(c)(relocation or in lieu payment). This prohibition on double recovery in no way limits compensation under different statutes for different losses such as the fair market value of property taken, injury to the remainder, rental losses, moving expenses, court costs, and the like.

§ 1263.020. Accrual of right to compensation. Because this section as originally drafted appeared to set up a valuation date, the Commission revised

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the section to make clear that it applies only to accrual of the right to compensation:

1263.020. Except as otherwise provided by law, the right to compensation shall be deemed to have accrued at the date of filing the complaint.

The Comment to this section giving an example of an exception to the rule of accrual of the right to compensation was revised as follows, subject to selection of more appropriate language following staff research into the federal estate tax law and regulations on alternate valuation dates for diminution of value by passage of time:

Thus, for example, if an interest in existence at the time of filing the complaint (such as a lease) is extinguished or partially dissipated before entry of judgment (such as by the expiration or partial expiration of the term of the lease); the owner of the interest may not have a right to compensation to the extent of such extinction or dissipation.

§§ 1263.110-1263.150. Date of valuation. After thorough consideration of the State Bar Committee proposal to make the date of valuation the date of trial as a general rule, the Commission, on a divided three-to-three vote determined to make no change in the date of valuation scheme it had previously approved.

§ 1263.220. Business equipment. The Commission considered and rejected the proposal of the State Bar Committee to classify all personal property that is installed for use on the property taken and that cannot be removed without a substantial loss in value as improvements pertaining to the realty.

The Commission directed that the Comment be revised to make clear that this section merely adds a category of improvements that are deemed improvements pertaining to the realty and does not affect the general classification of property as improvements pertaining to the realty as provided in Section 1263.210.

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The Comment to this section should also be revised to delete references to property that can be "easily" removed "without impairment" of value since these references conflict with the standards set out in the section.

Where equipment can be removed without substantial impairment of its value but the removal will damage the structure in which it is installed, the Comment should indicate that the equipment is "not classified as an improvement pertaining to the realty under this section." For a related Commission decision, see discussion of Section 1263.230 below.

§ 1263.230. Improvements removed or destroyed. The Commission determined to add a provision that, where the defendant seeks to remove an improvement whose removal will damage the structure in which it is located, the defendant may serve on the plaintiff a notice of his intent to remove the improvement. If, within 30 days following service of the notice the plaintiff serves on the defendant a notice of refusal to allow removal, the improvement is deemed an improvement pertaining to the realty and must be compensated as such; if, following service of the notice the plaintiff does not within 30 days serve such a notice of refusal on the defendant, then the defendant may remove the improvement doing no more damage to the structure than is reasonably necessary and receive compensation for the structure in its undamaged state.

§ 1263.240. Improvements made after service of summons. The Commission considered and rejected the State Bar proposal to delete the portion of subdivision (c) that prevents a court order permitting compensation for subsequent improvements if the plaintiff has made a deposit of probable compensation.

§ 1263.250. Harvesting and marketing of crops. The portion of this section that permitted the farmer who is prevented from harvesting his crops to

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recover "the costs reasonably incurred in connection with the crops" was amended to permit recovery of "the reasonable value of his material and labor reasonably incurred in connection with the crops."

§ 1263.320. Fair market value. The Commission considered and rejected the State Bar proposal to replace this section with a codification of BAJI instruction 11.73 defining fair market value.

§ 1263.430. Benefit to remainder. After considering the State Bar recommendation to require separate assessment of benefits, the Commission determined to continue the substance of the separate assessment requirement of existing law.

The Commission considered and rejected the State Bar proposal to require that the rules as to which benefits are to be offset against damages be coextensive with the rules that determine which damages are compensable.

§ 1263.440. Computing damage and benefit to the remainder. For the purpose of clarity, the Commission reworded this section to read:

1263.440. (a) The amount of any damage to the remainder and any benefit to the remainder shall reflect any delay in the time when the damage or benefit caused by the construction and use of the project in the manner proposed by the plaintiff will actually be realized.

(b) The value of the remainder on the date of valuation, excluding prior changes in value as prescribed in Section 1263.330, shall serve as the base from which the amount of any damage and the amount of any benefit to the remainder shall be determined.

§ 1263.510. Loss of goodwill. The Commission, for purposes of clarity, decided to offset by commas the portion of subdivision (a) that applies goodwill loss to a business located on the remainder as well as to one located on the part taken. A motion to delete Section 1263.510 failed on a three-to-three vote.

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The Commission considered and rejected the State Bar Committee proposal to make the standard for loss under this section the "business value" rather than "goodwill."

Subdivision (b), prohibiting double recovery for goodwill loss, was deleted as unnecessary since it merely duplicates the general provision denying double compensation for the same loss.

§ 1263.610. Performance of work to reduce compensation. The Commission considered and rejected addition to the Comment of a sentence to the effect that failure to agree during negotiations is not admissible at trial.

§ 1263.620. Partially completed improvements; performance of work to protect public from injury. The Commission considered and rejected the State Bar Committee proposal to permit compensation for expenses incurred by the property owner to protect the property sought to be acquired from the risk of injury.

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STUDY 36.400 - CONDEMNATION (COMPREHENSIVE STATUTE:
CHAPTER 10--DIVIDED INTERESTS)

The Commission considered Memorandum 73-67 and Memorandum 73-55 relating to compensation for divided interests. The Commission made the following decisions with regard to the divided interest chapter of the Eminent Domain Law:

General approach of chapter. A section is to be added that makes clear that the approach of the divided interests chapter is to remedy defects in the law and not to deal comprehensively with the subject of divided interests; hence, existing law relating to the compensability of particular interests is not affected unless specifically covered in the divided interests chapter.

§ 1265.010. Undivided fee rule; exception. This section (which stated the undivided fee rule and an exception to the undivided fee rule where the sum of the parts exceeds the value of the whole) was deleted. Instead, the Comment to Section 1260.220 (giving the plaintiff the option to require a lump-sum valuation of the property) should be expanded to indicate that the rule of People v. Lynbar, Inc., 253 Cal. App.2d 870, 62 Cal. Rptr. 320 (1967), remains unimpaired.

§ 1265.110. Rights under lease not affected. This section (which states that the article on leases does not apply to agreements in leases providing differing rules) was relocated to the end of the article.

§ 1265.120. Termination of lease in whole taking. The last sentence of the Comment (which referred to the provisions of Section 1265.110) was deleted and a reference to Section 1265.160 (which provides that the right of a lessee to compensation is not affected by termination of the lease under this section) was inserted.

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§ 1265.210. Acquisition of property subject to encumbrances. Section 1265.210 continues existing law that authorizes a condemnor to take property subject to a lien, deducting the amount of the lien from the award and paying off the lien as it comes due. This section was approved for inclusion in the Eminent Domain Law without change.

§ 1265.230. Prepayment penalty under mortgage or trust deed. In response to a suggestion of the State Bar Committee, the section precluding compensation of prepayment penalties was revised to apply to a mortgage, deed of trust, or other lien.

§ 1265.310. Unexercised options. This section, making an unexercised option to acquire an interest in property compensable, was revised to provide that the option holder is entitled to the compensation "for the value of the option, if any" rather than the blanket statement that he is entitled to compensation for the option.

