

July 9, 1971

<u>Time</u>	<u>Place</u>
July 15 - 7:00 p.m. - 10:00 p.m.	State Bar Building
July 16 - 9:00 a.m. - 5:00 p.m.	601 McAllister Street
July 17 - 9:00 a.m. - 1:00 p.m.	San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

July 15-17, 1971

July 15

1. Minutes of June 11-12 Meeting (sent 6/23/71)

2. Administrative Matters

Meeting Schedule

Memorandum 71-47 (sent 6/23/71)

3. Study 65.40 - Inverse Condemnation (Aircraft Noise Damage)

Memorandum 71-46 (sent 6/23/71)

First Supplement to Memorandum 71-46 (sent 7/2/71)

4. Study 71 - Pleading

Compulsory Joinder of Causes; Separate Statement of Causes

Memorandum 71-48 (sent 6/29/71)

Tentative Recommendations (attached to Memorandum)

First Supplement to Memorandum 71-48 (sent 6/29/71)

5. Study 30 - Child Custody

Memorandum 71-24 (sent 5/19/71; another copy sent 6/18/71)

First Supplement to Memorandum 71-24 (sent 6/29/71)

July 16-17

6. Study 39.30 - Attachment, Garnishment, Execution (Employees' Earnings Protection Law)

Memorandum 71-44 (sent 6/18/71)

Draft Statute (attached to Memorandum)

Preliminary Portion of Recommendation (sent 6/25/71)

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7. Study 36.41 - Condemnation (Protective Condemnation)
Memorandum 71-13 (sent 6/2/71)
First Supplement to Memorandum 71-13 (sent 7/2/71)
8. Study 36.43 - Condemnation (Open Space Acquisition)
Memorandum 71-27 (sent 6/2/71)
First Supplement to Memorandum 71-27 (sent 6/2/71)
Second Supplement to Memorandum 71-27 (sent 6/18/71)
9. Study 36.35 - Condemnation (Possession Prior to Final Judgment)
Memorandum 71-25 (sent 6/2/71)
Comprehensive Statute (you were sent this for prior meetings)
Memorandum 71-35 (sent 6/29/71)
10. Study 36.65 - Condemnation (Disposition of CCP § 1239)
Memorandum 71-49 (sent 7/2/71)
11. Study 36.65 - Condemnation (Nonprofit Hospitals)
Memorandum 71-43 (sent 6/29/71)
12. Study 36.65 - Condemnation (Airports)
Memorandum 71-45 (enclosed)
Background Study (attached to Memorandum)
13. Study 36.50 - Condemnation (Philosophy of Compensation)
Memorandum 71-36 (sent 6/30/71)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JULY 15, 16, AND 17, 1971
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on July 15, 16, and 17, 1971.

Present: Thomas E. Stanton, Jr., Chairman
John D. Miller, Vice Chairman
G. Bruce Gourley
Noble K. Gregory
John N. McLaurin
Marc W. Sandstrom

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

Messrs. John H. DeMouilly, Jack I. Horton, E. Craig Smay, and Nathaniel Sterling, members of the Commission's staff, and Professor Warren, the Commission's consultant on attachment, garnishment, and execution also were present.

The following observers were present for the portions of the meeting indicated:

Thursday, July 15

Roger Arnebergh, City Attorney, Los Angeles
Dwight E. Bishop, Bolt, Beranek, and Newman, Inc., Van Nuys
Jerome Cohen, City and County of San Francisco
Joseph R. Crotti, State Department of Aeronautics, Sacramento
Norval Fairman, State Department of Public Works, San Francisco
Dr. Maurice A. Garbell, Maurice A. Garbell, Inc., San Francisco
Lloyd Hinkelman, Office of Attorney General, Sacramento
David Ingram, Real Estate Appraiser, Menlo Park
Chris Krapp, Director of Aviation, Oakland Int'l Airport
Bert J. Lockwood, Los Angeles Department of Airports
Clifton A. Moore, General Manager, City of Los Angeles
John M. Morrison, Office of Attorney General, Sacramento

