

August 21, 1970

Time

Place: San Francisco

September 3 - 10:00 a.m. - 5:00 p.m.
September 4 - 9:00 a.m. - 5:00 p.m.
September 5 - 9:00 a.m. - 1:00 p.m.

Thursday and Friday
Rm. 1157, State Office Bldg.
455 Golden Gate Avenue

Saturday
State Bar Building
601 McAllister Street

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

September 3-5, 1970

1. Minutes of July 10-11 meeting (sent 8/4/70)
2. 1970 Legislative Program
3. Administrative Matters

Budget for 1971-72 Fiscal Year

Memorandum 70-74 (sent 8/7/70)

Research Contracts

Memorandum 70-75 (sent 8/7/70)

First Supplement to Memorandum 70-75 (enclosed)

New Topics

Memorandum 70-96 (sent 8/7/70)

4. Annual Report

Memorandum 70-76 (sent 8/12/70)

Draft of Annual Report (attached to Memorandum)

First Supplement to Memorandum 70-76 (sent 8/12/70)

5. Study 71 - Joinder of Parties

Memorandum 70-97 (sent 8/4/70)

6. Study 52 - Sovereign Immunity

Memorandum 70-98 (sent 8/7/70)

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7. Study 65 - Inverse Condemnation (General Approach)
Memorandum 70-100 (sent 8/4/70)
Research Studies (attached to Memorandum)
8. Study 65.25 - Inverse Condemnation (Water Damage; Interference With Land Stability)
Memorandum 70-72 (sent 8/6/70)
Tentative Recommendation (attached to Memorandum)
Research Study (attached to Memorandum)
First Supplement to Memorandum 70-72 (sent 8/10/70)
9. Study 36 - Condemnation (General Approach)
Memorandum 70-99 (sent 8/7/70)
10. Study 36.20(2) - Condemnation (Tentative Statute)
Memorandum 70-77 (enclosed)
11. Study 36.31 - Condemnation (Procedure for Raising Right to Take Issues)
Memorandum 70-78 (to be sent)
Research Study (attached to Memorandum)
12. Study 36.24 - Condemnation ("More Necessary" Public Uses)
Memorandum 70-79 (to be sent)
13. Study 36.30 - Condemnation (Substitute Condemnation)
Memorandum 70-80 (to be sent)
14. Study 36.42 - Condemnation (Future Condemnation)
Memorandum 70-81 (to be sent)
15. Study 36.60 - Condemnation (Moving Expenses)
Memorandum 70-82 (sent 8/10/70)
Tentative Recommendation (attached to Memorandum)
16. Study 36.35 - Condemnation (Possession Prior to Final Judgment and Related Problems)
Memorandum 70-59 (sent 6/30/70; another copy sent 7/28/70)
Printed Tentative Recommendation and Study (sent 7/28/70)
First Supplement to Memorandum 70-59 (sent 8/4/70)
Second Supplement to Memorandum 70-59 (sent 8/7/70)
Third Supplement to Memorandum 70-59 (sent 8/12/70)

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17. Study 65 - Inverse Condemnation (Insurance)

Memorandum 70-84 (enclosed)

18. Study 36.65 - Condemnation (Disposition of Existing Statutes)

Section 1238.1

Memorandum 70-85 (sent 8/4/70)
Research Study (attached to Memorandum)

Section 1238.2

Memorandum 70-86 (sent 8/4/70)
Research Study (attached to Memorandum)

Section 1238.3

Memorandum 70-87 (sent 8/4/70)
Research Study (attached to Memorandum)

Sections 1273.01-1273.06

Memorandum 70-88 (enclosed)

Sections 1242 and 1242.5

Memorandum 70-89 (enclosed)

19. Study 36.25 - Condemnation (Byroads)

Memorandum 70-95 (sent 8/7/70)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 3, 4, AND 5, 1970

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on September 3, 4, and 5, 1970.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
G. Bruce Gourley (September 4 and 5)
Noble K. Gregory
Marc W. Sandstrom
Joseph T. Sneed

Absent: Alfred H. Song, Member of the Senate
Carlos J. Moorhead, Member of the Assembly
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, and E. Craig Smay, members of the Commission's staff, also were present.