The Comment should indicate that the section applies to the valuation of options other than those in a lease, an option in a lease being taken into account in the determination of the market value of the lease. Also reference should be made to the prohibition against double recovery. The Comment should also indicate that evidence of the price at which an option is exercisable may be admissible to show the value of the option but is not admissible to show the value of the property to which it relates except as an admission as provided in the Evidence Code. The sentence in the Comment referring to State v. Whitlow, 243 Cal. App.2d 490, 52 Cal. Rptr. 336 (1966), should be deleted.

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STUDY 36.420 - CONDEMNATION (COMPREHENSIVE STATUTE:
CHAPTER 12--ARBITRATION)

The Commission considered Memorandum 73-71 and the attached draft of Chapter 12 (Arbitration). The Commission approved Chapter 12 for printing in the tentative recommendation without further change.

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STUDY 36.500 - CONDEMNATION (COMPREHENSIVE STATUTE: AMENDMENTS,
ADDITIONS, AND REPEALS--EVIDENCE CODE)

The Commission considered Memorandum 73-73, the First Supplement to Memorandum 73-73, and the attached studies relating to evidence and valuation of special purpose properties in eminent domain. The Commission made the following determinations with regard to these matters:

Code Civ. Proc. § 610. View by jury of the premises. The Commission directed the staff to prepare a recommendation to require the judge to accompany the jury in any case where a jury view is ordered pursuant to this section.

Code Civ. Proc. § 1263.320. Fair market value. The following paragraph was added to the Comment to this section:

The phrase "in the open market" has been deleted from the definition of fair market value because there may be no open market for some types of special purpose properties such as schools, churches, cemeteries, parks, utilities, and similar properties. All properties, special as well as general, are valued at their fair market value. Within the limits of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code, fair market value may be determined by reference to (1) the market data (or comparable sales) approach, (2) the income (or capitalization) method, and (3) the cost analysis (or reproduction less depreciation) formula.

Code Civ. Proc. § 1263.510. Loss of goodwill. The following paragraph was added to the Comment to this section:

The determination of loss of goodwill is governed by the rules of evidence generally applicable to such a determination and not by the special rules relating to valuation in eminent domain contained in Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code. See Evid. Code § 811 and Comment thereto. Thus, the provisions of Evidence Code Sections 817 and 819 that restrict admissibility of income from a business for the determination of value, damage, and benefit in no way limit admissibility of income from a business for the determination of loss of goodwill.

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Evid. Code § 811. "Value of property." This section was amended to substitute references to the Eminent Domain Law for those to the existing eminent domain title as set out in Exhibit I to Memorandum 73-73.

Evid. Code § 812. Concept of just compensation not affected. This section was amended to substitute references to the Eminent Domain Law for those to the existing eminent domain title as set out in Exhibit I to Memorandum 73-73.

Evid. Code § 813. Value may be shown only by opinion testimony. Subdivision (a) of this section was amended to read:

813. (a) The value of property may be shown only by opinion of:

(1) Witnesses qualified to express such opinions; and

(2) The owner of any right, title, or interest in the property
~~or-property-interest~~ being valued ; and

(3) An officer or employee designated by a corporation claiming any right, title, or interest in the property being valued if such person is knowledgeable as to the character and use of the property .

Conforming changes should be made in the Comment to this section as set out in Exhibit I to Memorandum 73-73.

Evid. Code § 814. Matter upon which opinion must be based. This section was amended to substitute a general reference to "fair market value" for the particular definition of fair market value presently in the section as set out in Exhibit I to Memorandum 73-73. The Comment should indicate that no substantive change is made by this amendment.

Evid. Code § 816. Comparable sales. A new subdivision was added to this section to read:

(c) The provisions of this section shall be liberally construed to the end that an expert witness is permitted a wide discretion in his selection of comparable sales. Nothing in this section affects the right of the court in its discretion to limit the number of sales used by a witness.

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Conforming changes should be made in the Comment to this section as set out in Exhibit I to Memorandum 73-73.

Evid. Code § 817. Leases of subject property. This section was split into two subdivisions as set out in Exhibit I to Memorandum 73-73.

Evid. Code § 822. Matter upon which opinion may not be based. This section was amended to add a specific preclusion of admissibility of transactions involving the trade or exchange of any property as set out in Exhibit I to Memorandum 73-73. The Comment should refer to the Evidence Code provisions permitting cross-examination of an expert on admissible matters only for the purpose of determining whether he has based his opinion on improper matters.

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STUDY 36.520 - CONDEMNATION (CONFORMING
CHANGES--SPECIAL DISTRICTS)

The Commission considered Memorandum 73-70 and the attached draft of conforming changes in the special district acts, along with additional conforming changes produced at the meeting and attached hereto as Bill No. 1 (green) and Bill No. 2 (pink). The Commission approved for printing the tentative recommendation and the conforming changes, along with any similar provisions that may be discovered by the staff in the process of preparation for printing.

The printed recommendation might include in the preliminary portion a listing of illustrative changes made and the reason for those changes and might note some general features of the Eminent Domain Law such as the public use limitation. The preliminary portion should also contain a note to the following effect:

Some special district statutes contain a provision that authorizes entry on property to make technical and other investigations, make measurements, collect data, and make analyses, studies, and inspections. Some of these provisions require revision to eliminate portions that deal with matters covered in the proposed Eminent Domain Law. [listing] These provisions have been revised to conform to the language of similar special district statute provisions that do not require revision. [listing]

The preliminary portion might also indicate the number of sections and words deleted from the statutes by these conforming changes.

The staff should investigate the use of the word "superseded" in the Comments to the sections to determine whether it is an appropriate term for the changes being made.

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STUDY 39.100 - ENFORCEMENT OF SISTER STATE JUDGMENTS

The Commission considered Memorandum 73-65 which discussed comments on the tentative recommendation relating to enforcement of sister state judgments. The Commission approved the recommendation for printing subject to the revisions indicated below. Before the recommendation is actually printed, however, the Commission is to be provided with the text of the statutory language and Comment dealing with the problem of splitting a cause of action (see discussion below).

Preliminary part. The last paragraph of the preliminary part (page 4) should be rewritten as follows:

The recommended registration procedure constitutes a complete and orderly statutory scheme for the enforcement of sister state money judgments. The registration system offers savings in time and money to both courts and creditors. The procedure is fair to the judgment debtor since his opportunity to attack the enforcement of the sister state judgment is preserved. The registration system is speedy, efficient, and inexpensive to utilize.

Code of Civil Procedure Section 1710.10. "Sister state judgment." The words "entitled to full faith and credit in this state" should be deleted so that this section would read as follows:

As used in this chapter, "sister state judgment" means that part of any judgment, decree, or order of a court of a state of the United States, other than California, which requires the payment of money.

A provision that use of the registration procedure does not preclude the right to enforce the nonmonetary part of the judgment by an action should be added to Section 1710.10 or as a separate section in order to avoid any problem with the rule against splitting causes of action.

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§ 1710.15. "Judgment creditor." "Judgment debtor" should be defined in subdivision (b) substantially as follows:

"Judgment debtor" means the person or persons against whom an action to enforce a sister state judgment could be brought.

§ 1710.30. Entry of judgment. The first sentence of this section should be reworded as follows:

Upon the filing of the application, the clerk shall enter a judgment based upon the application for the amount shown therein to be remaining unpaid under the sister state judgment .