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Thursday, July 15, continued

Keiffer E. Parker, State Department of Aeronautics, Sacramento
Jerry L. Pettis, United States Congressman, Loma Linda
J. Kerwin Rooney, Port of Oakland
Milton N. Sherman, Assistant City Attorney, Los Angeles
Charles E. Spencer, State Department of Public Works, Los Angeles
Daniel J. Weston, Deputy Attorney General, Sacramento
Nicholas C. Yost, Deputy Attorney General in Charge, Environmental
Unit, Los Angeles

Friday, July 16

Robert Bidlingmaier, California Department of Water Resources, Los Angeles
Robert W. Bryant, California Department of Human Resources Development,
Sacramento
Loren S. Dehl, California Association of Collectors, Sacramento
Norval Fairman, State Department of Public Works, San Francisco
Jack H. Gillette, California Department of Human Resources Development,
Sacramento
Lloyd Hinkelman, Office of Attorney General, Sacramento
Mark W. Jordan, Office of Attorney General, Los Angeles
Emil A. Markovitz, Creditor's Service, Sacramento
John M. Morrison, Office of Attorney General, Sacramento
Richard Peters, California Franchise Tax Board, Sacramento
Leland S. Roberts, Board of Equalization, Sacramento
Terry C. Smith, Los Angeles County Counsel
Eric W. Wright, San Mateo County Legal Aid

Saturday, July 17

Robert Bidlingmaier, California Department of Water Resources, Los Angeles
Joseph R. Crotti, State Department of Aeronautics, Sacramento
Norval Fairman, State Department of Public Works, San Francisco
Dr. Maurice A. Garbell, Maurice A. Garbell, Inc., San Francisco
Lloyd Hinkelman, Office of Attorney General, Sacramento
John M. Morrison, Office of Attorney General, Sacramento
Milton N. Sherman, Assistant City Attorney, Los Angeles
Terry C. Smith, Los Angeles County Counsel
Charles E. Spencer, State Department of Public Works, Los Angeles
Nicholas C. Yost, Deputy Attorney General in Charge, Environmental
Unit, Los Angeles

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ADMINISTRATIVE MATTERS

Correction and Approval of Minutes of June 11-12, 1971 Meeting

The following sentence was added after the period on the second line on page 12 of the Minutes of the June 11-12, 1971, meeting: "The legal description of the property should be included in the published notice if service is made by publication." With this change, the Minutes of the June 11-12, 1971, meeting were approved.

Schedule for Future Meetings

The Commission adopted the following schedule for future meetings:

<u>Date</u>	<u>Time</u>	<u>Place</u>
September 9	7:00 p.m. - 10:00 p.m.	State Bar Building
September 10	9:00 a.m. - 5:00 p.m.	1230 West Third Street
September 11	9:00 a.m. - 4:00 p.m.	Los Angeles, CA 90017
October 7 (evening)	7:00 p.m. - 10:00 p.m.	State Bar Building
October 8	9:00 a.m. - 5:00 p.m.	601 McAllister Street
October 9	9:00 a.m. - 1:00 p.m.	San Francisco, CA 94102
November 4 (evening)	7:00 p.m. - 10:00 p.m.	Stanford Law School
November 5	9:00 a.m. - 5:00 p.m.	Stanford University
November 6	9:00 a.m. - 11:00 a.m.	Stanford, CA 94305
December 2 (evening)	7:00 p.m. - 10:00 p.m.	State Bar Building
December 3	9:00 a.m. - 5:00 p.m.	1230 West Third Street
December 4	9:00 a.m. - 1:00 p.m.	Los Angeles, CA 90017

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STUDY 30 - CHILD CUSTODY

The Commission considered Memorandum 71-24 and the First Supplement to that memorandum.

