

Memorandum 2012-6

2012 Legislative Program (Status Report)

This memorandum provides a status report on the Commission's 2012 legislative program.

The first section of the memorandum discusses legislation that will be introduced in 2012, to implement Commission recommendations. The second section discusses two bills that were introduced in 2011 and are now proceeding as "two-year bills."

LEGISLATION INTRODUCED IN 2012

The legislation discussed below has either already been introduced this year, or is awaiting expected introduction.

AB 1529 (Dickinson) — Trial Court Restructuring

By statute, the Law Revision Commission is responsible for proposing revisions to the codes to remove material made obsolete by trial court restructuring. See Gov't Code § 71674. In response to this directive, the Commission has already proposed, and the Legislature has already enacted, literally hundreds of code revisions, in several different bills.

Assembly Bill 1529 (Dickinson) would implement several more Commission recommendations relating to trial court restructuring:

- (1) *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)*, 39 Cal. L. Revision Comm'n Reports 157 (2009).
- (2) *Trial Court Restructuring: Writ Jurisdiction in a Small Claims Case* (Aug. 2011).
- (3) *Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture* (April 2011).

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

- (4) *Compensation under Evidence Code Sections 731, 752, and 753.* This proposal was part of the Commission's recommendation on *Statutes Made Obsolete By Trial Court Restructuring (Part 5)*, 39 Cal. L. Revision Comm'n Reports 109 (2009). The rest of that recommendation has already been enacted. See 2010 Cal. Stat. ch. 212.

The bill is pending in the Assembly but has not yet been referred to a policy committee.

Among other things, the bill would amend Family Code Section 1834 to reflect the enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850. As shown in the Commission's recommendation, the amendment would also make the following technical correction to that code section:

(b) The probation officers of the county and the ~~attaches~~ attachés and employees of the family conciliation court shall assist a person in the preparation and presentation of a petition under this part if the person requests assistance.

However, the bill does not include that correction, because existing law already includes the accent mark over the "e" in question. The staff is not sure why the version of Section 1834 we were working with did not reflect as much.

In any case, the Commission's Comment needs to be revised to delete the last sentence, as shown in ~~strikeout~~ below:

Comment. Subdivision (a) of Section 1834 is amended to reflect enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Gov't Code §§ 77000-77655). See, e.g., Gov't Code §§ 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 10 ("court operations" include "publications and legal notices, by the court"); cf. Cal. R. Ct. 10.810(d), Function 6 (listing "court operations" relating to dispute resolution programs, including conciliators, but signaling that "[a]ny other related services, supplies, and equipment" are allowable under Function 10").

~~Subdivision (b) is amended to make a stylistic revision.~~

Unless the Commission otherwise directs, the staff will implement this revision. In accordance with standard procedure, we will then provide the revised Comment to the policy committees that hear AB 1529, along with the Commission's recommendation.

Nonsubstantive Reorganization of Deadly Weapon Statutes — 2012 Clean-Up Legislation

At the direction of the Legislature, the Commission undertook a nonsubstantive reorganization of the deadly weapon statutes, which was enacted in 2010. See 2010 Cal. Stat. ch. 711; *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm'n Reports 217 (2009). Due to the reorganization and renumbering of the deadly weapon statutes, numerous code provisions that cross-referred to those statutes had to be adjusted to reflect the new numbering scheme. Those conforming revisions were enacted in a separate bill the same year. See 2010 Cal. Stat. ch. 178.

However, the bill with those technical changes included a subordination clause, to ensure that it would not override any substantive legislation affecting the same code sections. See 2010 Cal. Stat. ch. 178, § 108. Due to the subordination clause, some of the conforming revisions were “chaptered out” (i.e., nullified) by another bill that amended the same code section. See Gov't Code § 9605.

To correct that problem and some other minor glitches, the Commission prepared a clean-up bill last year, which was enacted. See AB 1402 (Committee on Public Safety), 2011 Cal. Stat. ch. 285; *Nonsubstantive Reorganization of Deadly Weapon Statutes: Clean-Up Legislation* (Feb. 2011). Again, however, a number of the revisions in that bill were chaptered out due to the bill's subordination clause.

Consequently, further clean-up legislation is necessary this year. That clean-up legislation would essentially be a repeat of parts of last year's clean-up bill. Only a few technical changes are needed to update the legislation and Comments, as detailed in Exhibit pages 1-3. A bill draft incorporating the necessary changes has already been prepared and is ready for introduction.

