Legis. Prog., J-1403, H-855 February 5, 2008

Memorandum 2008-5

2008 Legislative Program: Status of Bills

The staff is in the process of locating legislative authors for recently approved recommendations. The status of that effort is discussed in this memorandum and reflected in the attached chart. The chart will be updated orally at the meeting.

Also attached are two staff draft recommendations that, if approved, would supersede the recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 4* (Dec. 2007). The need for this change is discussed below.

Finally, two letters are attached as an Exhibit. The first is from Donie Vanitzian. See Exhibit p. 1. The second is from Duncan R. McPherson. See Exhibit p. 8. Both letters raise objections to the recommendation on *Statutory Clarification and Simplification of CID Law* (Dec. 2007).

BILL INTRODUCTION

Two-Year Bills

There are two bills that were introduced in 2007 and have met the legislative deadlines to continue on for consideration in 2008 as "two-year bills":

- AB 250 (DeVore), would implement the Commission's recommendation on *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).
- AB 567 (Saldaña), would implement a variant of the Commission's recommendation on *Common Interest Development Ombudsperson,* 35 Cal. L. Revision Comm'n Reports 123 (2005). It differs from the Commission's recommendation in that it provides for binding enforcement of statutory law, rather than mediation.

The staff is assisting the authors of these bills and will continue to update the Commission on their progress.

2008 Introduction

There are a number of recently approved recommendations that could be introduced this year:

- Trial Court Restructuring: Appellate Jurisdiction of Bail Forfeiture
- Statutes Made Obsolete by Trial Court Restructuring: Part 4
- Deposition in Out-of-State Litigation
- Revision of No Contest Clause Statute
- Statutory Clarification and Simplification of CID Law
- Technical and Minor Substantive Statutory Corrections: References to Recording Technology

In addition, the following recommendation is pending approval at the February 2008 meeting:

- Mechanics Lien Law

The staff will know more about the prospects for introduction of those recommendations by the February meeting and will update the Commission at that time.

TRIAL COURT RESTRUCTURING

The recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 4* (Dec. 2007) would address a number of provisions that have become obsolete, either in part or in whole, as a consequence of trial court unification and restructuring.

In meeting with legislative staff to discuss the Commission's 2008 legislative program, concern was raised about whether one of the changes proposed in the recommendation is too substantive to be included in an omnibus recommendation that is described as making mostly technical changes.

Specifically, the recommendation would repeal Code of Civil Procedure Section 396, which mandates the transfer of a case when it is filed in a trial court that lacks subject matter jurisdiction. Prior to trial court unification, that section applied when a case was filed in the municipal court but should have been filed in the superior court (or vice versa). That problem no longer exists. To the extent that Section 396 is intended to address transfers between trial courts, it is obsolete.

However, Section 396 could also be read as applying where an action is filed in superior court, but jurisdiction is in a court of appeal or the Supreme Court (hereafter, "an appellate court"). Under that reading, Section 396 would require transfer of the case to an appellate court with jurisdiction, rather than dismissal.

There is a split in authority on that point. In a case decided before trial court unification, the Fifth District Court of Appeal held that if a superior court lacks jurisdiction of a case and an appellate court would have jurisdiction, Section 396 requires the superior court to transfer the case to the appropriate appellate court. *Padilla v. Dep't of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Section 396 applies to "proceedings filed in the superior court, which, by statute, may only be filed in the Supreme Court or the Court of Appeal"). After unification, however, the Second District Court of Appeal disagreed with the Fifth District's opinion, and stated that Section 396 does not authorize a transfer by a superior court to an appellate court. *TrafficSchoolOnline, Inc. v. Superior Court*, 89 Cal. App. 4th 222, 225, 234-35, 107 Cal. Rptr. 2d 412 (2001) (stating disagreement with *Padilla* court and concluding that "the superior court is not vested with the authority by Code of Civil Procedure section 396 to transfer a case to the Court of Appeal or the Supreme Court").

The Commission's recommendation would resolve that question by repealing Section 396 and adding a new section with the same number that would clearly require a superior court to transfer a matter over which it lacks jurisdiction to an appellate court that would have jurisdiction. If the *Padilla* analysis is correct, this change would simply delete the obsolete aspect of Section 396 (its application to transfers between municipal and superior courts) while preserving its existing application to transfers between superior court and an appellate court — **a nonsubstantive change**. However, if the *TrafficSchoolOnline* analysis is correct, then the recommendation goes beyond eliminating the obsolete aspect of Section 396. It would add a new rule providing for transfers between superior court and an appellate court — **a substantive change**.

The legislative staff was concerned that the Commission' aggregation of the proposed revision of Section 396 with all of the other technical changes in the recommendation might obscure its potentially substantive nature.

In order to avoid any confusion on the point, the staff recommends that the recommendation be replaced with *two* recommendations. One would include only the proposed change to Section 396. See *Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdictio*n, attached. The other would include the remaining

miscellaneous technical changes. See *Statutes Made Obsolete by Trial Court Restructuring: Part 4*, attached. This should have no substantive effect on the recommendation, and can be done at virtually no cost as the recommendation has not yet been printed. This minor adjustment in the presentation of the recommendation should help to eliminate an issue that might otherwise create problems in the Legislature.

OBJECTIONS TO RECODIFICATION OF CID LAW

We received two letters objecting to the proposed recodification of CID law.

The first is from Donie Vanitzian, a regular contributor to the Commission's CID study. Her most recent complaint seems to be that the Commission "rushed" the development of the recommendation, without adequate homeowner input. See Exhibit p. 1-7. In fact, the Commission took over two and a half years in developing the recommendation, with every step open to public scrutiny and input. In addition to circulating materials to every major interested group (including groups representing seniors, homeowner activists, associations, managers, and realtors), our materials were distributed to over 400 recipients by electronic mail.

The second letter is from Duncan R. McPherson, a Stockton attorney specializing in real estate law. His comments were submitted on December 31, 2007, in response to the June 2007 tentative recommendation. Unfortunately, the Commission had approved its final recommendation before we received Mr. McPherson's letter.

Mr. McPherson believes that the transitional cost associated with changing section numbers is not justified by the benefit provided by the proposed law. See Exhibit p. 8-24. He discusses a number of problems that he sees with existing law, which would not be resolved by the proposed law.

The staff disagrees with Mr. McPherson's overall evaluation of the proposed law. The proposed law would significantly improve the organization and user-friendliness of the statute. There would be transitional costs associated with adjusting to the new numbers, but those costs would be temporary. The benefits of the improved organization would be permanent. Note also that the proposed law includes features specifically designed to ease the transitional cost. There is a disposition table that shows the relationship between a provision of existing law and the provision of the proposed law that continues it. The Comments to each

section provide further history. In addition, proposed Section 4010 provides a transitional rule:

> 4010. (a) A provision of this part, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment, and a reference in a statute to the provision of this part shall be deemed to include a reference to the previously existing provision unless a contrary intent appears.
>
> (b) A reference in an association's governing documents, to a former provision that is restated and continued in this part, is deemed to include a reference to the provision of this part that restates and continues the former provision.

Subdivision (b) obviates the need to revise governing documents as a result of the proposed law, though an association may choose to do so.

The staff agrees that there are many issues relating to CIDs that are left unresolved by the proposed law. That is by necessity. The issues described by Mr. McPherson are difficult and will require considerable care to resolve. Many involve contentious issues that will be inherently controversial, no matter what course the Commission recommends. To include such matters in a technical recodification would produce a recommendation that is unenactable. Reform in this area needs to be deliberate and incremental. The proposed recodification would provide a clean platform on which such reform can proceed.