§ 1710.40. Effect of judgment; enforcement. In order to make clear that an action may be brought to renew a judgment, the last portion of the Comment should be rewritten as follows:

A judgment entered pursuant to this chapter may be enforced or carried into execution after 10 years as provided by Section 685. Likewise, an action may be brought upon a judgment entered pursuant to this chapter. Cf. Thomas v. Thomas, 14 Cal.2d 355, 358, 94 P.2d 810, ___ (1939); Atkinson v. Adkins, 92 Cal. App. 424, 426, 268 P. 461, ___ (1928). However, the same sister state judgment may not serve as the basis for entry of more than one California judgment. See Sections 1710.10, 1710.60(b), (c), 1710.65, and the Comments thereto.

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STUDY 63 - EVIDENCE CODE ("ERRONEOUSLY COMPELLED"
DISCLOSURE OF PRIVILEGED INFORMATION)

The Commission considered Memorandum 73-63 and the attached draft of a recommendation relating to erroneously ordered disclosure of privileged information.

The recommendation was approved for printing and submission to the 1974 session of the Legislature after the following revisions were made:

(1) In the letter of transmittal, the word "continuing" was substituted for "continuous" review in the first sentence of the second paragraph.

(2) The words "was deemed significant by" were substituted for "was of great significance to" in footnote 6 on page 3.

(3) On page 3, after the period and notecall in the first line, the substance of the following sentence is to be inserted: "This recommendation is in no way intended to indicate concurrence by the Commission in the Kaplan statement quoted in footnote 6."

STUDY 63 - EVIDENCE CODE (EVIDENCE CODE SECTION 999)

The Commission considered Memorandum 73-64 and the attached draft of a recommendation relating to Evidence Code Section 999--the "criminal conduct" exception to the physician-patient privilege.

The recommendation was approved for printing after the following revisions were made:

- (1) The first reason given on page 1 was revised to read:

1. The exception involves the court in collateral inquiries which are not justified by its utility. It is easy of application only where the patient has been tried and convicted of the crime; and, in any such case involving a crime punishable as a felony, the judgment of conviction would serve a much more significant evidentiary purpose (see Evid. Code § 1300). In a case where the patient has been acquitted of the crime, the court would be faced with the question whether such acquittal should be accepted as determinative against application of the exception. And in the great majority of cases in which the exception might be invoked, where there would have been no prior criminal trial, the court would have to rule on whether the exception applies³ and determine the extent of the evidentiary showing as to the criminality of the patient's conduct required to invoke the exception.⁴

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3. See Evid. Code § 405 and Comment thereto. The procedure in ruling on the applicability of the privilege is explained in the Comment to Section 405 as follows:

After the judge has indicated to the parties who has the burden of proof and the burden of producing evidence, the parties submit their evidence on the preliminary issue to the judge. If the judge is persuaded by the party with the burden of proof, he finds in favor of that party in regard to the preliminary fact and either admits or excludes the proffered evidence as required by the rule of law under which the question arises. Otherwise, he finds against that party on the preliminary fact and either admits or excludes the proffered evidence as required by such finding.

* * * * *

Under this code, as under existing law, the party claiming the privilege has the burden of proof on the preliminary facts.

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(2) On page 2, reason 2 was deleted.

[Citations omitted.] The proponent of the proffered evidence, however, has the burden of proof upon any preliminary fact necessary to show that an exception to the privilege is applicable. . . .

4. [former footnote 3]

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STUDY 72 - THE RIGHT OF NONRESIDENT ALIENS TO INHERIT

The Commission considered Memorandum 73-62 and the attached draft of a tentative recommendation. The reference to the author of the background study being a student was deleted. As thus revised, the recommendation and study was approved for printing and submission to the 1974 legislative session.

The Commission declined to undertake a study of Probate Code Section 1026. It was noted that a study would have to be made before a recommendation concerning Section 1026 could be made. Because of the other topics that require priority and will require all of the Commission's resources for a number of years, the Commission has determined not to undertake any new studies at this time. This decision is to be communicated to Mr. Mosk.

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STUDY 78 - LANDLORD-TENANT RELATIONS

The Commission considered Memorandum 73-75 and the staff draft of the tentative recommendation relating to landlord-tenant relations. The Commission made the following decisions:

Part I: Abandonment of Leased Real Property

Civil Code Section 1951.3. Lessor's notice of belief of abandonment.

This section should be redrafted to provide for a written notice of the lessee's intent not to abandon the property. The form of the lessee's notice should be set out in the statute. It should also be provided, but not required, that the lessor may send a blank notice on a return postcard for the lessee's use. Instead of providing that the lessor's notice state that the lessee must communicate his intent not to abandon not later than 15 days after the effective date and giving the rules on the effective date of the notice, the lessor's notice should contain a place for filling in the date by which written notice of such intent must be received. The lessor would fill in the proper date based on the time limits provided except that he could allow a longer period if he wishes. It should be made clear that notice is to be sent by first-class mail, postage prepaid, and that the lessor's notice to the lessee should be sent to all addresses where the lessee might be expected to be located.

Part II: Disposition of Personal Property Remaining on Premises at Termination of Tenancy

Civil Code Section 1963.10. Definitions. The last two sentences of the Comment to this section should be replaced by the following:

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It should be noted that the title taken at a sale of property under Section 1963.50 is subject to any lien or right provided by other provisions of law.

§ 1963.20. Right of tenant to remove his personal property. This section should be deleted.

§§ 1963.40 and 1963.50. The order of these two sections should be reversed so that the general provision for disposition of property precedes the provision for property worth less than \$100. The form of notice set out in Exhibit I to Memorandum 73-75 should be followed in substance except that the reference to the landlord's reasonable belief that the property is worth less than \$100 should be deleted and the date by which the tenant must redeem the property should be filled in by the landlord in the same manner as the lessor's notice under Section 1951.3. Subdivision (c) of Section 1963.40 should be reworded substantially as follows:

The landlord is not liable to a tenant or an owner to whom notice was given pursuant to subdivision (a) for the disposition of personal property pursuant to this section.

§ 1963.70. Reasonable costs. Subdivision (c) should read substantially as follows:

If the landlord stores the personal property on the premises, the cost of storage shall be the fair rental value of the portion of the premises where the property is stored for the term of the storage.

A revised recommendation is to be prepared for Commission consideration at the October meeting.

APPROVED

Date

Chairman

Executive Secretary

BILL NO. 1

An act to amend Sections 61610 and 66657 of the Government Code, to amend Sections 5900.4, 6076, 6296, 6896, and 7147 of the Harbors and Navigation Code, to amend Section 8961 of the Health and Safety Code, to add Section 13070.1 to the Public Resources Code, to amend Sections 12703 and 16404 of, and to repeal Section 16405 of, the Public Utilities Code, to amend Sections 25280 and 27166 of, and to repeal Sections 25052, 31003, 31004, 31203, and 31204 of, the Streets and Highways Code, to amend Sections 22425, 43352.5, 60230, 71693, 71694, and 74553 of, and to repeal Sections 22229, 22455, 31044, 35625, 43531, 43532, 43533, and 74555 of, the Water Code, relating to eminent domain.

The people of the State of California do enact as follows:

COMMUNITY SERVICES DISTRICT

Government Code § 61610 (amended)

Section 1. Section 61610 of the Government Code is amended

to read:

61610. A district may ~~take or~~ acquire real or personal property of every kind within or without the district by grant, purchase, gift, devise, lease, or ~~condemnation pursuant to eminent domain proceedings in accordance with Title 7, Part 3 of the Code of Civil Procedure, provided the district, in exercising~~ such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be removed to a new location.