The following observers were also present:

Hubert O. Bower, Attorney General's Office (September 3)
Garrett H. Elmore, California State Bar (September 5)
Lloyd Hinkleman, Attorney General's Office (September 3)
Gideon Kanner, Fadem & Kanner (September 4 and 5)
John N. McLaurin, Hill, Farrer & Burrill (September 4 and 5)
John M. Morrison, Attorney General's Office (September 3 and 4)
Kenneth G. Nellis, Department of Public Works (September 3 and 4)
Willard A. Shank, Attorney General's Office (September 3 and 4)
Terry C. Smith, Los Angeles County Counsel's Office
Jon D. Smock, Judicial Council (September 3)
Charles E. Spencer, Department of Public Works
Reginald M. Watt, Attorney, Chico (September 3 and 4)

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ADMINISTRATIVE MATTERS

Approval of Minutes of July 10-11, 1970, Meeting. The Minutes of the July 10-11, 1970, meeting were approved as submitted.

1970 Legislative Program. The Executive Secretary reported on the progress of the 1970 legislative program as follows:

Adopted or Enacted (13)

Bills (10)

- Ch. 41 (SB 266)(proof of foreign documents)
- Ch. 45 (AB 123)(rule against perpetuities)
- Ch. 69 (SB 129)(res ipsa loquitur)
- Ch. 89 (AB 171)(leases)
- Ch. 104 (AB 126)(public entity--statute of limitations)
- Ch. 312 (AB 124)(quasi-community property)
- Ch. 417 (AB 125)(arbitration in eminent domain)
- Ch. 618 (SB 98)(fictitious business names)
- Ch. 662 (SB 91)(entry for survey; condemnation for water carrier terminal facilities)
- Ch. 720 (SB 90)(representations as to credit)

Resolutions (3)

- Res. Ch. 45 (SCR 7)(inverse condemnation study)
- Res. Ch. 46 (SCR 8)(general authority to study topics)
- Res. Ch. 54 (SCR 6)(nonprofit corporation study)

Sent to Governor (1)

- SB 94 (governmental liability)(Deleted from this bill are provisions dealing with nuisance liability, plan or design immunity, and ultrahazardous activity liability)

Dropped (1)

- SB 92 (plan or design immunity)

Defeated (1)

- SB 95 (general evidence bill)

This bill passed the Senate after two sections (psychotherapist-patient privilege) were deleted. The Assembly deleted two more sections (marital testimonial privilege), leaving only the res ipsa loquitur section which was approved in SB 129, making SB 95 unnecessary.

Note. Senate Bills 480 and 481 contain provisions based on the psychotherapist-patient privilege provisions of SB 95. These bills have been sent to the Governor.

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Budget for 1971-72 Fiscal Year. The Commission considered Memorandum 70-74, the First Supplement to Memorandum 70-74, and Exhibit IV of Memorandum 70-76. The Executive Secretary advised the Commission that the Department of Finance had determined that it would consider a budget that did not exceed \$172,300 as one that holds the line at the present level of expenditures. The difference between \$172,300 and the amount available for the current fiscal year (\$168,918 according to Department of Finance) represents the effect of merit salary increases and increased costs resulting from inflation.

The Commission directed that the budget request for 1971-72 should be \$172,300. Concern was expressed that this request would not provide adequate funds for research and printing, but the Executive Secretary expressed the view that the fiscal situation of the state is such that it would be undesirable to request more funds than the amount allocated by the Department of Finance to the Commission.

The Executive Secretary reported that he was hopeful that a new lease could be made with Stanford for a rent of \$5,000 per year, starting July 1, 1971. The Commission, after discussion, approved such a lease if it could be worked out with Stanford and met the requirements of the Department of General Services.

The itemization of operating expenses set out in the First Supplement to Memorandum 70-74 was generally approved, subject to such modifications as are necessary so that the budget for 1971-72 will total \$172,300.

Research Contracts. The Commission approved the termination of the contract with Professor James E. Hogan, UC Davis Law School, and the agreement terminating the contract is to relieve both the state and Professor Hogan of any obligations under the contract. The Executive Secretary was

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authorized to execute the agreement terminating the contract on behalf of the Commission.

