

Admin.

February 13, 2019

Memorandum 2019-8

Minutes of Meeting on February 7, 2019 (Draft)

The California Law Revision Commission¹ held a meeting on February 7, 2019. A draft of Minutes for that meeting is attached for Commissioners to review.

The attached draft will be deemed final after it is approved by a vote of the Commission. When voting, the Commission may make specific changes to the Minutes. If so, those changes will be memorialized in the Minutes for the meeting at which the vote occurred.

Respectfully submitted,

Brian Hebert
Executive Director

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

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

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DRAFT MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 7, 2019
Sacramento

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

Commission:

- Present:* Jane McAllister, Chairperson
Victor King, Vice-Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Thomas Hallinan
Olga Mack
Crystal Miller-O'Brien
- Absent:* Assembly Member Ed Chau
Senator Richard D. Roth
Susan Duncan Lee

Staff:

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

Other Persons:

Rick Brausch, Department of Toxic Substances Control

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APPROVAL OF ACTIONS TAKEN

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

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MINUTES

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

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

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ADMINISTRATIVE MATTERS

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Report of Executive Director

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The Executive Director reported on the following matters:

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- The approved meeting schedule for the December 2019 meeting contained a typographical error regarding the day of the meeting. The Commission approved correcting the error by scheduling the meeting for December 6, 2019.
- The Governor’s proposed budget for 2019-20 would increase the Commission’s funding by \$576,000 and would authorize three new positions (an Attorney IV, Attorney III, and Secretary). The Commission would be assigned a new study of the Penal Code. The Department of Finance website indicates that a budget trailer

1 bill will be introduced related to the Commission’s budget. The
2 language of the bill has not yet been publicly released.

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

6 **Commissioner Suggestions**

7 No Commissioner suggestions were made.

8 **Open Government Laws**

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

- 12 • The Commission revised Section 380(a) of its Handbook of
13 Practices and Procedures, as shown on page 2 of the First
14 Supplement to Memorandum 2019-2. (*Commissioner Mack was not*
15 *present for this decision.*)
16 • The staff will spend a modest amount of time investigating the
17 cost of live-streaming audio of its meetings. (*Commissioner Mack*
18 *was not present for this decision; Commissioner King voted against the*
19 *decision.*)

20 2019 LEGISLATIVE PROGRAM

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

23 The Commission decided to suspend further efforts to find an author for
24 legislation to implement its recommendation on *Homestead Exemption: Dwelling*
25 (2017).

26 STUDY E-200 — RECODIFICATION OF TOXIC SUBSTANCE STATUTES

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

31 The Commission made the following decisions:

- 32 • Work on Chapter 6.8 will proceed first, followed by work on
33 Chapter 6.5 of Division 20 of the Health and Safety Code.

- 1 • The recodified Chapter 6.8 should be located in a new Division 45
2 of the Health and Safety Code.
- 3 • New Division 45 will be organized as proposed on pages 5 and 6
4 of the memorandum.
- 5 • The existing short title for Chapter 6.8 will be preserved. The short
6 title for the legislation that recodifies Chapter 6.8 will be the
7 “Hazardous Substance Account Recodification Act of 2020.”
8 (*Commissioner Boyer-Vine was not present when these decisions were*
9 *made.*)
- 10 • As a general rule, definitions that are currently distributed
11 throughout Chapter 6.8 will not be aggregated. (*Commissioner*
12 *Boyer-Vine was not present when this decision was made.*)
- 13 • The existing definition of “director,” in Section 25313, will be
14 preserved.
- 15 • The following issues will be added to the list of substantive issues
16 for possible future study:
 - 17 • Should the definition of “release authorized or permitted
18 pursuant to state law” (continued in proposed Section 68110) be
19 restated for clarity?
 - 20 • Should the definition of “remedy” (continued in proposed
21 Section 68125) be restated for clarity?
 - 22 • Should the provision that governs the application of certain
23 definitions (continued in proposed Section 68035) be revised to
24 add an express exception to allow for a different meaning where
25 appropriate (e.g., “unless the context requires otherwise”)?