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Comment. Section 61610 is amended to delete unnecessary language.

See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

SAN FRANCISCO BAY CONSERVATION AND
DEVELOPMENT COMMISSION

Government Code § 66657 (amended)

Sec. 2. Section 66657 of the Government Code is amended to read:

66657. In eminent domain or inverse condemnation proceedings for any property within the area of the commission's jurisdiction, in determining "just compensation," as used in Section 14 of Article I of the California Constitution, or "~~value, "damage," or "benefits," as used in Section 1248~~" of the Code of Civil Procedure, the influence of the San Francisco Bay Plan, in effect at the time of the taking or damaging of the property, upon the value of the property or the interest being valued shall be inadmissible as evidence and not a proper basis for an opinion as to the value of the property.

the compensation provided in Chapter 9 (commencing with Section 1263.010) and Chapter 10 (commencing with Section 1265.010 of Title 7 of Part 3

Comment. Section 66657 is amended to substitute a correct reference for the former reference to repealed Section 1248.

HARBOR IMPROVEMENT DISTRICT

Harbors & Navigation Code § 5900.4 (amended)

Sec. 3. Section 5900.4 of the Harbors and Navigation Code is amended to read:

5900.4. The board may exercise the right of eminent domain, ~~in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary or convenient to the exercise of the powers conferred by this part. ~~In exercising the right of eminent domain the district has the same rights, powers, and privileges as are by law possessed by a municipal corporation.~~

Comment. Section 5900.4 is amended to delete unnecessary language.

See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

HARBOR DISTRICT

Harbors & Navigation Code § 6076 (amended)

Sec. 4. Section 6076 of the Harbors and Navigation Code is amended to read:

6076. It may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use and take any property necessary or convenient to the exercise of its powers. In the proceedings relative to the exercise of such right the district has the same rights, powers and privileges as a municipal corporation.~~

Comment. Section 6076 is amended to delete unnecessary language.

See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

PORT DISTRICT

Harbors & Navigation Code § 6296 (amended)

Sec. 5. Section 6296 of the Harbors and Navigation Code is amended to read:

6296. It may exercise the right of eminent domain in the ~~manner provided by law for the condemnation of private property for public use. It may take any property necessary to carry out any of the objects or purposes of the district, whether the property is already devoted to the same use or otherwise. In the exercise of the right of eminent domain, the district has the same right, power and privileges as a municipal corporation.~~ to .

Comment. Section 6296 is amended to delete unnecessary language.

See Code Civ. Proc. §§ 1230.020 (law governing exercise of eminent domain power), 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. § 1240.510 et seq. (compatible use).

RIVER PORT DISTRICT

Harbors & Navigation Code § 6896 (amended)

Sec. 6. Section 6896 of the Harbors and Navigation Code is amended to read:

6896. It ~~has and it~~ may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. It may take any property necessary or convenient to carry out any of its purposes, whether the property is already devoted to the same use or otherwise. In the exercise of the right of eminent domain, a district has the same right, power and privileges as an incorporated city under the laws of this State. A district shall proceed in the name of the district in condemnation proceedings.~~

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Comment. Section 6896 is amended to delete unnecessary language.

See Code Civ. Proc. §§ 1230.020 (law governing exercise of eminent domain power), 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. §§ 1240.510 et seq. (compatible use) and 1250.210 and Comment thereto (identification of parties).

SMALL CRAFT HARBOR DISTRICT

Harbors & Navigation Code § 7147 (amended)

Sec. 7. Section 7147 of the Harbors and Navigation Code is amended to read:

7147. The district may acquire by eminent domain ~~proceedings in the manner provided by law land and property~~ necessary, convenient or useful to the exercise of its powers, but may exercise the power to acquire ~~land and~~ any property outside the district by eminent domain only with the consent of the governing body of the county, or city if any, in which the property is located. ~~In the proceedings relative to the exercise of the right of eminent domain the district has the same rights, powers and privileges as a municipal corporation.~~

Comment. Section 7147 is amended to delete unnecessary language. See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power). See also Code Civ. Proc. § 1235.170 (defining "property").

PUBLIC CEMETERY DISTRICT

Health & Safety Code § 8961 (amended)

Sec. 8. Section 8961 of the Health and Safety Code is amended to read:

8961. The district may maintain a cemetery or cemeteries, and for this purpose may take and hold title to property by grant, gift, devise, condemnation, lease, or any other method. Cemeteries shall be

limited in use to burial in the ground of residents or taxpayers of the district or former residents or taxpayers of the district who purchased lots or plots while residents or taxpayers of the district or members of their families. Families shall be limited to a spouse, parents, grandparents, children and brothers and sisters.

Comment. Section 8961 is amended to make clear the right of public cemetery districts to acquire and hold title to realty for cemetery purposes. See 14 Ops. Cal. Atty. Gen. 252 (noting the confusion engendered by the recodification of Sections 8961, 8962, and 8963). The term "condemnation" preserves the grant of condemnation authority formerly contained in subdivision 14 of Section 1238 of the Code of Civil Procedure (condemnation authorized for "cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof").

RESORT IMPROVEMENT DISTRICT

Public Resources Code § 13070.1 (added)

Sec. 9. Section 13070.1 is added to the Public Resources Code, to read:

13070.1. As used in this chapter, "acquire" includes but is not restricted to taking by condemnation, purchase, or lease and receiving by donation or dedication.

Comment. Section 13070.1 is added to give the term "acquire" used in Section 13070 its broadest possible meaning and to insure that the repeal of Code of Civil Procedure Section 1238 will not affect adversely the districts formed under the Resort Improvement District Law.

MUNICIPAL UTILITY DISTRICT

Public Utilities Code § 12703 (amended)

Sec. 10. Section 12703 of the Public Utilities Code is amended to read:

12703. A district shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. A district may take any property necessary or convenient to the exercise of the powers granted in this division, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this division. A district shall proceed in the name of the district in condemnation proceedings.

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Comment. Section 12703 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (law governing exercise of eminent domain power), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

PUBLIC UTILITY DISTRICT

Public Utilities Code § 16404 (amended)

Sec. 11. Section 16404 of the Public Utilities Code is amended to read:

16404. A district may exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use and may take any property necessary or convenient to the exercise of the powers granted in this division, whether such property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right to condemn property the district has the same rights, powers, and privileges as a municipal corporation.~~ ^{to}

Comment. Section 16404 is amended to delete portions made unnecessary by the enactment of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (law governing exercise of eminent domain power), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use).

Public Utilities Code § 16405 (repealed)

Sec. 12. Section 16405 of the Public Utilities Code is repealed.

~~16405. A district may proceed in the name of the district in condemnation proceedings.~~

Comment. Section 16405 is unnecessary. See Code Civ. Proc. § 1250.210 and Comment thereto.

JOINT HIGHWAY DISTRICT

Streets & Highways Code § 25052 (repealed)

Sec. 13. Section 25052 of the Streets and Highways Code is repealed.

~~25052. Before exercising the right of eminent domain the board of directors of the district shall adopt a resolution describing the lands or rights of way sought to be acquired and declaring that the public interest and necessity require the acquisition thereof for the purposes of the district. The adoption of the resolution shall be conclusive evidence that:~~

- ~~(a) The public necessity requires the improvement for which the condemnation is proposed.~~
- ~~(b) The condemnation and acquisition of the property or rights of way is necessary for the improvement.~~
- ~~(c) The proposed improvement is planned and located in the manner which will be most compatible with the greatest public good and the least private injury.~~

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Comment. Section 25052 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 et seq.