The Commission directed the Executive Secretary to execute a contract on behalf of the Commission with Mr. Norman E. Matteoni, Deputy County Counsel of Santa Clara County, to prepare a study on the procedural aspects of condemnation law. The contract is to cover the same study as that undertaken by Professor Hogan and the compensation is to be \$5,000 plus travel expenses limited as follows:

1970-71 fiscal year -- \$150
1971-72 fiscal year -- \$200

The Executive Secretary reported that he had written to Professor Rabin at the UC Davis Law School concerning the lease study but had not yet received a reply. After discussion, the Executive Secretary was authorized to execute a contract with Professor Rabin of the UC Davis Law School for a study on the disposition of the lessee's property when a lease is terminated if Professor Rabin is willing to undertake the study. The compensation is to be \$2,500 for the study, plus travel expenses limited to \$150.

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Multi-year Schedule of Projects. The Commission discussed the First Supplement to Memorandum 70-76 and approved the following multi-year schedule of projects.

MULTI-YEAR SCHEDULE OF PROJECTS

(Number of sections is estimated unless otherwise indicated.)

JANUARY 1970 - JANUARY 1971

Legislative Consideration of Recommendations to 1970 Legislature (107 sections--actual count)

("*" indicates revised version of recommendation to prior session)

- Fictitious Business Names--40 sections (ENACTED)
- Sovereign Immunity (Revisions of Governmental Liability Act)--23 sections (Approximately 19 sections probably will be ENACTED)
- *Sovereign Immunity (Statute of Limitations)--12 sections (ENACTED)
- Quasi-Community Property--4 sections (ENACTED)
- Proof of Foreign Official Records--1 section (ENACTED)
- Condemnation Law and Procedure (Arbitration of Just Compensation)--7 sections (ENACTED)
- *Real Property Leases--14 sections (ENACTED)
- *Evidence Code (Revisions of Evidence Code)--5 sections (3 sections ENACTED)
- "Vesting" of Interests Under Rule Against Perpetuities--1 section (ENACTED)
- Representations as to Credit of Third Persons--1 section (ENACTED)

Topic Added to Agenda:
Nonprofit Corporation Law

Topics Dropped From Agenda:
Small Claims Court Law
Service of Process by Publication

Work on Recommendations to 1971 Legislature

("#" indicates topics that can be considered only if study is received by September 15, 1970)

- Attachment and Garnishment (TOP PRIORITY)
- Condemnation Law and Procedure (Relocation Assistance)(PRIORITY)
- Cross-Complaints and Counterclaims
- Joinder of Causes of Action
- #Right of Nonresident Aliens to Inherit (POSSIBLY)
- Insurance Against Inverse Liability (POSSIBLY)
- Sovereign Immunity--Nuisance, Ultrahazardous Activities, Plan or Design Immunity (POSSIBLY)

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Work on Other Topics

Inverse Condemnation (Water Damage; Land Stability)(TOP PRIORITY)
Condemnation Law and Procedure (The Right to Take)(TOP PRIORITY)
Jurisdiction in Custody Matters
Consideration of Recommendations to 1970 Legislature That Are Not
Enacted

JANUARY 1971 - JANUARY 1972

Legislative Consideration of Recommendations to 1971 Legislature (200
sections)

Attachment and Garnishment
Condemnation Law and Procedure (Relocation Assistance)
Cross-Complaints and Counterclaims
Joinder of Causes of Action
Right of Nonresident Aliens to Inherit
Inverse Liability Insurance
Sovereign Immunity

Topics to be Dropped From Agenda:

Taking Instructions to Jury Room (no legislation desirable)
Trial Preference Statutes (no legislation desirable)
Personal Injury Damage Award as Separate Property (legislation
enacted)
Mutuality of Remedies in Suits for Specific Performance (legis-
lation enacted)
Vehicle Code Section 17150 and Related Statutes (legislation
enacted)
Good Faith Improvers (legislation enacted)
Section 1974 of the Code of Civil Procedure (legislation enacted)
Additur and Remittitur (legislation enacted)
Civil Code Section 715.8 (legislation enacted)

New Topics:

(not yet determined)

Work on Recommendations to 1972 Legislature

Inverse Condemnation (Water Damage; Land Stability)(TOP PRIORITY)
Revision of Arbitration Statute
Disposition of Lessee's Property Upon Termination of a Lease
Liquidated Damages
Jurisdiction in Custody Matters

Work on Other Topics

Condemnation Law and Procedure (The Right to Take)(TOP PRIORITY)
Condemnation Law and Procedure (Compensation and Related Problems)
(TOP PRIORITY)