After discussion, the Commission directed the staff to present this matter for consideration as to whether the study should be expanded at the time the Commission considers whether any new studies should be requested for approval by the 1972 Legislature.

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STUDY 36.35 - CONDEMNATION LAW AND PROCEDURE (POSSESSION PRIOR
TO FINAL JUDGMENT)

The Commission considered Memorandum 71-25, relating to portions of the Comprehensive Statute prescribing procedures for possession of property prior to final judgment. The Commission made the following determinations:

Section 1268.05. The language relating to "issue as to title" is adequate. The section may remain in the Comprehensive Statute as previously approved.

Sections 1268.08 and 1270.05. The policy that a condemnee waives the opportunity to appeal the right to take by drawing down the deposit or award was reaffirmed. Sections 1208.08 and 1270.05, with Comments, were approved as set out in the Comprehensive Statute.

Sections 1269.01 and 1269.02. The Commission adopted the policy that condemnors may obtain possession of property prior to judgment by ex parte order of court, provided the condemnee has the opportunity to contest the right to possession prior to his actual dispossession. Sections 1269.01 and 1269.02, with Comments, as set out in Exhibit IV to Memorandum 71-25, were approved with the following exception: Subdivision (a) of Section 1269.02, setting the standard under which a condemnee may obtain a stay of the order for possession and the Comment describing that standard, were reserved for future consideration. It was suggested that one possibility for the standard is full compliance with applicable relocation requirements.

The Commission did not consider the remainder of Memorandum 71-25, discussing Sections 1269.04 and 1270.01-1270.08.

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The Commission also considered Memorandum 71-35 relating to enforcement by writ of orders for possession. The Commission approved the policy that an order for possession should be enforceable as a matter of right and that express statutory authority for enforcement should be provided. The Commission directed the staff to prepare a provision comparable to that appearing on page three of the memorandum, phrased sufficiently broadly to cover enforcement of all orders and judgments, for inclusion in the procedural portion of the Comprehensive Statute.

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STUDY 36.41 - CONDEMNATION (PROTECTIVE CONDEMNATION)

The Commission considered Memorandum 71-13 and the First Supplement thereto. The following actions were taken.

(1) The Comment on page 2 of the First Supplement to Memorandum 71-13 should be inserted in an appropriate place in the comprehensive statute.

(2) Proposed Section 304 should be phrased substantially as follows:

304. (a) Except to the extent limited by statute, any person authorized to acquire property for a particular purpose by eminent domain may exercise the power to eminent to acquire incidental property necessary to carry out and make effective the principal purpose involved, including the protection or preservation of the attractiveness, safety, and usefulness of the public work or improvement.

(b) Subject to any applicable procedures governing the disposition of property, a person that has acquired property under subdivision (a) may sell, lease, exchange, or otherwise dispose of such property or an interest therein subject to such reservations or restrictions as are necessary to protect or preserve the attractiveness, safety, and usefulness of the public work or improvement.

(3) The Commission discussed whether the resolution of necessity should be conclusive where the person acquiring the property intends at the time of the acquisition to sell or lease the property subject to restrictions or reservations to protect or preserve the public work or improvement. The Commission decided that the resolution of necessity should be conclusive in such a case.

(4) Subdivision 18 of Section 1238 of the Code of Civil Procedure (Exhibit I of Memorandum 71-13) was approved for repeal and the Comment to the subdivision also was approved.

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- (5) Government Code Sections 190-196 were approved for repeal.
- (6) Streets and Highways Code Section 104.3 was approved for repeal.
- (7) Water Code Section 256 was approved for repeal.
- (8) Section 14-1/2 of Article I of the State Constitution was approved for repeal.
- (9) With respect to the repeals approved in items 5-7, the Comment should state that these grants of condemnation authority are superseded by the provisions of proposed Section 304.