Streets & Highways Code § 25280 (amended)

Sec. 14. Section 25280 of the Streets and Highways Code is amended to read:

25280. The board of directors of the district may request the board of supervisors and the proper officers of any county situated within the district to condemn and acquire property or rights of way within that county which are necessary for the projects of the district. Upon receipt of the request, the board of supervisors shall undertake the condemnation and acquisition requested by the board of directors and the cost thereof shall be a proper deduction from any levy made by the district upon or within that county. Any excess in such cost over and above the amount of any such levy shall be paid to the county by the district out of any funds provided for that purpose. The proceedings required to be taken by any county or county officers under the provisions of this section may include the taking of ~~immediate possession~~ of any property or rights of way necessary for district purposes.

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judgment

Comment. Section 25280 is amended to conform to the language used in the Eminent Domain Law. See Article 3 (commencing with Section 1255.410) of Chapter 6 of Title 7 of Part 3 of the Code of Civil Procedure.

BRIDGE AND HIGHWAY DISTRICT

Streets & Highways Code § 27166 (amended)

Sec. 15. Section 27166 of the Streets and Highways Code is amended to read:

27166. The district may ~~have and exercise, in the name of the district,~~ the right of eminent domain ~~for the condemnation of, any property, whether such property is already devoted to the same use or another public use, or otherwise,~~ necessary to the exercise of the powers granted in this part, or in any provision of law, to the district. ~~The district may condemn any existing highway, or right of way, or any portion thereof, whether the same be publicly or privately owned. In any proceeding to exercise the right of eminent domain, the district shall have the same rights, powers, and privileges as the State of California. If property is condemned by the district, the district may take possession and use the property in accordance with the provisions of Section 1254 of the Code of Civil Procedure.~~

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Comment. Section 27166 is amended to delete portions superseded by the Eminent Domain Law. See Code Civ. Proc. §§ 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1255.410 et seq. (possession prior to judgment), 1250.210 and Comment thereto (identification of parties).

FOLSOM LAKE BRIDGE AUTHORITY

Streets & Highways Code § 31003 (repealed)

Sec. 16. Section 31003 of the Streets and Highways Code is repealed.

~~31003. The authority shall commence any such proceedings in eminent domain whenever it first passes a resolution declaring that public interest and necessity require the construction of the toll bridge and that the acquisition of any particular real estate, personal property, franchises, rights, privileges, or easements is necessary therefor. Such resolution shall be conclusive evidence:~~

- ~~(a) Of the public necessity of such construction.~~
- ~~(b) That such property and franchises, rights, privileges, or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor.~~
- ~~(c) That such proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.~~

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Comment. Section 31003 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 et seq.

Streets & Highways Code § 31004 (repealed)

Sec. 17. Section 31004 of the Streets and Highways Code is repealed.

~~31004. The authority may condemn and take, in fee or otherwise as the authority determines, in the name of the authority, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.

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Comment. Section 31004 is superseded by Code of Civil Procedure Section 1240.310 et seq.

EL DORADO COUNTY TOLL
TUNNEL AUTHORITY

Streets & Highways Code § 31203 (repealed)

Sec. 18. Section 31203 of the Streets and Highways Code is repealed.

~~31203. The authority shall commence any such proceedings in eminent domain whenever it first passes a resolution declaring that public interest and necessity require the construction of the toll tunnel and that the acquisition of any particular real estate, personal property, franchises, rights, privileges, or easements is necessary therefor. Such resolution shall be conclusive evidence:~~

- ~~(a) Of the public necessity of such construction.~~
- ~~(b) That such property and franchises, rights, privileges, or easements are, and that the acquisition of the fee or other interest therein is, necessary therefor.~~
- ~~(c) That such proposed construction is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.~~

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Comment. Section 31203 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 et seq.

Streets & Highways Code § 31204 (repealed)

Sec. 19. Section 31204 of the Streets and Highways Code is repealed.

~~31204. The authority may condemn and take, in fee or otherwise as the authority determines, in the name of the authority, pursuant to or in conjunction with any other proceedings at any time brought pursuant to this article, any real property considered necessary for the purpose of exchanging it for other real property to be used for any of the purposes of this chapter.~~

~~Real property may be acquired for such purposes only when the owner of the property needed for a purpose provided in this chapter has agreed in writing to such exchange, and when, in the opinion of the authority, an economy in the acquisition of the necessary property can be effected thereby. The determination of the authority is conclusive evidence of all matters set forth in this section.~~

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Comment. Section 31204 is superseded by Code of Civil Procedure Section 1240.310 et seq.

IRRIGATION DISTRICT

Water Code § 22229 (repealed)

Sec. 20. Section 22229 of the Water Code is repealed.

~~22229. A district may enter upon any land to make surveys and determine the location for its necessary works on any land which may be deemed best for their location.~~

Comment. Section 22229 is superseded by Code of Civil Procedure
Section 1245.010 et seq.

Water Code § 22425 (amended)

Sec. 21. Section 22425 of the Water Code is amended to read:

22425. A district may acquire by any means any property or interest in property to carry out its purposes, including any of the following:

(a) Property for the construction, improvement, and operation of works in this state or in any other state or in a foreign nation.

(b) Works being constructed.

(c) Stock of domestic or foreign corporations owning water, water rights, canals, waterworks, franchises, concessions, or rights.

(d) Works by which land has been or may be supplied with water for irrigation.

(e) Property not otherwise authorized herein that may be required as a condition to obtaining state financial assistance for local projects as set forth in Chapter 5 (commencing with Section 12880), of Part 6, Division 6, of the Water Code.

(f) Public buildings and grounds.

Comment. Subdivision (f) is added to Section 22425 to preserve the authority of irrigation districts to condemn property for public buildings and grounds for their use. This addition was necessitated by the repeal of subdivision 3 of Section 1238 of the Code of Civil Procedure which authorized the exercise of the power of eminent domain for "public buildings and grounds . . . for the use of any . . . irrigation district." See former Code Civ. Proc. § 1238 and Comment thereto.

Water Code § 22455 (repealed)

Sec. 22. Section 22455 of the Water Code is repealed.

~~22455. Eminent domain proceedings may be brought by a district pursuant to the provisions of Title 7, Part 3 of the Code of Civil Procedure.~~

Comment. Section 22455 is unnecessary. See Code Civ. Proc.

§ 1230.020 (law governing exercise of eminent domain power).

COUNTY WATER DISTRICT

Water Code § 31044 (repealed)

Sec. 23. Section 31044 of the Water Code is repealed.

~~31044. Eminent domain proceedings may be brought by a district pursuant to the provisions of Title 7, Part 2 of the Code of Civil Procedure.~~

Comment. Section 31044 is unnecessary. See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

CALIFORNIA WATER DISTRICT

Water Code § 35625 (repealed)

Sec. 24. Section 35625 of the Water Code is repealed.

~~35625. Eminent domain proceedings may be brought by a district pursuant to the provisions of Title 7, Part 3 of the Code of Civil Procedure.~~

Comment. Section 35625 is unnecessary. See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

WATER STORAGE DISTRICT

Water Code § 43531 (repealed)

Sec. 25. Section 43531 of the Water Code is repealed.