Mr. McPherson also raises a number of technical issues about the proposed law. Some of the issues have already been addressed. Others might have been addressed if raised earlier, but cannot easily be addressed at this stage of the process. **The staff will work with Mr. McPherson to explore whether any of the specific criticisms that he has raised require an adjustment to the proposed law.**

Respectfully submitted,

Brian Hebert
Executive Secretary

January 17, 2008

Via facsimile and United States Postal Service Mail

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Attention: Mr. Hebert

THE TEMPLE OF BLAME AND WHOLESALE TITLEHOLDER DISENFRANCHISEMENT

Re: Statutory Clarification and Simplification of CID Law

TABLE OF CONTENTS

Dear Mr. Hebert,

When are you finally going to get it?

There's nothing "simple" about this project of yours, but there's everything "complicated" about it.

What's the rush? Why does it seem that you are in such a hurry to push through this pork-barrel project of yours? Could it be because your aiders and abettors over there in the California Legislature are headed for terming out their term limits and the money party might be nearing an end?

Its been a good year for you and the Commission Mr. Hebert, you've all collected another year's worth of salaries, while the rest of California residential deed-restricted titleholders have been paying, paying, paying, with no end in sight. Now, with your so-called S-i-m-p-l-i-f-i-c-a-t-i-o-n nonsense, they will keep paying, but the difference will be that they will be paying ***more***.

Typical of the California Law Revision Commission, rather than concentrating efforts in cleaning up the Probate Code, Evidence Code, Court Gridlock, Code of Civil Procedure, you now float to the surface of the shallowest of ponds whose laws encompass Common Interest Developments. You dig the biggest hole, as the Commission did in 2000, and then throw the statutory-financers, that is, the "Titleholders" into that hole to sink or swim on their own. You do this with no quantifiable result of your **past** projects and with criticism of such past projects gaining momentum.

Typical of the California Law Revision Commission, it has trivialized its latest project called "Statutory Clarification and Simplification of CID Law."

Typical of the California Law Revision Commission reports to the public that it will be several years before this is presented to the Legislature, now, while you have ratcheted up the speed in the fast lane, you signal right and turn left into the 2008 legislature.

Frankly, I'm really interested in exactly HOW this entire project of yours came to be in the first place and exactly **who's** idea it was. No, the owners didn't want it. The Owners wanted fairness--which your Commission purported to give them for several years in a row. That so-called fairness was an unmitigated failure.

It now appears clear; that so-called fairness campaign was nothing more than a ruse meant to create havoc in order to substantiate your bigger cash cow titled the "Statutory Clarification and Simplification of CID Law." If I didn't know better I'd claim this is a calculated fraud perpetrated on the public for no other reason than to rewrite a law that has existed for two decades, that people have come to know, and that the Legislature refuses to amend properly prior to its and the many other Chartered amendments.

It appears that it is easier to ***rewrite*** than to ***do*** it ***right*** in the first place.

That aside, the California Law Revision Commission ***should not*** submit its so-called handy work under-the-guise of "Statutory Clarification and Simplification of CID Law" to the Davis-Stirling Act in 2008 to the Legislature. As usual, it is half-baked and ill-thought out.

A project this massive and with ***far-reaching consequences for millions of titleholders*** should be written (or, as it pertains to Mr. Hebert's tutelage, REWRITTEN) with greater care. Introducing a wholesale rewrite as you are presently doing should wait until well after 2008, if it is introduced at all.

When the public refers to distrust of government, they are referring to actions such as described in this correspondence.

I.
"DUE NOTICE" TO ALL COMMON INTEREST DEVELOPMENT TITLEHOLDERS

The California Law Revision Commission has a higher duty to the public than it is practicing.

If the California Law Revision Commission ***really*** wants the input of **owners**, and not just industry lawyers and industry in general, then immediately without delay, **purchase and place full page advertisements in major newspapers throughout California for one year and simultaneously send them to EVERY common interest development titleholder informing them that you are going to be altering said laws, that means ALL the laws that pertain to this type of deed-restricted property ownership.**

It is not enough to claim that because the California Law Revision Commission has an Internet website that is sufficient "notice." It is not.

Every owner is not computer literate.

Every owner does not have a computer.

Every owner cannot afford a computer.

Every owner cannot afford Internet access.

Every owner is not aware of the California Law Revision Commission, what you are doing, what you do, what your import is on their ownership, and who pays your salaries; but more to the point, they are absolutely unaware that your actions will detrimentally affect the lives of millions of titleholders and prospective titleholders.

I am appalled at the California Law Revision Commission's ill-conceived project and the speed and momentum this so-called Agency is generating for its personal project. The wholesale rewriting and revamping of a substantial statute, i.e., the Davis-Stirling Act (Civil Code Sections 1350 through 1378) should be better thought out and in a sense, "beta tested" prior to deciding which ***laws*** will become incorporated into the present code, and which ***laws*** will be amended.

The California Law Revision Commission needs to take into account that millions of titleholders in California are ***unaware*** of the CLRC's existence and/or import. While the California Law Revision Commission may receive ***some*** letters from titleholders, the **majority** of the public is absolutely unaware of:

(a) what the California Law Revision Commission has in store for them and are therefore unable to comment or participate in any meaningful way;

(b) what the California Law Revision Commission's **purpose** is, and **what** it **does;**

(c) that the California Law Revision Commission has a heavy influence in the statutes and laws governing how this segment of residential deed-restricted titleholders will buy, sell, own, and rent, within the confines of common interest developments throughout this state.

Those who are aware are not quite sure that they fully understand the effects of the CLRC's wholesale rewrites.

II.
FISCAL IMPACT ON THE STATE OF CALIFORNIA

California is presently cash and income strapped to the extent of at least $14.5 billion dollars in debt with proposed cuts to be made in every State Department.[1] One can only hope that one of the departments that will be faced with budget cuts will be the California Law Revision Commission.

Perhaps the reason you appear to be impetuously pushing this project through is precisely because of those budget cuts and your fear the project will be axed.

The proposed changes, i.e. "Statutory Clarification and Simplification of CID Law" are ***anything but "simple."*** They are complicated with far-reaching consequences for those who will be bound by them.

III.
GAPING LOOPHOLES AND CROSSOVERS EXIST IN THE CALIFORNIA LAW REVISION COMMISSION'S PROPOSED "STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW"

Coincidentally, too many of the changes the California Law Revision Commission proposes to incorporate into said text, were already posed to the California Legislature to no avail. I know this because I proposed the changes and brought those and other issues to the attention of Legislators, Legislature and the Governor. Now, as then, I was ignored. In my possession are documents and correspondence to Assemblypersons and Senators attempting to bring legal flaws inclusive of various statutory loopholes to their attention **prior to** passing certain provisions and amendments to sections--but went unheeded.

Still, in the hundreds of proposed pages of text generated by the California Law Revision Commission, **the bad laws, including loopholes, remain.**

Mr. Hebert, I know you are aware of these issues because I have written to you about them before, and you have my book, and you have seen my latest edition of *Common Interest Developments--Homeowners Guide,* Thomson-West, 2007-2008. What is surprising is that you and your "Commission" continue to bastardize an entire statute that could have been properly executed from the beginning but was not. Instead you and the Commission are doing what the drafters of the initial Davis-Stirling Act did: Sloppy work.