The staff is in the process of finding an author for this clean-up legislation. Based on communications exchanged last year, we expect it to be included in the annual omnibus public safety bill. **Unless the Commission otherwise directs, we will pursue this possibility, using the current bill draft and the revised Comments shown in the attached Exhibit, at pages 1-3.**

References to “Tort Claims Act”

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code is commonly referred to as the California “Tort Claims Act.” That name is

misleading, however, because Division 3.6 is not limited to tort claims. It also includes certain types of contract claims against public entities and public employees.

To prevent confusion and accurately describe the statutory content, the California Supreme Court recently adopted the practice of referring to Division 3.6 as the “Government Claims Act,” instead of the “Tort Claims Act.”

For the same reasons, existing statutory references to the California “Tort Claims Act” should be replaced with references to the “Government Claims Act.” The Commission’s recommendation on *Statutory Cross-References to “Tort Claims Act”* (June 2011) would follow that approach.

A bill draft to implement the recommendation has been prepared and is ready for introduction. The staff has requested that the proposal be included in this year’s “civil omnibus bill,” which will be introduced by the Assembly Committee on Judiciary. If that does not work out, we will seek another author or hold the proposal for introduction in 2013.

Resolution of Authority

At least once per session, the Commission seeks the introduction of a concurrent resolution that sets out the “calendar of topics” on which the Commission is authorized to work. This is done pursuant to Government Code Section 8293, which provides as follows:

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

Assembly Member Donald Wagner has agreed to introduce the resolution. In addition to the calendar of topics, it will contain the following new language that expressly affirms two long-standing Commission practices:

Be it ...

Resolved, That the staff of the commission is invited to appear and testify at any committee hearing of a bill to implement a Commission recommendation, for the purpose of explaining the recommendation and answering questions posed by committee members, provided that the

staff may not advocate for the passage or defeat of the legislation; and be it further

Resolved, That the commission is requested to provide a copy of a commission recommendation to each member of a policy committee that is hearing a bill that would implement the recommendation...

The staff does not expect any objection to that new language.

TWO-YEAR BILLS: AB 805 (TORRES) AND AB 806 (TORRES)

Assembly Bills 805 and 806 were introduced by Assembly Member Norma Torres in 2011 to implement the Commission's recommendation to recodify the Davis-Stirling Common Interest Development Act. See *Statutory Clarification and Simplification of CID Law* (Feb. 2011). (A "common interest development" is a real property development in which each owner owns a "separate interest" and a shared interest in some "common area." Examples include "planned developments" and condominiums. See Civil Code Section 1351.)

AB 805 would repeal the existing Davis-Stirling Act and replace it with a reorganized and improved new statute. AB 806 would correct all statutory cross-references to provisions that would be repealed by AB 805.

Because of the size and complexity of those bills, it was planned from the outset that they would proceed on a slow track, as two-year bills. Both bills were approved by the Assembly on May 2, 2011. On January 11, 2012, both bills were approved by the Senate Committee on Transportation and Housing, as consent items. They are now awaiting hearing by the Senate Committee on Judiciary.

Both bills were amended on January 4, 2012. The bill amendments are discussed below.

Bill Coordination Amendments

Most of the amendments made to AB 805 and AB 806 were technical bill coordination amendments. That is, the amendments were made in order to preserve the effect of *other* bills that were enacted in 2011. Bill coordination amendments of this type are made as a routine matter of comity and do not reflect any endorsement of the content of the other bills.

In 2011, the following bills made changes to the Davis-Stirling Common Interest Development Act: AB 657 (Gordon), AB 771 (Butler), AB 887 (Atkins), AB 1298 (Blumenfield), SB 53 (Calderon), SB 150 (Correa), SB 209 (Corbett), and SB 563 (Committee on Transportation and Housing). AB 805 was amended to

preserve the changes made by those bills. AB 806 was also amended, to preserve changes made by various bills. (The Executive Director approved these amendments pursuant to Rule 3.3 of the Commission’s Handbook of Practices and Procedures. That rule permits technical amendments to be made without prior Commission approval. Ordinarily, the Executive Director would have consulted the Commission’s Chair before approving the amendments, but that was not possible in this case, because the Chair position was vacant.)