~~43531. In condemnation proceedings the board shall proceed in the name of the district under the provisions of Section 14 of Article I of the Constitution of this State, and Title 7, Part 3 of the Code of Civil Procedure, except as otherwise provided in this article.~~

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Comment. Section 43531 is unnecessary. See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power). See also § 1250.210 and Comment thereto (identification of parties).

Water Code § 43532 (repealed)

Sec. 26. Section 43532 of the Water Code is repealed.

~~43532. The board shall not commence any proceedings in eminent domain unless it first adopts a resolution declaring that the public interest and necessity require acquisition, construction or completion of the improvement for which the property or interest in property is required, or will be required, and that the property or interest described in the resolution is necessary for the improvement; provided, when the board adopts such resolution by two-thirds (2/3) of all its members, the resolution shall be conclusive evidence of all of the following:~~

- ~~(a) The public necessity for the proposed improvement;~~
- ~~(b) That the property or interest is necessary for the proposed public improvement; and~~
- ~~(c) That the proposed public improvement is planned or located in a manner which will be most compatible with the greatest public good and the least private injury.~~

The resolution provided for in this section, however, shall not constitute conclusive evidence of the matters specified in subdivisions (a), (b) and (c) in the case of taking property located within a county in which the district is located but outside of the boundaries of the district, unless the board of ~~supervisors of the county in which such property is situated declares to the contrary.~~

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Comment. Section 43532 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 et seq.

Water Code § 43532.5 (amended)

Sec. 27. Section 43532.5 of the Water Code is amended to read:

43532.5. Notwithstanding any other provision in this article, the board shall not commence any proceedings in eminent domain with respect to property located outside of a county in which the district is located unless the board of supervisors of the county in which such property is situated gives its approval to such proceedings. ~~In the event that the board of supervisors gives its approval, a resolution adopted by the board pursuant to the provisions of Section 43532 shall be deemed conclusive evidence of the matters specified in subdivisions (a), (b) and (c) specified in Section 43532.~~

Comment. The last sentence of Section 43532.5 is superseded by Code of Civil Procedure Section 1245.250.

Water Code § 43533 (repealed)

Sec. 28. Section 43533 of the Water Code is repealed.

~~43533. Whenever a part of a parcel of land is to be acquired pursuant to this article and any portion of the remainder is to be left in such shape or condition as to be of little value to its owner, the board may acquire and sell such portion or may exchange the same for other property needed to carry out the powers conferred on said board.~~

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Comment. Section 43533 is superseded by Code of Civil Procedure
Section 1240.410 et seq.

WATER REPLENISHMENT DISTRICT

Water Code § 60230 (amended)

Sec. 29. Section 60230 of the Water Code is amended to read:

60230. For the purposes of replenishing the ground water supplies within the district, a district shall have power:

- (1) To have perpetual succession.
- (2) To sue and be sued, except as otherwise provided herein or by law, in all actions and proceedings in all courts and tribunals.
- (3) To adopt a seal and alter it at pleasure.
- (4) To take by grant, purchase, gift, devise, or lease, to hold, use and enjoy, and to lease, convey or dispose of, real and personal property of every kind, within or without the district, necessary or convenient to the full exercise of its power.
- (5) Within or outside of the district to construct, purchase, lease, or otherwise acquire, and to operate and maintain necessary waterworks and other works, machinery and facilities, canals, conduits, waters, water rights, spreading grounds, lands, rights and privileges useful or necessary to replenish the underground water basin within said district, or to augment the common water supplies of said district.
- (6) For the common benefit of said district, to store water in underground water basins or reservoirs within or outside of said district, to appropriate and acquire water and water rights within or outside of said district, to import water into said district, and to conserve water within or outside of said district.

(7) To carry out the purposes of this act, to commence, maintain, intervene in, defend and compromise, in the name of said district, or otherwise, and to assume the costs and expenses of any and all actions and proceedings now or hereafter begun to determine or adjudicate all or a portion of the rights to divert, extract, or use waters within the district, or within any segments thereof or subbasins therein, as between owners of or claimants to said rights, to prevent any interference with water or water rights used or useful to the lands, inhabitants, owners, operators, or producers within said district, or to prevent the diminution of the quantity or quality of the water supply of said district, or to prevent unlawful exportation of water from said district.

(8) To ~~have and~~ exercise the right of eminent domain ~~and in the manner provided by law for the condemnation of private property for public use,~~ to take any property necessary to supply the district or any portion thereof with replenish-

ment water, except (a) water and water rights already devoted to beneficial use, and (b) property (other than water and water rights) already appropriated to public use unless the taking be for a more necessary public use than that to which the property is already appropriated; provided, the district in exercising such power shall in addition to the damage for taking, injuring, or destruction of property also pay the cost of removal, reconstruction or relocation of any structure, including, but not limited to, railways, mains, pipes, conduits, wires, cables, towers, or poles of any public utility which is required to be removed to a new location. No use by a district of property owned, at the time the action to condemn is brought, by an existing agency having powers to provide for the replenishment of ground waters, shall constitute a more necessary public use than the use to which the property is already appropriated. ~~In proceedings relative to the exercise of such right, the district shall have all of the rights, powers and privileges of a city.~~

A district shall not exercise the right of eminent domain ~~under this subdivision for the condemnation of~~ property outside the boundaries of the principal county in which the district is situated unless it first obtains the consent thereto of the board of supervisors of the county in which such property is located.

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(9) To act jointly with or co-operate with the United States or any agency thereof, and, under the applicable laws of this State, co-operate and act jointly with the State of California, or any county or agency thereof, or any political subdivision or district therein, including flood control districts, public and private corporations, and any person, to the end that the purposes and activities of this district may be fully and economically performed.

(10) To cause assessments and/or charges to be levied as hereinafter provided to accomplish the purposes of this act and to maintain such reserve funds for the future purchase of water for replenishment purposes as are hereinafter authorized to be levied.

(11) To make contracts, to employ labor and to do all acts necessary for the full exercise of the foregoing powers.

(12) To carry on technical and other investigations of all kinds, necessary to carry out the provisions of this act, and for this purpose said district shall have the right of access through its authorized representative to all properties within said district.

(13) To borrow money and incur indebtedness and to issue bonds or other evidences of such indebtedness; also to refund or retire any indebtedness or lien that may exist against the district or property thereof; also to issue warrants to pay the

formation expenses of the district, which warrants may bear interest at a rate not exceeding 6 percent a year from the date of issue until funds are available to pay the warrants, and which formation expenses may include fees of attorneys and others employed to conduct the formation proceedings, but shall not include the expenses of holding and conducting the formation election.

(14) To cause taxes to be levied, in the manner hereinafter provided, for the purpose of paying any obligation of the district, including its formation expenses and any warrants issued therefor.

(15) To fix the rates at which water shall be sold for replenishment purposes, and to establish different rates for different classes of service or conditions of service, provided the rates shall be uniform for like classes and conditions of service.

(16) To fix the terms and conditions of any contract under which producers may agree voluntarily to use replenishment water from a nontributary source in lieu of ground water, and to such end a district may become a party to such contract and pay from district funds such portion of the cost of such replenishment waters as will encourage the purchase and use of such water in lieu of pumping so long as the persons or property within the district are directly or indirectly benefited by the resulting replenishment.

Comment. Section 60230 is amended to delete unnecessary language.