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Condemnation Law and Procedure (Other Aspects) (TOP PRIORITY)
Inverse Condemnation (Various Aspects) (TOP PRIORITY)
Consideration of Recommendations to 1971 Legislature That Are Not
Enacted

JANUARY 1972 - JANUARY 1973

Legislative Consideration of Recommendations to 1972 Legislature

Inverse Condemnation (Water Damage; Land Stability; Other Aspects)
Arbitration
Jurisdiction in Custody Matters
Disposition of Lessee's Property
Liquidated Damages

Work on Recommendations to 1973 Legislature

Comprehensive Eminent Domain Statute (TOP PRIORITY)
Consideration of Recommendations to 1972 Legislature That Are Not
Enacted
Oral Modification of Written Contract

JANUARY 1973 - JANUARY 1974

Legislative Consideration of Recommendations to 1973 Legislature

Comprehensive Eminent Domain Statute
Oral Modification of Written Contract

Work on Other Topics

Comprehensive Garnishment-Attachment-Execution Statute
Nonprofit Corporation Law
Partition and Probate Sales
Other Topics added to agenda at 1971 and subsequent sessions

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Letter Concerning Availability of Volume 9. The letter, handed out at the meeting, to be sent to the members of the Senate and Assembly by the legislative members of the Commission was generally satisfactory. It was considered desirable to indicate the contribution of the Commission to law reform and the topics under study. Various editorial changes were suggested to be incorporated into the draft to be submitted for consideration by the legislative members.

Procedures for Determination of New Topics. The Commission determined that the decision as to which new topics will be requested for authorization at a particular legislative session ordinarily should be made at one meeting during the year. If the various possible new topics are considered at one meeting each year, the Commission will have an overall view of all the possible new topics when a decision is made as to the new topics to be requested for authorization at a particular session.

Topics may be brought to the Commission's attention when the suggestion is received, but those topics that appear to be suitable for study should be written up for possible inclusion in the Annual Report and considered at the time the Annual Report is approved for printing.

This procedure should be added to the Handbook of Practices and Procedures.

New Topic--Termination of Limitations on Use of Property. The Commission directed the staff to write up a request for authority to study the broad topic discussed in Memorandum 70-96 so that the Commission can determine at the October 1970 meeting whether to request authority to study this topic.

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Annual Report. The Commission considered Memorandum 70-76. The Commission approved the provisions of the Annual Report discussed in Memorandum 70-76 with the following revisions.

In Exhibit I (pink), the following changes were made:

(1) On page 1a, the word "Two" was deleted, and the first three lines of page 2 were deleted, and the following substituted:

The final rulings in the two cases recently decided by the Superior Court in Los Angeles,¹ appeals from which are likely to be taken, should clarify the law in this area, and the Commission will then consider the need and advisability of legislation relating to aircraft noise damage. Other

(2) On page 3, line 5, the word "will" at the beginning of the line was replaced by "plans to" and at the end of the second paragraph the following sentence was added: "The Commission has retained Mr. Norman E. Matteoni, Deputy County Counsel of Santa Clara County, to prepare a background study on certain procedural aspects of condemnation."

(3) The two paragraphs on page 6 were revised to read in substance:

During the 1971 legislative session, the Commission also will be occupied with the presentation of its legislative program. In addition to the matters mentioned above, the 1971 legislative program will include a recommendation relating to various aspects of pleading,¹³ sovereign immunity,¹⁴ and the right of nonresident aliens to inherit.¹⁵ A major topic under active consideration is attachment and garnishment, and the Commission hopes to submit a recommendation on this topic to the 1971 Legislature.

If work on eminent domain and inverse condemnation does not occupy substantially all of its time, the Commission plans to consider during 1971 other topics authorized for study. These include arbitration, liquidated damages, and the problem of disposition of a lessee's property when his lease is terminated.

The Commission determined that a discussion of Senate Bill 266 (Exhibit II of Memorandum 70-76) should be included in the Annual Report unless Senator Cologne objects.

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The Calendar of Topics for Study, as set out on pages 3-4 of the memorandum, was approved. In any case where the topic merely refers to a code section number, the topic should be revised to indicate in parenthesis an indication of the matter covered by the section

The statement set out in Exhibit III was approved after the following change was made: The words "concludes that it would not be desirable to recommend legislation on this topic and" were deleted in the last three lines on the bottom of page 1. Also, the subject matter of the topics should be indicated where the topic is merely a reference to the code section.