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STUDY 36.43 - CONDEMNATION (OPEN SPACE ACQUISITION)

The Commission considered Memorandum 71-27 and the First Supplement thereto. The following suggestions were made for staff consideration in redrafting the proposed legislation.

(1) The staff is to give further consideration to the grant of condemnation power to cities and counties to preserve open space. Some limitation on what constitutes open space should be provided. Also, the grant might be limited to acquiring what is open space, not developed property. Possibly, the grant should be limited to acquisition of property that is shown as an open space on the master zoning plan.

(2) How is the requirement that equivalent property be acquired within one year after disposition of open space property to be enforced?

(3) The limitation proposed--to require replacement with equivalent property within one year--was considered to be a desirable one.

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STUDY 36.65 - CONDEMNATION (DISPOSITION OF EXISTING CODE SECTIONS)

The Commission considered Memorandum 71-49. The repeal of Code of Civil Procedure Section 1239 was approved and the Comment to the repealed section as set out in Exhibit I to Memorandum 71-49 was approved.

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STUDY 36.65 - CONDEMNATION--DISPOSITION OF EXISTING
STATUTES (NONPROFIT HOSPITALS)

The Commission considered Memorandum 71-43 and attached draft statute, relating to eminent domain authority of nonprofit hospitals, and instructed the staff to redraft and resubmit the memorandum and the statutes.

Definition of Persons and Purposes for Which Eminent Domain Authority Available

The Commission determined that broadening the scope of the authority of nonprofit hospitals to condemn should be accompanied by limitation of the authority to "true hospitals." The definition of "nonprofit hospital" in the statute should be drafted to exclude institutions providing only peripheral services, such as nursing homes and convalescent hospitals. The statute should make clear that condemnation is permitted for the purpose of providing public service facilities rather than facilities, such as medical offices, serving an essentially private function.

Authority of New Institutions

The statute should clarify that new institutions within the redrafted definition of "nonprofit hospitals" should have the power to condemn to get established upon the same terms as permit established hospitals to condemn to expand.

Limitation of Area in Which Condemnation Permitted

Insofar as hospital projects must receive the approval of local health planning boards and the state director of public health, it is an unnecessary limitation for the statute to prescribe the area in which hospitals may condemn.

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Approval and Licensing of Hospital Projects

That part of the statute incorporating existing law under which local health planning board project approval is prerequisite to condemnation for and licensing of new hospital facilities should be retained, but the Comment and memorandum should provide a more detailed explanation of the planning legislation. The proposed provision for approval by the state director of public health should also be retained.

Limitation on Condemnation of Existing Medical Facilities

The proposed limitation on taking of properties devoted wholly or in substantial part to providing full-time medical services should be removed. Condemnation for hospitals should be permitted only when the state director of public health finds that the result will be a net gain in community medical services.

Immediate Possession

Further study should be given to the question whether nonprofit hospitals should have the right to immediate possession. Particular attention should be given to the need for, the affect of, and the alternatives to granting the right of immediate possession.

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STUDY 39.30 - ATTACHMENT, GARNISHMENT, EXECUTION
(EARNINGS PROTECTION LAW)

The Commission considered Memorandum 71-44, the Tentative Recommendation attached thereto and both the oral presentations and written materials furnished on behalf of the state taxing agencies in connection with the First Supplement to Memorandum 71-44.

Bank accounts. The staff was directed to add a caveat both to the preliminary portion of the Tentative Recommendation and to Section 690.7 regarding the recent developments in the California Supreme Court relating to prejudgment attachment of bank accounts. This note would read substantially as follows:

Caveat. There is no procedure under California law permitting the debtor to obtain a hearing prior to a prejudgment levy of attachment. Recent decisions of both the United States Supreme Court and the California Supreme Court indicate that there is some question whether the absence of such a procedure causes such a levy to be unconstitutional (Sniadach, McCallop, claim and delivery citation). The California Supreme Court presently has under submission a case in which the procedure for prejudgment attachment of a bank account has been challenged on constitutional grounds (citation). If the court holds that such procedure is not constitutional, it will be necessary to make appropriate revisions in the law. This recommendation does not attempt to do that. This recommendation does provide limitations on the amounts which may be attached in circumstances where attachment is otherwise permitted.