Because the Commission’s recommendation on *Statutory Clarification and Simplification of CID Law* has not yet been sent to print, the staff was able to revise the statutory language proposed in the recommendation in order to reflect the bill coordination amendments. Minor additions and revisions to the Commission Comments were also made where necessary. Consequently, there is no need to approve a supplemental report to reflect these changes. They will be included in the final recommendation when it goes to print. (The staff made these technical revisions to the recommendation pursuant to Rule 2.7.4 of the Commission’s Handbook of Practices and Procedures, which permits the staff to make technical revisions to a recommendation as necessary.)

Minor Improvements Made as Part of Bill Coordination Amendments

For the most part, the bill coordination amendments simply reiterate the language of the 2011 legislation verbatim. However, in a few instances minor improvements were incorporated into the amendments:

- Statutory cross-references were updated as necessary.
- A reference error was corrected in proposed Civil Code Section 4528.
- Terminology was standardized (to better reflect established definitions) in proposed Civil Code Section 4525.
- Proposed Civil Code Section 4920 was rephrased for clarity.
- In proposed Section 4090, references to a “majority” of directors were replaced with references to a number of directors sufficient to constitute a quorum (consistent with similar changes made in the Commission’s recommendation.).

The Executive Director approved the incorporation of those minor improvements and the recommendation was revised to reflect them.

Technical Amendments Proposed by Legislative Staff

A number of minor amendments were made to AB 805 to address concerns raised by the staff of the Senate Committee on Transportation and Housing. These amendments were made to clarify minor ambiguities, delete superfluous language, make a minor organizational improvement, and standardize terminology. These changes were made in proposed Civil Code Sections 4055, 4180, 4210, 4235, 4340, 4365, 4705, 4720, 4785, 4910, 5125, 5205, 5215, 5655, 5730, 5960.

The Executive Director had no objection to any of these amendments. They appear, overall, to be unproblematic. However, because they did not originate from the Commission, the staff decided against incorporating them into the Commission's recommendation.

Technical Amendments Recommended by Commission Staff

The amendments to AB 805 also included a small number of technical revisions recommended by the Commission's staff. They corrected numbering errors and made minor nonsubstantive language adjustments. The amendments were made to proposed Sections 5305, 5500, 5660, and 5570. The revisions to those sections were approved by the Executive Director and integrated into the Commission's final recommendation.

Amendment to Clarify the Application of the Proposed Law

AB 805 was also amended to make the following change to proposed Section 4010 (with underscore showing the language added by the amendment):

4010. Nothing in the act that added this part shall be construed to invalidate a document prepared or action taken before January 1, 2014, if the document or action was proper under the law governing common interest developments at the time that the document was prepared or the action was taken. For the purposes of this section, "document" does not include a governing document.

Section 4010 is a general provision, added to make clear that the recodification of the Davis-Stirling Act would not retroactively disturb

completed transactions that were proper under the former law (i.e., a “document prepared or action taken” before the operative date of AB 805).

The purpose of the amendment was to make clear that the provision does not limit the application of the new law to an association’s “governing documents” (e.g., its declaration, articles of incorporation, bylaws, and operating rules), even if those documents were adopted prior to the operation of the new law. Otherwise, older governing documents would be immunized against any positive changes made in connection with the recodification of the Davis-Stirling Act. That was not the Commission’s intent.

This issue was first raised in connection with a closely-related study, in which the Commission is examining the extent to which the Davis-Stirling Common Interest Development Act should apply to commercial and industrial developments. See Tentative Recommendation on *Commercial and Industrial Common Interest Developments* (Feb. 2011).

The proposed law in that related study contains a provision (proposed Section 6505) that is identical to proposed Section 4010. In response to public comment on *that* provision, the Commission decided to revise Section 6505 to add the language shown in underscore above. See Minutes (Aug. 2011), 4.

The same change should have been made to Section 4010 at that time. This is partly because the rationale for the change applies with the same force to both provisions and partly because the Commission has committed to maximizing the parallelism between the two proposed bodies of law.

For those reasons, the Executive Director approved the amendment to Section 4010 in AB 805 and incorporated the change (and a conforming revision to the Commission’s Comment) into the final recommendation.