The budget statement on page 5 of the memorandum was approved after the words "because no legislation on these topics is desirable" were deleted at the end of the suggested statement.

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STUDIES 36; 36.20(2) - CONDEMNATION (GENERAL APPROACH; TENTATIVE STATUTE)

The Commission considered Memoranda 70-77 and 70-99 concerning the scope and progress of the work to date in completing a comprehensive statute relating to condemnation law and procedure. No specific action was required to be taken.

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STUDY 36.24 - CONDEMNATION (THE RIGHT TO TAKE--"MORE NECESSARY"
PUBLIC USE)

The Commission considered Memorandum 70-79. Chapter 8 (Sections 450 through 455) relating to the right to take for a "more necessary" public use was tentatively approved as submitted. However, when these provisions are sent out for review, the staff was directed to solicit comment with respect to the wisdom of the policies reflected here and to refer specifically to Section 454 and whether it is presently causing difficulty, whether it is needed and whether it should be retained, repealed, or modified.

Approval of Chapter 9 (Sections 470 and 471) relating to condemnation for consistent uses was deferred until the comments of the Department of Public Works concerning these sections have been received.

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STUDY 36.25 - CONDEMNATION (BYROADS)

The Commission considered Memorandum 70-95 and directed the Executive Secretary to write to Mr. Joseph Horton and express the Commission's appreciation of his interest in their work and advise him that they had tentatively determined that a private person should not have a right to condemn a byroad but that the Street Opening Act of 1903 should be clarified to permit byroad construction pursuant to that act.

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STUDY 36.30 - CONDEMNATION (THE RIGHT TO TAKE--SUBSTITUTE CONDEMNATION)

The Commission considered Memorandum 70-80 and Chapter 6 (Sections 410 through 415) relating to substitute condemnation. Sections 410 through 415 were tentatively approved subject to the following modifications:

Section 410. The term "property to be exchanged" was changed to "substitute property" and the staff was directed to make this conforming change throughout the chapter. The staff was further directed to eliminate the C, Q₁, Q₂ terminology throughout.

Section 411. The staff was directed to revise the leadlines to this section and Section 412 to make clear the relationship between these two sections. Paragraph (2) of subdivision (a) was revised to provide substantially as follows:

(2) The necessary property is devoted to or held for some public use and the substitute property will be devoted to or held for the same public use by the owner of the necessary property.

Section 412. Subject to the change in the leadlines indicated above, Section 412 was approved as submitted.

Section 413. Previously approved; no changes necessary.

Section 415. Section 415 was revised to provide substantially as follows:

415. (a) Notwithstanding Section 412, where a public entity acquires property for a public use and exercises or could have exercised the right of eminent domain to acquire such property for such use, the public entity may exercise the right of eminent domain to acquire such additional property, as appears reasonably necessary and appropriate after taking into account any hardship to the owner of the additional property, to provide access to a public road from any property which is not acquired for such public use but which is cut off from access to a public road as a result of the acquisition by the public entity.

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(b) Where a public entity has furnished or committed itself to furnish, according to a specific plan, access to property cut off from access to a public road as a result of the acquisition of property for public use by the public entity, such fact shall be taken into account in determining the damage to the property which is not acquired for public use.

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STUDY 36.31 - CONDEMNATION (PROCEDURE FOR RAISING RIGHT TO TAKE ISSUES)

The Commission considered Memorandum 70-78 and the tentative staff recommendations relating to the response to a complaint in condemnation. The Commission directed the staff to retain for the present the existing nomenclature (i.e., complaint, summons, answer) and to incorporate Sections 901 and 902 (Exhibit III) in the tentative statute as staff recommendations only.

Section 902 was revised as follows:

902. (a) A condemnee desiring to raise any defense to the taking of his property shall file and serve upon the condemnor preliminary objections to the complaint for condemnation within 45 days after the service of summons upon him or within such longer period of time as is stipulated or as the court may allow upon good cause shown. A condemnee who needs additional time to prepare preliminary objections shall apply to the court for such time within the 45-day period.

(b) All defenses shall be raised at one time and in one document. They may be inconsistent. The grounds for each defense shall be specifically stated. Any defense not raised by a timely preliminary objection is waived unless the court for good cause shown determines otherwise.