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

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

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

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

32 **Cumulative Draft (Memorandum 2019-12)**

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

1 **Part 5, Chapters 14-19 (Memorandum 2019-13)**

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

6 *Special Rule for Governor Who Held Office Between 1974 and 1988 (Gov't Code §*
7 *6268(b)-(c); proposed Gov't Code § 7928.010)*

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

13 *Definition of “Elected or Appointed Official” (Gov't Code § 6254.21(f); proposed Gov't*
14 *Code § 7920.495)*

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

18 **§ 7920.495. “Elected or appointed official”**

19 7920.495. For purposes of Article 3 (commencing with Section
20 7928.200) of Chapter 5, “elected or appointed official” includes, but
21 is not limited to, all of the following:

- 22 (a) A state constitutional officer.
- 23 (b) A member of the Legislature.
- 24 (c) A judge or court commissioner.
- 25 (d) A district attorney.
- 26 (e) A public defender.
- 27 (f) A member of a city council.
- 28 (g) A member of a board of supervisors.
- 29 (h) An appointee of the Governor.
- 30 (i) An appointee of the Legislature.
- 31 (j) A mayor.
- 32 (k) A city attorney.
- 33 (l) A police chief or sheriff.
- 34 (m) A public safety official.
- 35 (n) A state administrative law judge.
- 36 (o) A federal judge or federal defender.
- 37 (p) A member of the United States Congress or appointee of the
38 President.

1 **Comment.** Section 7920.495 continues former Section 6254.3(f)
2 without substantive change. See Section 13 (singular includes
3 plural and vice versa).

4 See Section 7920.530 (“public safety official”).

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

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

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

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

16 *Constitutionality (Gov’t Code § 6254.21(c); proposed Gov’t Code §§ 7920.120,*
17 *7928.215, 7928.220, 7928.225)*

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

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

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

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

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

32 Proposed Government Code Section 7929.005 (recodifying Government Code
33 Section 6254.12, with revisions to improve clarity) is acceptable for purposes of a
34 tentative recommendation.

1 *Document Assessing Agency’s Vulnerability to Terrorist Attack or Other Criminal Act*
2 *Intended to Disrupt Agency Operations (Gov’t Code § 6254(aa); proposed Gov’t*
3 *Code § 7929.200)*

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

7 *Definition of “Voluntarily Submitted” (Gov’t Code § 6254(ab); proposed Gov’t Code §*
8 *7929.205(a))*

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

16 *State Compensation Insurance Fund (Gov’t Code § 6254(ad); proposed Gov’t Code §§*
17 *7929.400-7929.430)*

18 “Chapter 18. State Compensation Fund” (proposed Gov’t Code §§ 7929.400-
19 7929.430) is acceptable for purposes of a tentative recommendation. The material
20 in that chapter should not be relocated to “Chapter 5. Health Care.”

21 *Definition of “Fully Executed” (Gov’t Code § 6254(ad)(7); proposed Gov’t Code §*
22 *7929.430(a))*

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

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

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

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

32 On page 20 of the draft, lines 5 to 9 should read:

1 Apparently, however, there is an unresolved issue regarding this
2 matter and there are ongoing discussions about it between the
3 county and the Judicial Council. To allow for resolution of that
4 issue while ensuring that Section 70624 is eventually repealed, the
5 Commission tentatively proposes to add a five-year sunset clause
6 to the section.

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

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

11 STUDY J-1405.2 — TRIAL COURT RESTRUCTURING CLEAN-UP:
12 TASK FORCE ON TRIAL COURT EMPLOYEES

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

18 *(Commissioner Hallinan was not present for this decision.)*

19 STUDY L-3032.1 — REVOCABLE TRANSFER ON DEATH DEED: FOLLOW-UP STUDY

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

28 STUDY L-4130 — DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

29 The Commission considered Memorandum 2019-5 and its First Supplement,
30 presenting a staff draft of proposed legislation regarding the liability of a person
31 who takes property outside of probate under the affidavit procedure for real
32 property of small value (Prob. Code §§ 13200-13210).

1 The Commission approved the proposed legislation for inclusion in a
2 tentative recommendation. The staff will use that proposed legislation as a model
3 for reform of the other procedures at issue in this study (Prob. Code §§ 13100-
4 13116 (affidavit procedure for personal property of small value), 13500-13660
5 (surviving spouse)).

6 STUDY R-100 — FISH AND GAME LAW

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

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

12 *(Commissioner Hallinan was not present for this decision.)*

13 STUDY T-100 — TECHNICAL AND MINOR SUBSTANTIVE CORRECTIONS

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

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

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

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Director