The results of sloppy work equates to bigger problems and higher costs for those purchasers of property **and** existing owners, than had existed prior to the wholesale rewrite you are conducting right now. It also costs the State of California money.

IV.
CLRC'S CIRCUMVENTION OF PUBLIC COMPLAINTS

In my opinion and the opinion of others, the California Law Revision

[1] See e.g., J. Rau & E. Halper, *Pain of Proposed State Budget Cuts is Widely Spread,* L.A. Times, Jan. 12, 2008.

Commission, whether artful or not, IS circumventing the real issues surrounding public complaints of said laws pertaining to common interest developments.

For all the pages of text you have produced, and all the rhetoric, pomp, and circumstance, save the back-patting, the approximate 300 pages of slop miserably fails to protect titleholder assets.

It fails to provide *per se* penalties against third-party management companies and their employees, fails to provide *per se* penalties against recalcitrant boards, fails to *per se* assist titleholders in protecting their assets, fails to provide a ***viable avenue of redress*** for the mounting problems associated with common interest developments, and homeowner associations. **Every avenue the titleholder attempts to pursue for "fairness" is a costly dead-end—no thanks to you and your Commission.**

The so-called pre-existing, or statutory avenues for "redress" are woefully inadequate and in theory while they may ***look good on paper,*** they are all but useless in application AND they are NOT cost effective for the owner.[2] Implementation of many sections of the Davis-Stirling Act (even with your so-called Simplification) does not address the myriad of crossover laws, existing loopholes, and language and directions are frankly, **do not work in "real life."**

V.
BYPASSING THE LEGISLATIVE PROCESS BY USING "MADE TO ORDER" CHANGES THAT INCLUDE ALTERING SUBSTANTIVE ISSUES RESULTING IN TITLEHOLDER DISENFRANCHISEMENT

If owners knew of the dire implications of the California Law Revision Commission's so-called "substantive issues" terminology, they'd be all over your Commission like a dirty shirt. So too, if owners **really** understood that the fancy language you propose on paper would have a detrimental (ie, legal) effect once implemented, they'd be all over your Commission like a dirty shirt.

Subtle change? Not! For instance, the California Law Revision Commission has decided to make a SUBTLE change in words. Who would be the wiser? For example, take a look at your Section 4540. The CLRC decides to delete and cross-out just two words. The two words are: "adjourn to."

The CLRC decides to include instead, the words "meet in." Gee, doesn't sound so bad does it? Wrong!

That example of the CLRC's so-called SIMPLIFICATION is DISASTROUS to owners. It removes the "session" requirement and converts the "session" to a type of executive meeting or secret meeting that is not allowed presently under the Davis-Stirling Act. Also in that example, it appears to seriously circumvent the Open Meeting Act in a variety of ways. Because owners cannot presently attend an executive session, this change in the LAW will give boards carte blanche to meet in secret -- how would an owner EVER know that the board is meeting pursuant to LAW because it is now NOT a "session" it is a bona fide --secret-- MEETING -- just what the industry ordered from the Commission. Other problems associated with that so-called SIMPLIFICATION are equally disastrous.

One of the most contentious and complained about topics that readers to my co-

[2] Donie Vanitzian, *Common Interest Developments*, (Thomson-West, 2007-2008 ed).

authored Los Angeles Times, *Associations* column in the Real Estate section write about, has to do with that very topic of secret meetings, executive sessions and board meetings that are called "executive board meetings" whatever the heck THAT'S supposed to be! Other complain that advisors to boards keep informing them their association does not fall under the Davis-Stirling Act -- all because they do not want to abide by the law.

Boards have been meeting in secret regardless of the Davis-Stirling Act because they suffer no ***quantifiable*** penalties at law for doing so. Interference by third party vendors encouraging such lawbreaking actions is growing at a record pace. But precisely because they are "third party vendors" (eg, management companies) they contract directly with a board of directors and are basically unaccountable to the owners who pay their salaries. They are in a sense able to interfere to their heart's content without fear of prosecution.

Your Section 4540 is just what association industry advisors ordered, give the boards free reign.

The CLRC gives the association industry and the out-of-control-boards just what they want --- a type of "get out of jail card" -- meet in "executive session" without notice, without a duly convened meeting, any time they want and without any accountability whatsoever. And, check out the free-for-all line-up you've given the board, hell, they just hit the lottery big time. There goes accountability and openness right out the window. Why? Because of the California Law Revision's deletion of otherwise seemingly innocuous TWO WORDS.

The California Law Revision Commission's entire preposterous project titled "Statutory Clarification and Simplification of CID Law" project is laden with problems similar to that just described, only worse.

VI.
MORATORIUM ON CHANGES TO DAVIS-STIRLING ACT; NO SO-CALLED BILL OF RIGHTS NEEDED; CREATION OF VICTIM'S FUND FOR DEED-RESTRICTED OWNERS

As I have written before to you, there needs be a moratorium on changes to the Davis-Stirling Act in general.

Until the California Law Revision Commission completely expunges the word "property" from the statutes governing purchase, sale, and ownership of residential deed-restricted properties, the titleholders have a vested interest in their property.

There should be no separate, or independent "bill of rights" in the California Statutes for residential deed-restricted property owners. Instead, the US Constitution should apply and the titleholder's "rights" should be written into said statutes by way of realistic redress and penalties against associations, their third party providers and advisors, and boards of directors. **The benefits of said penalties must flow directly to the affected titleholder(s).**

There should also be created, a "Victims Fund" for any titleholder who is a victim of the aforementioned who break the laws.

However, to date, and even with the California Law Revision Commission recommendations, the titleholders have no *per se* "rights" and they have no protections.[3]

VII.
VOLUNTARY WAIVER

The California Law Revision' Commission makes reference to very dangerous combination of words: **Voluntary Waiver.** This must be removed (let alone clarified and defined) from the statute sections. That is dangerous for titleholders because statutorily the titleholder "voluntarily waives" certain rights on ***purchase.*** Yet, this appears to be intentionally misleading in the California Law Revision' Commission's language pertaining to its project titled: Statutory Clarification and Simplification of CID Law.

In effect, this means, that everything that is being proposed is superseded by the purchase of such "property." **What layperson would understand the LEGAL implications of giving up THOSE rights by a stroke of a pen on an escrow document that they probably did not read, or if they read, did not fully comprehend?**

VIII.
WARNING: "THE STAFF RECOMMENDS AGAINST THAT CHANGE"

John Wayne once said, "Who the hell are you?"

Interestingly, way too many serious and pertinent suggestions from the public are pooh-poohed by the California Law Revision Commission with the one-liner brush off comment "the staff recommends against that change." Most of your reasons for discounting such changes appear to be without justification.

A better idea would be that the California Legislature issue a warning to all residential deed-restricted owners and potential owners of the perils of such ownership that inures to the detriment of the titleholder. Just as "truth in lending" has become an issue, so too must truth in these statutory provisions be an issue in this wholesale rewrite that the public has been handicapped in controlling.

Despite extremely naive and trusting nature of most buyers and owners and despite the availability of SOME media coverage of the legal problems surrounding ownership of these properties, owners do not fully appreciate the seriousness of the situation. The California Law Revision Commission has not helped--they have instead, hurt these consumers.

Thank you for your time.

Very truly yours,
/s/
Donie Vanitzian, J.D., Arbitrator

[3] See e.g., Business and Professions Code sections 11018 et seq.