(c) Within such period as the court determines is reasonable, the court shall determine all preliminary objections and shall make such preliminary or final orders as are required.

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STUDY 36.35 - CONDEMNATION (POSSESSION PRIOR TO FINAL JUDGMENT AND RELATED PROBLEMS)

The Commission considered Memorandum 70-59, the First, Second, and Third Supplements to Memorandum 70-59, and the attached Tentative Recommendation. The Commission took the following action with respect to the provisions of the Tentative Recommendation:

(1) Consideration of Code of Civil Procedure Sections 1249, 1249a, 1249.1, and 1257 (dealing with date and measure of valuation and costs of new trial), of Government Code Sections 38090 and 38091 (concerning date of valuation), and of Streets and Highways Code Sections 4203 and 4204 (concerning date of valuation) was deferred pending separate staff memoranda on these problems.

(2) Code of Civil Procedure Sections 1243.4, 1243.5, 1243.6, 1243.7, and 1254 were approved for repeal, with comments indicating appropriate disposition of their provisions.

(3) Government Code Sections 16425 through 16427 and Code of Civil Procedure Sections 1252, 1253, 1255a, and 1255b were approved as set forth in the Tentative Recommendation.

(4) Title 7.1, DEPOSIT OF PROBABLE JUST COMPENSATION PRIOR TO JUDGMENT: OBTAINING POSSESSION PRIOR TO FINAL JUDGMENT, was approved for inclusion in the comprehensive statute as Division 7 (the sections to be renumbered accordingly) subject to the following action:

Section 1268.01--The staff was directed to determine whether special or general benefits were to be considered in offsetting the benefit to a remainder parcel, and to insert appropriate language in subdivision (c)(3).

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Section 1268.02--Subdivision (b) was revised to include the words "and copied" wherever they occur in the phrase "may be inspected and copied."

Section 1268.03--Subdivision (e) was revised to include the sentence, "Nothing in this subdivision precludes the court from making a determination or redetermination that probable just compensation is greater than the amount withdrawn."

Section 1268.04--Approved without change.

Section 1268.05--Subdivision (f) was revised to read as follows:

(f) Unless the undertaking is required primarily because of an issue as to title between the applicant and another party or person, if the undertaking is executed by an admitted surety insurer the applicant filing the undertaking is entitled to recover the premium reasonably paid for the undertaking as a part of the recoverable costs in the eminent domain proceeding.

The staff was directed to investigate the propriety of the "issue of title" language of this subdivision.

Section 1268.06--Subdivision (d) was revised as follows:

(d) If the undertaking is executed by an admitted surety insurer, the applicant filing the undertaking may recover the premium reasonably paid for the undertaking as a part of the recoverable costs in the eminent domain proceeding.

Section 1268.07--Approved as printed.

Section 1268.08--Consideration suspended pending a staff memorandum based on materials to be supplied by Mr. Kanner.

Section 1268.09--Approved as printed.

Section 1268.10--The Commission approved subdivision (a) but voted to delete (b) and (c).

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Sections 1269.01 and 1269.02--The Commission directed the staff to devise procedures which would satisfy requirements of due process. The procedures should provide for notice and an opportunity to be heard. They should allow an extension of time in cases of hardship to the condemnee but should enable the condemnor to acquire property immediately in case of emergency.

Section 1269.03--This section is reserved for expansion.

Section 1269.04--Subdivision (b) was amended to read:

(b) At least 60 days, or such longer time as the court prescribes, prior to the time possession is taken pursuant to an order for possession, the plaintiff shall serve a copy of the order on the record owner of the property and on the occupants, if any. The court may, for good cause shown on ex parte application, shorten the time specified in this subdivision to a period of not less than three days.

The three-day provision must be redrafted in light of the Commission's decision to allow for emergency immediate takings. The Commission directed the staff to review the 60-day notice requirement in light of the Federal 90-day requirement. The Commission further directed the staff to investigate the "record owner and occupant" requirement to ascertain whether this would cover all interested parties to the proceedings.

Section 1269.05--The Commission revised this subdivision to limit the uses of the deposit to relocation purposes only. The Commission directed the staff to include in subdivision (c) or the Comment a cross-reference to the provision that a condemnor may not abandon if the condemnee has detrimentally relied. The Commission further directed the staff to consider possibilities of schemes whereby businesses could make use of the state's credit in order to obtain money for relocation.