Governing Document Hierarchy

AB 805 was also amended, on the staff’s recommendation, to address a perceived problem in proposed Civil Code Section 4205. Section 4205 is a new provision, which would provide guidance on the relative authority of the law and the most common types of governing documents used in common interest developments.

As originally recommended by the Commission, the provision read as follows:

4205. (a) The governing documents may not include a provision that is inconsistent with the law. To the extent of any inconsistency between the governing documents and the law, the law controls.

(b) The articles of incorporation may not include a provision that is inconsistent with the declaration. To the extent of any inconsistency between the articles of incorporation and the declaration, the declaration controls.

(c) The bylaws may not include a provision that is inconsistent with the declaration or the articles of incorporation. To the extent of any inconsistency between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration control.

(d) The operating rules may not include a provision that is inconsistent with the declaration, articles of incorporation, or bylaws. To the extent of any inconsistency between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration control.

Concerns were raised by interested persons that the proposed language would do more than just provide guidance on how to resolve inconsistency. The concern was that it would also create an affirmative duty to amend existing governing documents in order to remove superseded material.

In evaluating that concern, the staff reached three conclusions:

- (1) The Commission had never intended to create an affirmative duty to purge superseded material from existing documents.
- (2) The first sentence of each subdivision could be read to create such a duty.
- (3) The first sentences are not strictly necessary in order to achieve the real purpose of the section — to provide guidance on how to resolve conflicts between the law and the various types of governing documents.

Consistent with that analysis, the staff proposed to the Commission that the provision be amended to delete the first sentence of each subdivision. See Memorandum 2011-32, p. 7. Unfortunately, the Commission lost its quorum before it could consider and act on that proposal.

When the opportunity to amend AB 805 was presented, the Executive Director decided to proceed with the amendment of Section 4205, with the expectation that the amendment could be reversed if the Commission later decided against making that change. AB 805 was amended accordingly, but the amendment has not yet been incorporated into the Commission's recommendation.

The Commission should now decide whether to ratify that amendment. If so, the change will be incorporated into the Commission's recommendation. (A parallel change should also be made in the separate recommendation on commercial and industrial CIDs.). If the Commission decides against making this change, the staff will seek to reverse the amendment at the next opportunity.

Respectfully submitted,

Brian Hebert
Executive Director

NONSUBSTANTIVE REORGANIZATION OF DEADLY
WEAPON STATUTES: COMPARISON OF 2011 CLEAN-UP
BILL WITH 2012 CLEAN-UP BILL

TEXT REVISIONS

- (1) Each code section in the 2012 bill draft reflects revisions made in 2011 by the bill that chaptered out AB 1402's amendment of that code section.
- (2) AB 809 (Feuer) amended the version of Section 11106 scheduled to become operative on Jan. 1, 2012 (2011 Cal. Stat. ch. 178, § 89) and added a new version of Section 11106, which is scheduled to become operative on Jan. 1, 2014. See 2011 Cal. Stat. ch. 745, §§ 2, 2.5. Those revisions chaptered out the amendment of Section 11106 made by AB 1402 (Committee on Public Safety), 2011 Cal. Stat. ch. 285, § 23. To implement AB 1402's chaptered out revisions of Section 11106, it is necessary to amend both versions of Section 11106 found in AB 809. Sections 10 and 11 of the 2012 bill draft contain the necessary amendments.
- (3) In three places, AB 1402's amendment of Penal Code Section 11106 referred to "Section 12084, as that section read prior to being repealed *on January 1, 2006.*" (Emphasis added.) In the 2012 bill draft, the italicized language has been omitted from the amendments of Section 11106, because:
 - It is not necessary. There has only been one Penal Code Section 12084 in California's history, so there is no danger of confusing the Penal Code Section 12084 that was repealed on January 1, 2006, with a Penal Code Section 12084 that was repealed on another date.
 - Before Section 11106 was amended in 2011, it contained some references to "Section 12084, as that section read prior to being repealed *by the act that amended this section.*" (Emphasis added.) In 2011, each of those references was changed to "Section 12084, as that section read prior to being repealed." See AB 809 (Feuer), 2011 Cal. Stat. ch. 745, §§ 2, 2.5. The phrase "Section 12084, as that section read prior to being repealed" thus appears to be satisfactory to the Office of Legislative Counsel. The Commission should therefore use that language.