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December 31, 2007

Mr. Brian Hebert
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-4739

Re: Comments on the Tentative Recommendations Statutory Clarification and Simplification of CID Law, Dated June 2007

Dear Mr. Hebert:

The purpose of this letter is to comment on the Commission's tentative recommendations regarding statutory clarification and simplification of CID law, dated June of 2007. I am aware the Commission requested that all comments be received no later than September 21, 2007. Unfortunately, time constraints prevented me from completing a detailed review of the Commission's recommendations and the proposed legislation necessary, and organizing my comments within that time framework.

I have represented owners' associations since the late 1960s and have had a law practice, which has focused on the formation of real estate developments, representing owners' associations and the financing of such developments, since the early 1970s. This has included the formation of both residential and commercial projects in California and in a number of other states; and the formation of most types of projects from residential condominiums to new town master planned communities, and from commercial and medical condominiums to business parks. I have been a long time delegate to the California Legislative Action Committee of the Community Association Institute (CLAC) and a representative to the DRE Committee of the California Building Industry Association for an equally long time. I am a member and was the chair in the 1990s of the two American Bar Association Real Property and Probate Section committees, dealing with common interest developments and owners' association (now merged into the H-1 committee). I have also been involved in writing legislation, including *Business and Professions Code Section 11010.35*, dealing with a public report exemptions for the commercial sale of subdivision lots, the current version of *Business and Professions Code Section 11010.3*, the definition of commercial and industrial subdivisions, and the revisions to *Civil Code 2985(b)*, dealing with the sale of condominium units. In addition, I have had the experience of being a member, board member, and president of a residential condominium association, and a board member and president of a commercial mid-rise office condominium association, where I still serve as a board member and secretary. I am setting out this personal information only to show that I have had the opportunity over the past 35 years to view the creation and operation of real estate developments and the

operations of owners' associations from a variety of angles. Since I am involved with a number of organizations with interests in the proposed legislation, I want to make it clear that **my comments are strictly my own** and do not represent the views of any of these organizations, and, in fact, may conflict with a number of the positions taken by some of these organizations.

I do not want to comment on issues that have received extensive attention and comment from other parties, but wish to focus on certain issues contained in the existing Davis-Stirling Common Interest Development Act ("**Act**") and in your tentative recommendations have received insufficient attention. My focus is principally on the matters briefly set out in the following bullet points and discussed in more detail following the bullet points. I have intentionally not commented on other matters, which appear to have been covered by the comments from other parties:

- The impact and cost of this proposed legislation on existing associations, association boards and officers and on persons who provide services to those associations. The impact and cost is going to be so extensive that it makes no sense to enact legislation of this type unless that legislation attempts to solve ongoing problems with the current Act.

- The issue of determining whether the Act applies to certain developments, especially commercial and industrial ("**commercial**") developments. This is due to gaps and vagueness in the definitions contained in the Act which should be addressed and revised.

- Many residential associations exist outside the Act. There should be some policy determination of what should be the status of residential associations that exist outside the Act and what law should apply to them.

- Issues related to the size and type of CIDs. CIDs range in size from two separate interests to many thousands of separate interest and in type from very simple single-family home subdivisions, to complex master planned communities and high rise condominium developments on the residential side, to many types of commercial developments. These developments are not similar in many respects and have differing impacts on their members. The current one-size-fits-all law creates problems and costs, which should be addressed in any revision of the Act with special attention to commercial developments and small residential developments.

- Issues related to the use of the terms. Terms used in the Act, including "development" "common area" "association" "board" and "committees", create problems, either since they are undefined, such as "development" or vague such as "common area", or seeming misused, such as "association" and "board". The use of these terms should be reviewed and an effort to make terms precise and their use correct in the context in which they are used. There is a special problem in the treatment of the board of directors in the Act, where the board is treated as if it is the association.

- Issues that relate to commercial and industrial developments and their owners' associations. While there has been some minor attention paid to the differences between residential and commercial developments in the recommendations, there are problems in

having commercial projects being tied to many of the provisions of the Act. Commercial CID projects have become very common and yet no commercial trade organizations have been recruited to participate in this process and none to my knowledge participated in the original creation of the Act. I have found that many otherwise knowledgeable real estate lawyers are not aware of the impact of the Act on commercial projects and that many commercial managers are almost entirely ignorant to the Act and its requirements. There are serious questions as to whether many of the provisions of the Act should apply to commercial CIDs, unless the development chooses to have those provisions apply.

- Related comments to specific provisions of the summary contained on pages 1 through 26 and the proposed legislation.

- Related comments to specific provisions of the draft legislation.

1. **Impact of the proposed legislation**. The economic and other impact on associations, association boards of directors, managers, attorneys, accountants, budget and reserve preparers and other professionals representing associations and other involved with associations is going to be enormous. Even if no substantive changes are made by legislation, the reorganization and code section number changes is going to render obsolete all Act citations in existing governing documents and render obsolete all of the citations used in all textual materials related to the Act. There will be a tendency for attorneys and managers to urge associations to revise their governing documents to incorporate the statutory number changes and any changes made by the statute. This is at best an expensive process and in many associations due to member disinterest it is almost impossible to obtain a majority vote to make changes. Also every management employee, accountant, budget preparer and attorney working in this area as well as other board members are going to have to be re-schooled. This is a considerable economic price and disruption which should only be imposed upon CIDs **if the changes truly are worth the economic price**. Unless the changes deal with the major problem areas that presently exist it does not make sense to make only organizational changes which inflict this type of economic cost.

If legislation is going to be enacted, there are things that could be done to blunt the economic effect of the changes. A **schedule of code cross-references could be prepared to allow associations to quickly reference which sections in the revised Act are referenced by the references to the existing sections in their governing documents and in texts and opinion letters they may currently be using**. This would allow some ease in the use of existing documents and textual materials during the transaction period. Some sets of CC&Rs contain provisions allowing the Boards to adopt changes to the governing documents to reflect changes in new legislation without going through the amendment process. This type of restatement provision is not common. It might be worthwhile to consider **a statutory provision in the proposed legislation allowing the Boards to revise the governing documents and restate them without member consent for the sole purpose of revising any references to sections in the existing Act and to add or delete any provisions which is required by or inconsistent with the new legislation**. This would considerably reduce the cost of making governing document changes and would allow the changes to be made in CIDs where it might be impossible to obtain the vote needed for an amendment.