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Sections 1269.06-1269.08--Approved as printed.

Sections 1270.01-1270.07--Approved as printed. The Commission directed the staff to look into the problems of transfer of ownership liability and risk of loss, upon issuance of an order for immediate possession.

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STUDY 36.42 - CONDEMNATION (THE RIGHT TO TAKE--FUTURE USE)

The Commission considered Memorandum 70-81 and Section 401 of the Tentative Statute relating to condemnation for future use. The following action was taken:

(1) The staff was directed to consider how to make clear that Section 400 and other sections conferring special grants of condemnation authority are independent and cumulative grants of authority. Although eventually a specific section incorporating this concept may be required, for the interim the Comment to Section 401 should be revised to clarify this point.

(2) Subdivision (a) of Section 401 was revised to read:

(a) For the purposes of this section, property is "actually used for the public use" not only when it is actually devoted to that use but also when construction is started on the project for which the property is taken with the intent to complete the project within a reasonable time.

(3) The staff was directed to revise subdivision (b) of Section 401 to provide that periods of delay caused by extraordinary litigation or failure to obtain agreements or permits necessary for construction from other public entities should be excluded in determining whether there is a reasonable probability of use of the property taken.

(4) The staff was directed to consider defining "date of use" as that term is used in Section 401.

(5) The last sentence in subdivision (d) was deleted and subdivision (e) of Section 401 was revised to read:

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(e) When the resolution states or it is established by proof that there is no reasonable probability that the property sought to be taken will be actually used for the public use for which it is taken within seven years from the date of adoption of the resolution of necessity, the condemnor has the burden of proving that the taking is authorized under subdivision (b).

(6) The staff was directed to revise the Comment to make clear that the former effect of the resolution of necessity upon the issue of future use.

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STUDY 36.60 - CONDEMNATION (RELOCATION ASSISTANCE)

The Commission considered Memorandum 70-82 and the attached Tentative Recommendation (2/20/70). The Commission deferred a detailed examination of the recommendation pending receipt of specific written comments from the Department of Public Works. However, the Commission determined that it would be advisable to submit a relocation assistance bill at the next legislative session. To this end, the staff was directed to prepare a tentative recommendation for the October 1970 meeting, which either conforms to the federal legislation or contains a statement that such conformity will be achieved as soon as possible. The recommendation should also provide compensation for loss of favorable financing in conformity with federal legislation. To ensure that some body of rules and regulations will always be available, the staff was directed to revise Section 7268 to provide a hierarchy of rules; i.e., if an acquirer does not adopt the necessary rules, the rules of the county in which the property sought to be taken is located will apply; if the county has not adopted such rules, the rules of the Board of Control will apply.

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STUDY 36.65 - CONDEMNATION (DISPOSITION OF EXISTING STATUTES)

Code of Civil Procedure Section 1238.1. The Commission considered Memorandum 70-85 and tentatively approved the repeal of Code of Civil Procedure Section 1238.1 and the inclusion of the explanatory Comment set forth in Exhibit I to the memorandum subject to editorial revisions.

Code of Civil Procedure Section 1238.2. The Commission considered Memorandum 70-86 and tentatively approved the repeal of Code of Civil Procedure Section 1238.2 and the inclusion of the explanatory Comment set forth in Exhibit I to the memorandum subject to editorial revisions.

Code of Civil Procedure Section 1238.3. The Commission considered Memorandum 70-87 and Exhibit I attached thereto. The staff was directed to solicit the comments of Mr. George C. Hadley of the law firm of Musick, Peeler and Garrett regarding the staff recommendation.

Code of Civil Procedure Sections 1273.01-1273.06. The Commission considered Memorandum 70-88 and tentatively approved the repeal of Chapter 3 (commencing with Section 1273.01) of Title 7 of Part 3 of the Code of Civil Procedure and the adoption of Division 10 (commencing with Comprehensive Statute Section 1300) relating to arbitration.

Code of Civil Procedure Sections 1242 and 1242.5. The Commission considered Memorandum 70-89 and tentatively approved the repeal of Code of Civil Procedure Sections 1242 and 1242.5. Sections 500 through 505 of the Tentative Statute were tentatively approved as set forth in Exhibit I to the memorandum. The last sentence of subdivision (a) of Section 506 was revised to read:

In the interests of justice, the court may award the owner, in addition to his court costs, reasonable attorney's fees in an amount fixed by the court.