COMMENT REVISIONS

Code of Civil Procedure

Comment. Paragraphs (q)(7) and (t)(3) of Section 527.6 (~~as it reads in 2010 Cal. Stat. ch. 572, § 4~~) are amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Paragraph (u) is amended to correct an incomplete cross-reference.

Note. The notation “(as it reads in 2010 Cal. Stat. ch. 572, § 1)” is no longer necessary. As of Jan. 1, 2012, there will only be one version of Code of Civil Procedure Section 527.6, making it unnecessary to identify which version is being amended.

Comment. Paragraphs (q)(7) and (r)(3) of Section 527.8 (~~as it reads in 2010 Cal. Stat. ch. 572, § 2~~) are amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Note. The notation “(as it reads in 2010 Cal. Stat. ch. 572, § 2)” is no longer necessary. As of Jan. 1, 2012, there will only be one version of Code of Civil Procedure Section 527.8, making it unnecessary to identify which version is being amended.

Comment. Paragraphs (q)(7) and (r)(3) of Section 527.85 (~~as it reads in 2010 Cal. Stat. ch. 572, § 4~~) are amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

Note. The notation “(as it reads in 2010 Cal. Stat. ch. 572, § 4)” is no longer necessary. As of Jan. 1, 2012, there will only be one version of Code of Civil Procedure Section 527.85, making it unnecessary to identify which version is being amended.

Penal Code

Comment. Subdivision (g) of Section 273.6 (~~as it reads in 2010 Cal. Stat. ch. 178, § 55~~) is amended to incorporate language that was chaptered out due to a conflict between two bills that amended the section in 2010. See SB 1062 (Strickland), 2010 Cal. Stat. ch. 709, §§ 10, 28; SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, §§ 55, 108; Gov’t Code § 9605 (specifying how to resolve conflict between two bills that amend same section).

Note. The notation “(as it reads in 2010 Cal. Stat. ch. 178, § 55)” is no longer necessary. As of Jan. 1, 2012, there will only be one version of Code of Civil Procedure Section 273.6, making it unnecessary to identify which version is being amended.

Comment. Subdivision (a) of Section 626.95 (~~as it reads in 2010 Cal. Stat. ch. 178, § 60~~) is amended to correct a technical error.

Note. The notation “(as it reads in 2010 Cal. Stat. ch. 178, § 60)” is no longer necessary. As of Jan. 1, 2012, there will only be one version of Code of Civil Procedure Section 626.95, making it unnecessary to identify which version is being amended.

Comment. Subdivisions (a)(1), (f), and (i) of Section 626.10 (~~as it reads in 2010 Cal. Stat. ch. 178, § 61~~) are amended to incorporate language that was chaptered out due to a conflict between two bills that amended the section in 2010. See SB 1115 (Committee on Public Safety), 2010 Cal. Stat. ch. 178, §§ 61, 108; SB 1330 (Committee on Judiciary), 2010 Cal. Stat. ch. 328, §§ 157, 266; Gov’t Code § 9605 (specifying how to resolve conflict between two bills that amend same section).

Note. The notation “(as it reads in 2010 Cal. Stat. ch. 328, § 61)” is no longer necessary. As of Jan. 1, 2012, there will only be one version of Code of Civil Procedure Section 626.10, making it unnecessary to identify which version is being amended.

Comment. Section 11106 (as it reads in ~~2010~~ 2011 Cal. Stat. ch. ~~178, § 89~~ 745, § 2) is amended to improve clarity and readability. This is not a substantive change.

Comment. Section 11106 (as it reads in ~~2010~~ 2011 Cal. Stat. ch. ~~178, § 89~~ 745, § 2.5) is amended to improve clarity and readability. This is not a substantive change.

Note. AB 809 (Feuer) amended the version of Section 11106 scheduled to become operative on Jan. 1, 2012 (2011 Cal. Stat. ch. 178, § 89) and added a new version of Section 11106, which is scheduled to become operative on Jan. 1, 2014. See 2011 Cal. Stat. ch. 745, §§ 2, 2.5. Those revisions chaptered out the amendment of Section 11106 made by AB 1402 (Committee on Public Safety), 2011 Cal. Stat. ch. 285, § 23.

To implement AB 1402's chaptered out revisions of Section 11106, it is necessary to amend both versions of Section 11106 found in AB 809. Consequently, two Comments are also necessary, and each one needs to properly reflect which version of Section 11106 is being amended.