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Subdivision (c) of Section 690.7 was revised to read:

(c) A deposit account owned by a debtor is exempt from attachment to the extent of the lesser of:

- (1) Fifteen hundred dollars (\$1500).
- (2) The amount by which fifteen hundred dollars (\$1500) exceeds the amount in all other deposit accounts owned by the debtor on the date of the levy.

A similar change was made to subdivision (c) of Section 690.7-1/2.

Both Sections 690.7 and 690.7-1/2 should also be revised to deny any exemption where the levy is sought to enforce an order for support or a state tax liability.

State taxes. The staff was directed to redraft Section 723.31: (1) to permit the state taxing agency itself to issue a withholding order for taxes to take up to 50% of a taxpayer's nonexempt earnings; (2) to authorize the agency to apply to the court for an order to take all earnings other than the amount necessary for the taxpayer's support; (3) to permit the taxpayer subject to an order to apply to the court to have the amount taken by such order reduced. However, in no event should less than 25% of the taxpayer's nonexempt earnings be taken. Under no circumstances would a withholding order for taxes be issued unless the taxpayer had had notice and a prior opportunity for either an administrative or judicial hearing regarding his tax liability or such liability results from the taxpayer's own self-assessment.

The statute should also make clear that the term "notice to withhold" includes "orders to withhold," the term "judgment creditor" used in relation

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to the state refers to the specific state agency which is owed the debt or tax liability, and the tax liability includes penalties and accrued recoverable costs and interest.

Subdivision (d) was revised to read:

(d) No method of collection of an unpaid tax liability from the earnings of an employee may be used by the State, except as provided in this chapter.

The following decisions were made pursuant to a section-by-section analysis of the draft statute:

Civil Code

Section 4701. Previously approved.

Code of Civil Procedure

Section 688. Approved without change.

Section 690.5-1/2. The staff was directed to revise Section 690.5-1/2 to make clear the types of levy dealt with in subdivision (d). The basis for the amount of the exemption provided in subdivisions (e) and (f) should be the debtor's earnings for the last preceding pay period. The staff was directed to provide explicitly for immunity for the levying officer in the appropriate place in either the Government Code or the Code of Civil Procedure.

Section 690.6. Subdivision (a) of Section 690.6 was amended to read:

690.6(a). As used in this section, "earnings" do not include compensation payable by an employer to an employee for personal services performed by such employee whether denominated as wages, salary, commission, bonus, or otherwise.

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The staff was directed to make necessary changes throughout the statute conforming to this definition.

Section 690.18. Approved without change.

Section 690.50. Approved without change.

Section 710. Previously approved.

Section 723.10. Approved without change.

Section 723.11. Subdivision (a) was revised to add the modifier "personal" to servises and to delete the phrase "for such employer." A second sentence was added to subdivision (c) providing in substance:

As applied to the state, "judgment creditor" refers to the specific state agency seeking to collect a judgment or tax liability.

Section 723.20. The Comment to this section should be revised to make clear that this section does not apply to deductions which an employer may lawfully be permitted to make under sections authorizing withholding for insurance, health, welfare, or pension plans. E.g., Labor Code Sections 224, 300.

Section 723.21. Previously approved.

Sections 723.22-723.24. Approved without change.

Section 723.25. The staff was directed to consider redrafting this section to combine subdivisions (a) and (b).

Section 723.26. The required period was changed from 10 to 35 days.

Sections 723.27, 723.28. Approved without change.

Section 723.29. The first clause was revised to provide: "an employer who complies with any written order or written notice "

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Section 723.30. Approved without change.