See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

MUNICIPAL WATER DISTRICT

Water Code § 71693 (amended)

Sec. 30. Section 71693 of the Water Code is amended to read:

71693. A district may exercise the right of eminent domain and, in the manner provided by law for the condemnation of private property for public use, ~~may take any property necessary to supply the district or any portion thereof with water, whether such property be already devoted to the same use or otherwise, and may condemn any existing waterworks or system, or any portion thereof, or any waters or water rights owned by any person. In proceedings relative to the exercise of such right, the district shall have all of the rights, powers, and privileges of a city, provided, the district, in exercising such power, shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be removed to a new location.~~

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Comment. Section 71693 is amended to delete provisions made unnecessary by the enactment of general provisions in the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (law governing exercise of eminent domain power), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use). See especially Code Civ. Proc. § 1240.650 (use by public entity more necessary than use by other persons).

Water Code § 71694 (amended)

Sec. 31. Section 71694 of the Water Code is amended to read:

71694. A district may exercise the right of eminent domain ~~and, in the manner provided by law for the condemnation of private property for public use, may~~ take any property necessary to carry out any powers of the district. ~~In proceedings relative to the exercise of such right, the district shall have all of the rights, powers, and privileges of a city; provided,~~ to ~~the~~ district, in exercising such right, shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be removed to a new location.

The A district shall not exercise the right of eminent domain, under this section, for the condemnation of property outside the boundaries of the district for any purpose, unless it first obtains the consent thereto of the board of supervisors of the county in which such property is located; provided, however, that a district may exercise the right of eminent domain, under this section, for the condemnation of property outside the boundaries of the district for the acquisition of rights-of-way in any county in which territory of the district is located or in any county adjacent to such county without obtaining the consent of the board of supervisors thereof.

When a district proposes to exercise the power of eminent domain, under this section, for the condemnation of property outside the boundaries of the district for the acquisition of rights-of-way in any county in which territory of the district is located or in any county adjacent to such county, it shall give written notice, at least two weeks prior to condemning the property, to the board of supervisors of the county in which the property is located. Such written notice shall contain a description of the property to be condemned.

Comment. Section 71694 is amended to delete unnecessary language.

See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

WATER CONSERVATION DISTRICT

Water Code § 74553 (amended)

Sec. 32. Section 74553 of the Water Code is amended to read:

74553. A district may exercise the right of eminent domain ~~and, in the manner provided by law for the condemnation of private property for public use, may take any property necessary~~ to be used for dams, damsites, reservoirs, reservoir sites, canals, ditches and conduits, spreading basins, sinking wells or sinking basins, or otherwise necessary to accomplish the purposes of this division, or to operate or to make use of such works. to

Comment. The deleted portion of Section 74553 is unnecessary.

See Code Civ. Proc. § 1230.020 (law governing exercise of eminent domain power).

Water Code § 74555 (repealed)

Sec. 33. Section 74555 of the Water Code is repealed.

~~74555. Whenever real property which is devoted to or held for some other public or quasi-public use is required by a district for any purpose authorized by this division, the district may acquire by condemnation or agreement real property adjacent thereto or in the immediate vicinity thereof to be exchanged for the real property so required by the district.~~

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Comment. Section 74555 is superseded by Code of Civil Procedure
Section 1240.310 et seq.

BILL NO. 2

An act to amend Sections 25703, 28953, 30503, 40162, 50162, 70162, 90402, 96002, 98212, 100131, 101177, and 102242 of, and to repeal Sections 28954, 30504, 100130.5, and 102241 of, the Public Utilities Code, relating to eminent domain.

The people of the State of California do enact as follows:

TRANSIT DISTRICT--ALAMEDA OR CONTRA COSTA COUNTY

Public Utilities Code § 25703 (amended)

Section 1. Section 25703 of the Public Utilities Code is amended to read:

25703. A district shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. A district may take any property necessary or convenient to the exercise of the powers granted in this division, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this division. A district shall proceed in the name of the district in condemnation proceedings. The district, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location.

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Comment. The deleted portions of Section 25703 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Public Utilities Code § 28953 (amended)

Sec. 2. Section 28953 of the Public Utilities Code is amended to read:

28953. The district shall ~~have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district, in exercising such power, shall in addition to the damage for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this act or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

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Comment. The deleted portions of Section 38953 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

Public Utilities Code § 28954 (repealed)

Sec. 3. Section 28954 of the Public Utilities Code is repealed.

~~28954. Whenever the district shall determine to exercise the right of eminent domain, it shall adopt a resolution declaring that the public interest and necessity require the acquisition of any described real property or right or interest therein. Such resolution, if adopted by a vote of two-thirds of the members of the board of directors, shall be conclusive evidence of the following:~~

- ~~(a) The public necessity of such acquisition.~~
- ~~(b) That such property, rights, or interests are, and that the acquisition of the fee or other interest therein is, necessary therefor.~~
- ~~(c) That such proposed acquisition is planned or located in a manner which will be most compatible with the greatest public good and cause the least private injury.~~

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Comment. Section 28954 is superseded by Code of Civil Procedure Sections 1240.040 and 1245.210 et seq.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT

Public Utilities Code § 30503 (amended)

Sec. 4. Section 30503 of the Public Utilities Code is amended

to read:

30503. The district may ~~take or acquire real or personal property of every kind within the district by condemnation~~ pursuant to the eminent domain proceedings in accordance with Title 7 (commencing with Section 1237), Part 3 of the Code of Civil Procedure, or, in the alternative, in accordance with Chapter 8 (commencing with Section 1401), Part 1, Division 1 of this code, ~~whether the property is already devoted to the same use or otherwise.~~

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exercise the right of eminent domain within the boundaries of the district to take any property necessary or convenient to the exercise of the powers granted in this part

No such taking or acquisition by the district which would involve the abandonment, removal, relocation or use of property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical and efficient service.

Comment. The deleted portion of Section 30503 is superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1230.060 (Public Utilities Commission jurisdiction preserved), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. §§ 1235.170 ("property" defined) and 1240.110 (right to acquire any necessary right or interest in any type of property).

Public Utilities Code § 30504 (repealed)

Sec. 5. Section 30504 of the Public Utilities Code is repealed.

~~30604. The district is a rapid transit district within the meaning of Section 1241 of the Code of Civil Procedure.~~

Comment. Section 30504 is superseded by Code of Civil Procedure Section 1240.610 et seq. (more necessary public use). See also Code Civ. Proc. § 1240.510 et seq. (compatible use).

ORANGE COUNTY TRANSIT DISTRICT

Public Utilities Code § 40162 (amended)

Sec. 6. Section 40162 of the Public Utilities Code is amended

to read:

40162. The district shall ~~have or~~ exercise the right of eminent domain in the manner provided by law for the condemnation of private property within the boundaries of the district for public use. The district ~~may~~ take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers and privileges of a county and all rights, powers and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district in exercising such power shall, in addition to the damage for the taking, injury or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railway, mains, pipes, conduits, cables or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.

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No such taking or acquisition by the district which would involve the abandonment, removal, relocation, or use of property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation, or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical, and efficient service.

Comment. The deleted portions of Section 40162 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties). See also Pub. Util. Code § 40175 (extraterritorial condemnation authority).

STOCKTON METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 50162 (amended)

Sec. 7. Section 50162 of the Public Utilities Code is amended to read:

50162. The district ~~shall have or~~ exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. The district may~~ take any property necessary or convenient to the exercise of the powers granted in this part, ~~whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables, or poles of any public utility or public district which is required to be moved to a new location.