Unfortunately, the legislature has often viewed the operations of associations as being a battle between the association represented by the board and the members as if the association were a large impersonal corporation and the member as a consumer needing protection. Of course the relationship is not at all the same, since an association is not a profit making entity and can only assess enough money in order to carry out its obligations under the governing documents. Most of the complaints that one hears about associations in relationship to their members are the same complaints raised by citizens against local government agencies. Unfortunately the fact that an association is as dependant upon its assessments to supply often essential services as local governments are dependant upon taxes seems lost in most of these discussions. The simple fact is, if the association can not collect from one member, it must either collect that money from other members or forgo providing services. What is often characterized as a relationship between an association and a member is a relationship that impacts all of the other members. California has historically been a state which gave CIDs a low priority to secure the payment of assessments. The assessment is secured by a lien which only dates to when a default occurs and when the association is allowed to and determines to file a lien. This means any association lien is behind taxes and any deeds of trust and any judgment liens which have been previously recorded. The trade off was that these liens were easy to foreclose if there was any equity and that put pressure on the owner-members to pay. Now the priority remains low and the liens are not easy to foreclose. What this does is put significant pressure on the other members since the association as such does not ultimately bear this cost. In the case of condominiums where the owner-members are dependent on the association for services this can be a significant additional cost. In the current economic situation where housing prices have dropped significantly and where foreclosures are significantly higher than normal, who is hurt and benefited? The foreclosing lenders are benefitted since they are not responsible for any unpaid assessments or for any unpaid assessment until the foreclosure is completed. If they delay the foreclosure they can allow the assessments to accrue without any responsibility. The prior owner is not benefitted since he or she remains responsible for all assessments until the foreclosure is completed and they have no way to get out of this obligation. However the majority of these prior owners never pay the delinquent assessment since they do not have assets which can be levied upon. **The real losers are the other members who effectively have to pay the assessments not paid by the delinquent owner**. I am already seeing associations that are being pushed to insolvency due to the large number of defaults by and foreclosures related to the owners of homes purchase in the past few years. If an association, especially a condominium association becomes insolvent or lacks the money to operate, it can have an enormous economic impact on the non-defaulting members in terms of services which are not supplied (including basic maintenance), increased assessments, the loss of insurance coverage and the loss of ownership value (for buyers will not normally buy into an insolvent association). While the present convoluted foreclosure procedures can only be described as a mess I do not think foreclosure itself is the answer. What may be an answer is to increase the lien priority for assessment liens so that such liens have a priority for up to six months of regular assessments over all other liens except taxes. This is a priority which has been accepted by the secondary mortgage market in other states. This priority change will force foreclosing lenders to be more responsible and will allow the association to recover at least some of its assessment losses. A procedure should also be considered which would give associations the right to proceed with foreclosures when the separate interest has been vacated and is no longer being used as a residence.

2. **Application of Act.** There has always been a problem of determining whether the Act applies to certain types of development. This problem seems to be most acute with certain types of commercial developments. The problem exists exclusively with when a development is a planned development. The provisions of *Section 1351(k)* define a planned development as one where the common area is owned by an association or in common by the owners of the separate interests who possess certain appurtenant rights and a power exists in the "association" to enforce an obligation of an owner of a separate interest by means of an assessment which may be come a lien upon the separate interest. What is the result where there is clearly common area but there is no association and the assessment is set by a manager or center operator? What is the result if there is clearly common area but the common area is owned subject to easement rights by one of the principal separate interest owners? What is the situation in a commercial center whose documents I recently reviewed where the CC&Rs cite the Act, have common area and lien rights but do not provide for an association? Does eliminating an association take what otherwise would be a planned development out of the Act? At the same time the existing definition of "common area" is vague in that it is not necessarily possible to determine when property is common area. I discuss this issue later in this letter. This is not an abstract issue. Our office is representing both residential and commercial associations where there is a question as to whether these associations and their developments are CIDs.

3. **Developments and Associations outside the Act.** There are many residential developments with associations that would normally be planned developments and which are intentionally taken outside the Act by eliminating association owned common area and lien rights when the developments are formed. This has become a common method to deal with small subdivisions where an association is needed (sometimes to comply with the requirements of the local government) and avoid the costs of being subject to the Act. These subdivisions can also remain standard subdivisions for DRE purposes and if located in incorporated cities are generally exempt from public report requirements pursuant to *Business and Professions Code Section 11010.3*. I use this method frequently in small infill projects whose principal reason for existence is to maintain a common driveway or street and drainage facilities. I do not think it is appropriate for these projects to be subject to all of the Act's provisions but it might be worth while to provide these projects and their associations with some legal framework in which to operate. The fact that associations are formed outside of the Act is an illustration in part of the cost savings in avoiding the public report requirements but in part to the fact that amendments to the Act have made it overly expensive and complex to operate small associations under the Act.

4. **Size and Complexity of Various CIDs.** There are substantial issues related to the size and type of CID. The Act treats all CIDs the same except in the case of commercial and industrial CIDs where *Civil Code Section 1373*, provides that certain provisions of the Act do not apply to such associations. Associations in residential CIDs range from two and three unit condominium projects created from Victorian homes to high rise condominium buildings with hundreds of units and from small planned developments with only a park and landscaping as common area to large master planned developments with golf courses, lakes, club houses and other major improvements and thousands of lots. On the commercial and industrial side CIDs can commonly consist of office, medical and light industrial condominiums ranging from small to large low density projects to mid and high rise buildings and all types of shopping and business centers as well as

condominium parking garages and marinas. The impact of the CIDs and their associations on the owners and members varies depending on the size and type of the development and how much it affects the daily life of the members. In a planned development which maintains only a small park and pool and some landscaping and has minimum use and architectural controls there may be a very low impact of the CID and its association on the members. On the other had in a high density condominium or in a gated community with private streets, major common area improvements and a high level of use and architectural controls the impact of the CID and the association may be high. There is in addition a major difference in the role the association may play as between members between a low density single family detached house subdivision and a high density condominium. In the high density situation there is far more likely to be conflicts between neighbors ranging from parking, pets to noise in which the association may become involved. In many of the amendments to the Act in recent years I have the distinct impression that the members of the legislature sponsoring the legislation envision the association as being large, flush with money and having significant paid staff and easy access to legal advice. This could certainly be true of some associations but most associations I deal with are small, short of money, have little paid staff beyond their independent manager (whose costs they want to control), and which stay in operation only due to the efforts of volunteer directors and committee members. Page 1 of your Tentative Recommendation points out that half the CIDs in California contain 25 or less separate interests. This means that all of any extra overhead costs imposed by the Act must be shared by a very small number of homeowners. In an effort to protect various "rights" of members Act has made it harder and harder for small self managed associations to operate. Some of the recent Act amendments such as the provisions for member elections really made no sense for very small associations who are generally more worried about finding enough persons to serve on the board than they are about hotly contested elections. Getting the management and advice to keep up on the now complex provisions of the Act are too expensive for many of these associations who often have to pay the same price for their 25 or less member as does an association having thousands of members. The problem becomes worse when the development consists of low income housing and the members do not have the extra income to have unlimited management and legal advice. A method should be found to allow a less formal operation of small and low impact associations. Also provisions such as the current recently enacted election procedures should allow simpler procedures to be used for very small associations. In the commercial association on whose board I serve each owner is represented by one or more directors. This is often true in very small residential associations where a few units have been created from an existing house or building. In this situation there is no need for the formal election procedures currently in the Act. There should also be an in depth review of the Act as it relates to commercial CIDs and how the Act should apply to commercial CIDs.

5. **The Use of Certain Terms.** There is a problem in both the Act and current usage related to the terms "association" and "board". In general usage the board is often talked about as if it were somehow an officer of the association rather than a board of directors. The board can made decisions but it is not an officer and cannot execute contracts or even technically give directions to third parties other than its officers. It is the association's officers and agents (usually the manager) that have the power to act for the association. In the Act and in the proposed legislation there is a tendency to provide that the "board" will do something or that notice will be given to the "board". It probably should be the "association" rather than the "board" that should be named. The subject

is confusing for the boards often act both as boards of directors and also as quasi-judicial bodies hearing and deciding on use and architectural issues and violations of the governing documents. The Act should treat a board for what it is and not refer to it as if it were the executive of the association. There are also some problems with the use of the word committee in the Act. Some committees are in fact committees of the board as typical in other corporate entities. However based on the drafting of many sets of CC&Rs there are some committees (principally the architectural review committee but also sometimes the judicial committee) that have an existence directly derived from the CC&Rs and whose powers are independent of the board. In some cases they may even be directly elected by the members. The open meeting act provisions are somewhat confusing in this context for they discuss open meeting for committees which have some of the powers of the board. There are also terms used by the Act and in the proposed legislation such as "development" which is undefined and which is not a term with a firmly known meaning and "common area" which is in certain circumstance an ambiguous term. I discuss these terms under the definitions in the proposed legislation.