Section 723.31. See discussion above under State taxes.

Section 723.32. Approved without change.

Section 723.50. The reference in paragraph (3) of subdivision (a) was changed to state disability insurance. The tables in the preliminary portion of the recommendation should be recomputed on the basis of a 1% deduction for state disability insurance.

Section 723.51. The second sentence of this section was revised to read:

The judgment debtor's accustomed standard of living or a standard of living "appropriate to his station in life" is not the criteria for determining the amount essential for the support of the judgment debtor or his family.

Section 723.100. Section 723.100 was revised to read:

723.100. The Judicial Council may provide by rule for practices and procedures not inconsistent with this chapter in proceedings under this article.

Sections 723.101-723.104. Approved without change.

Section 723.105. A sentence should be added to subdivision (f) providing substantially as follows:

If the employer has withheld amounts pursuant to an earnings withholding order but has not paid over such amounts to the judgment creditor, after termination of the order, the judgment debtor may recover such amounts from his employer.

Section 723.106. The term "personal services" should be used in subdivision (a).

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Section 723.107. This section should be revised to authorize the State Administrator to promulgate rules and regulations permitting waivers of or variances from the requirements of subdivision (a).

Sections 723.108-723.109. Approved without change.

Article 5 (Sections 723.120-723.128). Approved without change.

Article 6 (Sections 723.150-723.162). Approved without change.

Financial Code

Section 15406. Previously approved.

Labor Code

Section 300. The following sentence was added to subdivision (e).

No revocation of such an assignment or power of attorney shall be effective as to the employer until he receives written notice of revocation from the maker.

Unemployment Insurance Code.

Section 1342. Previously approved.

The staff was directed to redraft the tentative recommendation in accordance with the foregoing decisions and to submit the revised recommendation to the Commissioners for review. The staff was authorized to distribute generally the revised recommendation for comment after allowing the Commissioners ten days in which to suggest further changes to the revised recommendation.

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STUDY 65.40 - INVERSE CONDEMNATION (AIRCRAFT NOISE DAMAGE)

The Commission considered Memorandum 71-46, the First Supplement thereto, and various background materials handed out at the meeting.

The Commission considered a request from the State Department of Aeronautics and from other persons and organizations that it consider the effect adoption of noise standards for airports will have on inverse condemnation liability and assist in drafting any needed legislative proposals to deal with the problem presented by the adoption of such standards.

The Commission agreed to consider the matter and assist in the drafting of needed legislation. It was noted that the statutes involved either were enacted upon Commission recommendation or involved areas of the law that the Legislature had directed the Commission to study. Sections of the Evidence Code and governmental liability act--both adopted on Commission recommendation--were reviewed. It was further noted that the Legislature had directed the Commission to study inverse condemnation, condemnation law and procedure, and sovereign immunity.

Having agreed to consider the matter, the Commission recalled that it had devoted a substantial amount of its time for approximately one year beginning in June 1969 to a study of inverse condemnation liability for aircraft noise. After making this one-year study and taking into account the views expressed by technical experts, lawyers representing airports, and lawyers representing property owners living in the vicinity of airports, the Commission determined that "it would be impossible at this time to provide satisfactory statutory standards or presumptions based on noise or distance that would aid in the determination of liability for aircraft noise damage. The changing technology

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for measuring noise and the tremendous number of variables with respect to both use of the 'damaged' property and aircraft operations make it both impracticable and undesirable to fix specific statutory criteria." Minutes of April 3 and 4, 1970, Meeting at page 23.

The Director of the California Department of Aeronautics stated that the aircraft noise regulations were not designed to establish a standard for civil liability in areas such as personal injury or property damage or eminent domain or inverse condemnation.

Various methods of dealing with the problem were discussed at length. At the conclusion of the discussion, the Commission reached the following conclusions.