No action in eminent domain to acquire property ~~or interests therein~~ within any incorporated city or any county shall be commenced unless the legislative body of the affected city or county has consented to such acquisition by resolution.

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Comment. The deleted portions of Section 50162 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties). See also Code Civ. Proc. §§ 1235.070 ("property" defined) and 1240.110 (right to acquire any necessary right or interest in any type of property).

TRANSIT DISTRICT--MARIN COUNTY

Public Utilities Code § 70162 (amended)

Sec. 8. Section 70162 of the Public Utilities Code is amended to read:

70162. The district ~~shall have or, exercise the right of eminent domain in the manner provided by law for the condemnation of private property within the boundaries of the district for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers and privileges of a county and all rights, powers and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings. The district in exercising such power shall, in addition to the damage for the taking, injury or destruction of property, also pay the cost of removal, reconstruction or relocation of any structure, railway, mains, pipes, conduits, cables or poles of any public utility which is required to be moved to a new location. Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~ ^(may) ^(to)

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Comment. The deleted portions of Section 70162 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

SAN DIEGO COUNTY TRANSIT DISTRICT

Public Utilities Code § 90402 (amended)

Sec. 9. Section 90402 of the Public Utilities Code is amended to read:

90402. The district shall ~~have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may~~ take any property necessary or convenient to the exercise of the powers granted in this act, ~~whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this act. The district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables, or poles of any public utility which is required to be moved to a new location.

No such taking or acquisition by the district which would involve the abandonment, removal, relocation or use of the property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical and efficient service.

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Comment. The deleted portions of Section 90402 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 96002 (amended)

Sec. 10. Section 96002 of the Public Utilities Code is amended to read:

96002. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may~~ take any property necessary or convenient to the exercise of the powers granted in this part, ~~whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ ^{may} ^{to} The district, in exercising such power shall, in addition to the damage for the taking, injury, or destruction of property, also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables or poles of any public utility or public district which is required to be moved to a new location.

No action in eminent domain to acquire property ~~or interests therein~~ within any incorporated city or any county shall be commenced unless the legislative body of the affected city or county has consented to such acquisition by resolution.

No such taking or acquisition by the district which would involve the abandonment, removal, relocation, or use of property of a railroad corporation, as defined in Section 230 of this code, shall be permitted, unless the Public Utilities Commission, after hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation, or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical, and efficient service.

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Comment. The deleted portions of Section 96002 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties). See also Code Civ. Proc. §§ 1235.070 ("property" defined) and 1240.110 (right to acquire any necessary right or interest in any type of property).

SANTA CRUZ METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 98212 (amended)

Sec. 11. Section 98212 of the Public Utilities Code is amended

to read:

98212. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power, in addition to the damage for the taking, injury, or destruction of property, shall also pay the cost of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, cables, or poles of any public utility or public district which is required to be moved to a new location.

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Comment. The deleted portions of Section 98212 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

SANTA CLARA COUNTY TRANSIT DISTRICT

Public Utilities Code § 100130.5 (repealed)

Sec. 12. Section 100130.5 of the Public Utilities Code is repealed.

~~100130.5. Whenever a portion of a parcel of real property is to be taken for district purposes and the remainder is to be left in such state or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the district may acquire the whole parcel and may sell the excess portion or exchange it for other property suitable for district purposes.~~

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Comment. Section 100130.5 is superseded by Code of Civil Procedure Section 1240.410 et seq.

Public Utilities Code § 100131 (amended)

Sec. 13. Section 100131 of the Public Utilities Code is amended to read:

100131. The district shall ~~have or~~ exercise the right of eminent domain ~~in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ The district, in exercising such power, shall in addition to the damages for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be moved to a new location. ~~Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district, except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~

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No taking or acquisition by the district which would involve the abandonment, removal, relocation, or use of the property of a railroad corporation, as defined in Section 230, shall be permitted, unless the Public Utilities Commission, after a hearing, shall find and determine that the public interest and necessity require the abandonment, removal, relocation, or use of such property and that such taking or acquisition will not unreasonably impair the ability of the railroad corporation involved to provide safe, adequate, economical, and efficient service.

Comment. The deleted portions of Section 100131 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

GREATER BAKERSFIELD METROPOLITAN TRANSIT DISTRICT

Public Utilities Code § 101177 (amended)

Sec. 14. Section 101177 of the Public Utilities Code is amended to read:

101177. The district ~~shall have and may exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may take any property necessary or convenient to the exercise of the powers granted in this part, whether the property is already devoted to the same use or otherwise. In~~ to ~~the proceedings, venue, and trial relative to the exercise of the right, the district shall have all the rights, powers, and privileges of an incorporated city and all of the rights, powers, and privileges conferred by this part. The district shall proceed in the name of the district in any such condemnation proceeding. In the exercise of such power, in addition to the damage for the taking, injury, or destruction of property, the district shall also pay the cost of removal, reconstruction, or relocation of any railways, mains, pipes, conduits, cables, poles, or other structures or facilities of any public utility or public agency which is required to be moved to a new location. Notwithstanding any other provision of this part or any other law, no property in public use shall be taken by the district except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~ to

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Comment. The deleted portions of Section 101177 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).

SACRAMENTO REGIONAL TRANSIT DISTRICT

Public Utilities Code § 102241 (repealed)

Sec. 15. Section 102241 of the Public Utilities Code is repealed.

~~102241. Whenever a portion of a parcel of real property is to be taken for district purposes and the remainder is to be left in such state or condition as to be of little value to its owner, or to give rise to claims or litigation concerning severance or other damage, the district may acquire the whole parcel and may sell the excess portion or exchange it for other property suitable for district purposes.~~

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Comment. Section 102241 is superseded by Code of Civil Procedure Section 1240.410 et seq.

SACRAMENTO REGIONAL TRANSIT DISTRICT

Public Utilities Code § 102242 (amended)

Sec. 16. Section 102242 of the Public Utilities Code is amended to read:

102242. The district ~~shall have or exercise the right of eminent domain in the manner provided by law for the condemnation of private property for public use. The district may~~ ^{may} take any property necessary or convenient to the exercise of the powers granted in this part, ~~whether the property is already devoted to the same use or otherwise. In the proceedings, venue, and trial relative to the exercise of the right, the district has all the rights, powers, and privileges of an incorporated city and all rights, powers, and privileges conferred in this part. The district shall proceed in the name of the district in condemnation proceedings.~~ ^{to} The district, in exercising such power, shall in addition to the damages for the taking, injury, or destruction of property, also pay the cost, exclusive of betterment and with credit for salvage value, of removal, reconstruction, or relocation of any structure, railways, mains, pipes, conduits, wires, cables, or poles of any public utility which is required to be moved to a new location. ~~Notwithstanding any other provision of this part or any other law, except as provided in Section 102243, no property in public use shall be taken by the district, except upon a finding by a court of competent jurisdiction that the taking is for a more necessary public use than that to which it has already been appropriated.~~ ⁻

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Comment. The deleted portions of Section 102242 are superseded by provisions of the Eminent Domain Law. See Code Civ. Proc. §§ 1230.020 (uniform procedure), 1240.510 et seq. (compatible use), 1240.610 et seq. (more necessary public use), 1250.210 and Comment thereto (identification of parties).