6. **Commercial and Industrial CIDs.** Issues relating to commercial and industrial associations (which I will refer to as "**commercial**"). The first line under "Background" in the tentative recommendation references footnote 1, which makes it clear that the CLRC recognizes that there are commercial CIDs, but the footnote makes it appear that commercial CIDs are not very important. This is a problem in this recommendation. Commercial and industrial CIDs are becoming very common and the number being formed appear to be growing. Even before the recent housing downturn that fifty percent of the CIDs being worked on by our office were commercial. The use of commercial CIDs is only going to increase and there are going to be more involved mixed used CIDs which may have component commercial and residential CIDs. In the years that I have tried to be involved in the legislative process I have not seen any involvement by any commercial trade association in legislation involving the Act and the CLRC has not brought any of these groups into the discussion regarding this recommendation. I have been told that the California Business Properties Association may be one group that should be involved. There should be a review of the recommendation to determine whether additional provisions of the Act should either not apply to commercial CIDs or whether commercial CIDs should be able to opt out of certain provisions of the Act. Unlike residential CIDs in commercial CIDs there can be major variations in the ownership interests held by each party and it is not uncommon to have a single owner or a small group of related owners who dominate the association due to the square footage of the owner's separate interests. One clear problem is the requirements for the amendment of condominium plans in commercial associations. In the case of commercial condominiums the amendment of a condominium plan should be allowed if approved by the owners of the space involved and the association subject to any limitations in the governing documents. I will discuss some of these issues below as part of comments on specific provisions of the proposed legislation.

7. **Comments on Background Discussion.** Comments on the Background and discussion contained on pages 1 through 26 of the Tentative Recommendation.

- The Notice discussion on pages 4 and 5. You should be aware that at least some time-shares are CIDs and there are fractional ownership CID associations where the notice provisions relying on notice to the unit or house may not be effective.

- Governing Documents on page 6. You need to deal with situations where there may be governing documents outside the types of documents you have referenced here. There may be REAs or senior sets of CC&Rs that are senior to the declaration for a specific CID in the case of mixed use developments or in the case of master planned developments or in some cases trusts or ground leases.

- "Owner vs. Member" on page 6. It is important to note that the owners and members may not always be the same. In many documents the fee owner under a contract of sale is treated as a secured party not an owner and the purchaser under the contract is treated as the member. These contracts do exist in California and are also used by the CalVet program. See the comments to *Section 4160*.

- *"Committees" on page 8.* I previously mentioned that it may be difficult to apply the concept of a committee that exercises power of the board if the committee has an independent existence set up by the CC&Rs. In fact architectural review committees may not only have independent existence but are almost totally controlled by the developer during the initial development. Should a noticed meeting be required for an architectural review committee to go over the plans of a house expansion with a member. What happens, as is often the case, where the committee delegates the duties of plan review to an independent architect or landscape architect and just ratifies the decision if there is no dispute? Does this require the formality of a board meeting? I would suspect that most owners would not want to have to discuss their house plans in front of an open meeting with input from any other member who wanted to attend. There needs to be some common sense understanding as to how these committees actually work.

- "Meeting Location" on page 9 and 11. I think it is difficult to codify the meeting location using the DRE regulation. Under the regulation you can use alternate language on the meeting location if you can justify it to the DRE. What is for instance too small? In many small developments meetings are held in a director's condominium unit since there is no other space. Is that too small if the unit cannot hold all of the members? And what is "as close as is practicable"? Does the association have to spend money to rent closer space when it has free meeting space further away? This is an example of micro-managing when there is no evidence of a problem. In fact this proposal could cause boards to continue to hold meeting with insufficient space in the development when it would be better for the members as a whole to have the meetings held in a larger venue. Some of the same problems relate the meeting location for membership meeting on page 11. What is suitable meeting space? Must it be indoors, with seating or what? I know of some associations where the homes are vacation homes and where all of the members live within the Bay Area and where the meetings are held in the Bay Area. As long as no one objects, why should the flexibility as to the meeting location be legislated away?

The fact is that there is no reason to limit the location of meetings except to prevent the meeting from being held in a location which is inconvenient for the directors or members. In the few cases where I have been involved with where the board was holding meetings in inconvenient locations the board was generally doing numerous illegal acts such as not noticing meetings and entering into self serving contract and none of such conduct would be solved by this proposal.

- Under "Member Elections" on page 11 and 12. The requirement of the Act in requiring the adoption of rules to be unusual. It is not unusual for the codes to require government agencies at the state level to adopt regulations or for local agencies to adopt conforming ordinances but it is certainly not common if not unique to require private entities to adopt rules. The suggested change is better than the existing situation but it would make better sense and follow a more normal statutory construction to provide for a statutory standard which applies if the governing documents do not provide otherwise.

- "Cumulative Voting" on page 13. This is an area which I am sure has been addressed by persons with much more practical experience me. However the only reason any governing documents have cumulative voting requirements is due to the long standing DRE requirement contained in *10 CCR 2792.19 (b)(1)*. This provision is of long standing but can be waived by the DRE if there is a good reason. In my experience the cumulative voting provisions are never used in commercial projects and almost always removed when the CC&Rs are rewritten for residential projects. There are still residential associations with variable voting rights which result in fractional votes, there are fractional ownership of condominiums which itself can create fractional votes and there are the commercial associations whose voting is almost always based on the square footage of ownership. There are also associations that provide that certain owners can vote for certain directors. None of these work well with cumulative voting. Also in some master planned communities condominium associations within those communities have the power to vote the votes of their members which already provides for a type of cumulative voting and requiring cumulative voting would only increase the power of an organized minority to control an association. There is considerable confusion as to whether and how cumulative voting can work with the election revisions to the Act and mandating cumulative voting will only make this situation worse. **A far better rule would be to provide that cumulative voting cannot be used in CID associations unless the documents provide to the contrary**. It certain should not apply to commercial associations due to the type of voting used. I realize that under your proposal cumulative voting would only be mandated if the governing documents allowed for cumulative voting. However there are enough residential associations with original documents allowing cumulative voting and more than a few commercial associations with CC&Rs unfortunately copied from residential formats where requiring cumulative voting could do harm.

- "Inspection of Records" on page 15. While I believe in transparency in association operations the **scope of the inspections** and the **cost burden** put on associations to

produce the documents and the burden of inspecting and **redacting the documents** goes beyond anything required by any other entity. No such inspection requirements would be tolerated in a commercial setting. In the case of self-managed associations the burden of meeting these requirements is a major burden on a volunteer board. The Act currently makes it impossible for the association to reasonably be paid its costs for this work which puts a burden on the other owners. What happens if the records are not available? Looking at the record retention period discussion on page 19, coupled with the inspection requirements I am reminded of how often the old records of self managed associations can disappear since they are often kept by association officers or managers who move or who cease performing those duties but who do not turn over the old records. Here again while large associations may operate more like businesses very small and unmanaged associations often have to make due with no office, no office staff or storage space and no file system which is easy to access and copy.

8. Comments on Proposed Legislation.

- *Section 4015(b).* What is a "development"? This is one of the basic terms that is widely used that is never defined.