The Commission favors a three-year moratorium on the use of aircraft noise standards promulgated by the California Department of Aeronautics for purposes other than regulatory enforcement of such noise standards. A statutory moratorium will permit the further scientific testing and experience needed to assist in determining whether the noise regulations of the department or similar standards can appropriately be utilized in civil damage litigation. At the same time, having the regulations go into effect on schedule will permit needed testing to be conducted and experience to be gained and will permit regulatory enforcement, thereby hopefully reducing noise pollution.

Liability for aircraft noise damage is necessarily involved in the Commission's study of inverse condemnation, sovereign immunity, and condemnation law and procedure. In making these studies, the Commission will consider during the moratorium period the extent to which the regulations on aircraft noise or similar standards might be used in civil damage liability cases.

The Commission approved the substance of the following draft statute as appropriate to implement the views summarized above.

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An act to add Section 21669.5 to the Public Utilities Code, relating to aircraft noise, and declaring the urgency thereof, to take effect immediately.

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

Section 1. Section 21669.5 is added to the Public Utilities Code, to read:

21669.5. (a) The noise regulations adopted pursuant to Sections 21669, 21669.1, and 21669.2:

(1) Do not establish a duty of care in favor of any person or entity and do not create for use by any person or entity a presumption to establish in any eminent domain proceeding a taking or damaging of property or a presumption to establish injury, damage, or a taking in any action or proceeding to recover for injury, damaging, or taking by reason of the operation of aircraft or aircraft engines.

(2) Are inadmissible as evidence, are not a proper basis for an opinion or a proper basis for cross-examining or impeaching a witness, or a matter of which judicial notice may be taken, in any eminent domain action or in any action or proceeding to recover for injury, damaging, or taking by reason of the operation of aircraft or aircraft engines.

(b) Subdivision (a) does not apply in any action or proceeding brought under this part to enforce the noise regulations or to punish violations thereof.

(c) This section shall remain in effect until the 61st day after the final adjournment of the 1974 Regular Session of the Legislature, and shall have no force or effect on and after that date.

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Sec. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

Noise regulations governing operation of aircraft and aircraft engines adopted pursuant to Sections 21669, 21669.1, and 21669.2 of the Public Utilities Code will go into effect on December 1, 1971, as provided in Section 21669.3 of the Public Utilities Code. In order that these regulations will not have any effect on liability in tort, inverse condemnation, and eminent domain actions, it is essential that this act take immediate effect.

STUDY 71 - PLEADING

Joinder of Defendants Under Former Code of Civil Procedure Section 379c

The Commission considered the First Supplement to Memorandum 71-48. After discussing the opinion of the California Supreme Court in Landau v. Salam, 4 Cal.3d 901 (1971), the Commission directed the staff to incorporate in a bill introduced at the current session an amendment to Section 379 (as amended by Senate Bill 201) to add an additional subdivision reenacting the language of former Code of Civil Procedure Section 379c. This would not make a substantive change in Section 379, since that section was intended to include the substance of former Code of Civil Procedure Section 379c, but would be a desirable addition since the court in the Landau case states the pleading requirements in a case that comes within former Section 379c. The addition would avoid the need for additional judicial decisions to make clear that the requirements of the Landau case are continued under Section 379.

The Comment to Section 379 should be revised to reflect the addition of the new subdivision.

Separate Statement of Causes of Action

The Commission considered Memorandum 71-48. After noting that the State Bar Committee on the Administration of Justice, "with substantial unanimity," recommends against further study of this matter, the Commission decided not to give the matter further study at this time and not to submit any recommendation on the matter to the 1972 legislative session.

Compulsory Joinder of Causes by Plaintiffs

The Commission considered Memorandum 71-48. After considerable discussion, the Commission directed the staff to distribute the tentative recommendation concerning compulsory joinder of causes for comment. The comments received will be reviewed by the Commission at its September meeting and, at that time, the Commission will consider what disposition to make of this matter.