With this exception, Section 506 was tentatively approved as submitted.

Minutes
September 3, 4, and 5, 1970

STUDY 52 - SOVEREIGN IMMUNITY

The Commission considered Memorandum 70-98 and the report of the Executive Secretary concerning Senate Bill 94. The Commission directed the staff to prepare for the October 1970 meeting a tentative recommendation incorporating the staff's suggestions regarding the provisions relating to nuisance and ultrahazardous activity liability and the exceptions to the plan or design immunity that were deleted from Senate Bill 94.

Minutes
September 3, 4, and 5, 1970

STUDY 65.10 - INVERSE CONDEMNATION (GENERAL APPROACH)

The Commission considered Memorandum 70-100 and the studies prepared to date by Professor Van Alstyne. The Commission determined that it should continue to study specific problems raised under the general heading of inverse condemnation and attempt to solve these problems as they are presented without undue concern whether these solutions can be incorporated into a comprehensive statute.

Minutes
September 3, 4, and 5, 1970

STUDY 65.25 - INVERSE CONDEMNATION (WATER DAMAGE)

The Commission considered Memoranda 69-134 and 70-72, the First Supplement to Memorandum 70-72, and the Research Study and Tentative Recommendation (8/5/69) attached to Memorandum 70-72. The Commission directed the staff to redraft the tentative recommendation to provide rules applicable to both public and private persons based upon present, existing law and framed in terms of an owner's rights and duties with respect to property. In connection with this redrafting, the staff was further directed to prepare a memorandum or memoranda providing additional background concerning the so-called "police power" exception to inverse condemnation liability, the governmental immunity for action taken in emergency situations, the scope of the immunity afforded by the "navigation servitude," and the problem of governmental liability based upon acceptance of a private improvement.

Minutes
September 3, 4, and 5, 1970

STUDY 65.50 - INVERSE CONDEMNATION (INSURANCE)

The Commission considered Memorandum 70-84 and directed the staff to prepare a recommendation authorizing public entities to obtain insurance against inverse condemnation liability.

STUDY 71 - JOINDER OF PARTIES

The Commission considered Memorandum 70-97 and the attached draft of a letter to Senator Grunsky. It was suggested that the following revisions be made in the letter:

- (1) In the last line of page 1, substitute "Under it," for "Under your bill,".
- (2) The discussion on the top half of page 2 should be more concise.
- (3) The word "might" should be substituted for "would" in the first line of the bottom paragraph on page 2.
- (4) The discussion on the last page needs a good topic sentence.

August 21, 1970

1970 LEGISLATIVE PROGRAM--LAW REVISION COMMISSION

Adopted or Enacted (13)

Bills (10)

- Ch. 41 (SB 266)(proof of foreign documents)
- Ch. 45 (AB 123)(rule against perpetuities)
- Ch. 69 (SB 129)(res ipsa loquitur)
- Ch. 89 (AB 171)(leases)
- Ch. 104 (AB 126)(public entity--statute of limitations)
- Ch. 312 (AB 124)(quasi-community property)
- Ch. 417 (AB 125)(arbitration in eminent domain)
- Ch. 618 (SB 98)(fictitious business names)
- Ch. 662 (SB 91)(entry for survey; condemnation for water carrier terminal facilities)
- Ch. 720 (SB 90)(representations as to credit)

Resolutions (3)

- Res. Ch. 45 (SCR 7)(inverse condemnation study)
- Res. Ch. 46 (SCR 8)(general authority to study topics)
- Res. Ch. 54 (SCR 6)(nonprofit corporation study)

Sent to Governor (1)

- SB 94 (governmental liability)(Deleted from this bill are provisions dealing with nuisance liability, plan or design immunity, and ultrahazardous activity liability)

Dropped (1)

- SB 92 (plan or design immunity)

Defeated (1)

- SB 95 (general evidence bill)
This bill passed the Senate after two sections (psycho-therapist-patient privilege) were deleted. The Assembly deleted two more sections (marital testimonial privilege), leaving only the res ipsa loquitur section which was approved in SB 129, making SB 95 unnecessary.
Note. Senate Bills 480 and 481 contain provisions based on the psychotherapist-patient privilege provisions of SB 95. These bills have been sent to the Governor.