- *Section 4020*. The application of the Act to commercial CIDs should be examined to determine if commercial CIDs should be able to opt out of other portions of the Act.

- *4025(c).* Use of terms such as "this part" make the Act difficult to understand for lay persons who are using the Act. It would make it easier reading just to say, "...pursuant to the Davis-Stirling Common Interest Development Act." The problem is the citation itself "Davis-Stirling Common Interest Development Act" is too long and awkward. Most persons just use "Davis-Stirling" and it might make sense to look at *Section 4000* and reduce the size of the Act's name by just reducing it to the "CID Act" or something else that is short and acceptable to the legislature.

- *Section 4035*. Why delivered to the "Board". Should it not be delivered to the "Association"? The Board is not the entity. Delivery should be to the Association through one of its officers or agents.

- *Section 4050*. I am concern that these delivery dates could have an unexpected impact on notices of meetings or notices of assessment increases where individual notice is required. If any member has an address outside of California or outside of the United States the time in which notices of meetings could be extended well beyond what is intended, possibly by 20 days. I have not examined in detail all of the notice provisions but this is an area that needs review.

- *Section 4065*. This definition does not seem to work with delegate voting systems.

- *Section 4090*. This definition would seem to make it a board meeting if the board members all attended a class together that covered topics such as association management and other issues that board members might encounter. There needs to be a concept here that the purpose of the congregation must be for the board members to be acting as a group and not just attending a meeting or class. This issue could also be handled by making it clear that a congregation is only when the board members are acting as a group and not just because they happen to be in the same room.

- *Section 4095*. This is the definition of Common Area. Since the language relating to the estate in common area in *Subsection (b)* does not mention ownership what happens if the ownership is in one member? Is it the intent to be common area if the area is to be owned either by the owners in common or by an association? This is going to have an impact as to whether certain commercial developments are subject to the Act. Also in *Subsection (c)* the use of "may consist" makes this sound optional. It should be tied with a reference to *4100(b)*. The problem with *4095* is that it is hard to know what is common area and what is not. If an existing association that may not be subject to the Act purchases land for the joint use of its members does that land become common area and the development and association become subject to the Act? Unless the declaration identifies property as common area how do you know for sure in a planned development what is common area? The definition tells us what the common area can consist of but does not identify what makes property common area. This is very important when trying to identify when developments are subject to the Act.

- *Section 4110(a)*. Why is the word "residents" used? Should this be members or owners?

- *Section 4125*. The undefined term "real property development" is used. We know what it is supposed to mean but does this term have any real meaning? Is not the separate ownership in the separate interest called the unit. These terms are all defined why not use them? Note that many condominium developments (if I may use that term) consist of a number of condominium projects located in a planned development where the association owns all or part of the common area that is not part of a condominium project.

- *Section 4145(c)*. This was a special interest provision that was lobbied into law. It hardly makes sense to limit this provision to its original purpose and perhaps it should be expanded to include any utility or service line serving a special interest.

- *Section 4150*. The definition should allow other documents to be designated as governing documents in the declaration. Those may include ground leases and REA or the declaration of a master association.

- *Section 4155(a)*. This definition may not be true. Depending on whether "assets" means all of the assets a manager may only control over limited portions of the

development's assets. Also what does control really mean in this provision? While many managers collect the assessments and disburse payables, they cannot control the reserve funds except to make deposits and they manage not control other non-cash assets such as common area.

- *Section 4160*. There are a number of situations in which a Member may not be an Owner and vice-versa. The common instance is a contract of sale which many declarations treat as a security interest. Thus the fee owner is not a member and the purchaser under the contract is the member. There is also the issue of entity ownership. A residential separate interest could be a trust or a family partnership or limited liability company. The membership rights will be held by the owner's of the trust or entity who may be technically tenants depending on the how the declaration deals with this situation if it deals with it at all. In the case of commercial CIDs the owner is commonly a corporation, partnership or limited liability company.

- *Section 4175*. This section raises a number of issues. First it uses the term "real estate development" again which may not have any real meaning. In *Subsections (a) and (b)* should not the ownership be of the separate interest? The definitions also use the term "development" which again is undefined.

- *Section 4185(b)*. In a condominium the separate interest is always going to be a unit. In a planned development it will be a lot or parcel. The terms "area, space" do not seem to serve any purpose.

- *Section 4535(c)*. To say "two-way" seems to limit the type of conference available. It may be multi-place two way transmission and "between the participants".

- *Section 4540*. A revision of this section could provide an answer to a dispute that has been going on between managers and attorneys for associations. There are lawyers who believe that the board can hold separate executive meetings in undisclosed locations and make decisions which are set out in secret minutes. There are other lawyers who feel that the procedure should be more like that under the Brown Act and that a meeting must be held, adjourned into an executive session for discussion and that any formal voting must be held in open session and that the vote must be recorded in the normal board minutes. There may be lawyers and managers who favor an in between position. However this section is written, it should make it plain what procedure should be followed. I personally favor the position of adjourning into executive session and voting outside the executive session but I know many prominent lawyers in this field who think otherwise. The minute provision, *Section 4550*, does not seem to allow for secret minutes but *Section 4700(b)(3)* seems to allow such minutes. The one place where secret minutes should be allowed is when the board is directing its attorneys or officers regarding litigation. This should not be recorded in the minutes and yet the board needs a record of what directions it gave in this regards. However, when the litigation is terminated those directions should go into the regular minutes.

- *Section 4560*. I discussed the problem with the definition of a committee, "exercises a power of the board". Due to the way that CC&Rs provide for architectural review committees and sometimes judicial committees this definition must be revised. I think that certain types of activities especially the review of plans and specifications where there is no current controversy should not require a noticed or open meeting except as to the member involved.

- *Section 4640*. *Subsection (a)(4)*. See my discussion under *Section 5900* regarding circumstances when no vote should be required to grant exclusive use of common area.

- *Section 4645*. These procedures, and those under *Section 4675*, should clearly include a person who votes in person as an officer, partner or other agent of an entity which is an owner. A decision should be made whether a proxy should be the method for an entity to grant the voting power or whether it should be by resolution or other appropriate delegation of this power.

- *4700*. It seems odd that if this is a disclosure provision that *Subsection (a)(5)* requires the records to be prepared in accordance with accrual accounting procedures. It would seem logical that the records if disclosed should be the records however they exist. If accrual accounting is to be required of all associations it should be a requirement under *Section 4805* which it is not. If a very small association uses cash accounting it makes no sense to require disclosure in another form. After all, the reason for disclosure is for the person asking for documents to see what the association has, not something artificial. This is one of the bizarre types of concepts introduced into the Act by various amendments which the recommendation should be weeding out. Also *Subsection (a)(9)*, the written board approval, makes no sense. If the board has acted it should be in the minutes. The board does not give other approvals although an officer might perform such an act. *Subsection (b)(3)* seems to raise the secrete minutes issue again.

- The overall impact of *Section 4705*, the redaction provisions of *4710* and *4715* and the restrictions on fees in *4720*, is an impossible situation for associations. Small associations could be financially broken by requests from any member with which they have a dispute. This whole idea is both bad law and bad policy and if it starts to be misused will have very negative consequences on the association and the other members who have to bear the cost. The time frames contained in these sections are rather short for self managed associations.

- *Section 4960(a)(10)*. The number of separate interests may be obvious in a residential development but in certain types of commercial CIDs where a grid or bar system is used and where the final number of units has not been determined it may not be possible to answer this question in a meaningful manner. Perhaps the state registry should require a statement of whether the CID is residential or commercial and not require the number of units in a commercial CID or allow an answer that the total number of units is not finalized.

- *Section 5005*. In very large associations this provision which requires the board to hear all disciplinary matters does not make sense since the board may not have the time to give the attention required which may lead to less of an opportunity to be heard rather than more of an opportunity. It makes more sense to allow for a disciplinary committee to make these decisions with the board to hear appeals. Also the Commission may want to consider the issue of whether there should be limits on the amount of fines imposed by associations. The note to this section indicates that a reimbursement charge can lead to non-judicial foreclosure. This is not true in most cases for use of lien rights for this type of charge is prohibited by the DRE regulations for new developments.

- *Article 2* and *Article 3* commencing with *Section 5050* are Articles that members are likely to read if they have a dispute with an association. These have to be some of the most unreadable provisions in the Act with the exception of the construction defects provisions. No one is likely to understand these provisions and they should be rewritten to provide a straight forward dispute resolution procedure.

- *Section 5580*. *Subsection (b)(2)*. There is a reference as to the assessment at the end of the proceeding year. Assessments are annual. The assessment should be based on the regular assessment as adjusted during the prior year. Also note the effect in *Subdivision (d)* of the time requirements to give notice. The 30-day notice could be increased by 20 days if there was a single foreign owner with an out of country address. This could cause major problems in adjusting assessments.

- *Section 5600*. The curious provision requiring a receipt giving the name of the person who actually received the payment should be deleted. Who actually receives the payment, the person who opens the letter, the person who deposits the check or who? Also if the member has a receipt from the manager who cares who "received" the check? This was simply one of those situations of drafting where the legislation made and makes no sense.

- *Section 5605*. This is a case where this section should make it clear what can be done. Most persons consider a late charge to be a one time charge when a payment is not made on time and then interest runs on the unpaid amounts. There are however associations which apparently charge multiple late payment charges for the same failure to pay. *Subsection (b)(3)* should make it clear what is allowed.

- *Section 5610*. This Section seems to imply that an association can assign its rights to foreclose a lien to a financial institution. Under the Act as written where the Board must make individual decisions on foreclosure and negotiate payment plans I do not know how this would be possible. I am in favor of being able to assign the stream of assessment income as security for a loan but I think that a hard look needs to be taken at subsection (b) and the other provisions of the Act related to foreclosure.

- *Section 5620(b)*. Why is a specially scheduled meeting limited to a committee meeting?

- *Section 5620(c)*. Late fees do not accrue (whatever late fees are). If this refers to interest it should use the term interest.

- *Section 5635(a)*. Is the copy of the lien release provided to the owner one that shows the recording information for the release? The provision does not say and it would be better policy to provide a copy showing the recording information.

- *Section 5640(b)*. The provision should not use the term "penalty". If it is referring to late charges it should use that term.

- *Section 5650(a)*. This provision should make it clear whether the delinquent assessments from multiple units owned by the same owner can be aggregated. They should be aggregated to deal early with delinquencies of builders and investors holding multiple interests whose defaults can lead to serious losses of income. The exception for the declarant does not begin to deal with these issues.

- *Section 5680(b).* This subsection should not exclude an employee who just happens to live in a development and who is not serving on the board due to his or her employment. The employee of a financial institution should only be excluded if they are serving on the board based on the financial institutions ownership of a unit. If the employee is a resident of the development and is on the board due to that ownership they should not be excluded because their employer forecloses on a house or unit in the same subdivision. This provision could be easily rewritten to make clear the relationships where the exclusion takes place.

- *Section 5685(b)*. I would suggest that this could be better written, "(b) A cause of action in tort against a member arising solely by reason of the member's ownership interest as a tenant in common shall be the liability solely of the association and the action shall be brought only against the association and not against the individual member..."

- *Section 5705*. This provision is one that probably should not apply to commercial CIDs. Note that in a commercial setting the association would be dealing with a business that would be dispossessed and quite likely a lease between the separate interest owner and a business which would throw the burden of the cost on the owner-lessor depending on the terms of the lease.

- *Section 5735*. This section should not apply to commercial CIDs.

- *Section 5740(a).* This provision is rather strangely written. It probably should say, "An association may not require that a member (why homeowner?) install or repair a roof with materials which would violate the requirements Section...."

- *Section 5745*. Now that the FCC regulations control antenna placement and since the technology of the dishes has changed is there a reason to retain this section? If it is retained it should be rewritten in light of current technology.

- *Section 5760(b).* The improvements allowed by this subsection should prohibit alterations which reduce insulation and sound transaction or that damage or reduce any moisture barriers.

- *Section 5800* makes no sense in a commercial CID where the interest in the common area, assessments and voting are almost always based on the square footage of the separate interests.

- *Section 5825(b).* The disclosure required here of specifying the applicable provisions of *Section 51.3* would be almost impossible for most persons to make and may not make sense without reference to the federal law on the subject of senior housing. This probably should only require a disclosure that the housing is a senior housing project under California and Federal law and leave it at that. Also under *Subsection (d)* there is a reference to "a true statement". Is this supposed to mean that the other information can be untrue?

- *Section 5830(b)*. The information should be delivered to the "association" not the "board".

- *Section 5900(a)*. This provision I am sure was enacted with the thought the common areas involved were land. In condominiums which are attached housing the common areas may include all areas outside the unit. In such situations it should be clear that this provision does not apply to such things as approving new windows and skylights in what may technically be common areas or installing fixtures into walls and ceilings where approved under the architectural approval provisions of the governing documents.

- *Section 5905(b)*. It would seem that the action here may not be a partition action but an action to terminate the condominium.

- *Section 5935*. It seems strange to refer to a transfer of an undivided interest in the common area with reference to a planned development. Perhaps this should read, "...includes any undivided interest in the common area and exclusive use common area appurtenant to the separate interest.

- *Section 6000*. This provision has always been ambiguous as to what happens if all of the separate interests in a development later come back under a common owner. Does a CID once formed always stay in existence until formally terminated?

- *Section 6005*. Perhaps an exception should be put into this provision that there will be no conflict between the articles and the declaration, "except as required by law".

- *Section 6075 and 6080*. These provisions relate to the requirements for an initial condominium plan and for its amendment. The major problem here is the amendment requirements for commercial condominiums. If the governing documents allow, the amendment for a commercial condominium plan should only

require the approval of the owners involved with the change and the association. In the case of residential associations the association board should be able to approve a change in the plan to reflect the actual physical status of the separate interests. When there is damage caused by fire or other destruction the separate interests can almost never be constructed exactly as they were originally due to the requirements of new building codes. Thus the old condominium plans diverge from the rebuilt buildings. The plans in my experience are almost never changed due to the problems of getting all of the signatures involved from owners within the same project (but in different buildings) and all of their lenders. It would be better policy to allow a simple method to conform the plan to a reconstructed building so that the recorded plan was accurate.

- *Section 6100(b)*. This is another place where the term "board" should be "association". The same is true with *Sections 6110 and 6115*.

- *Section 6150*. While the underlying intention of this provision is commendable it would be better for the provision just to say that if any covenant violates *Section 12955* it is void an unenforceable. *Section 12955* of the *Government Code* is so complex in its application that I do not believe its meaning is fully understood when applied to specific factual situations. The meaning of *Section 12955* is clear in cases of old fashion racial or religious prohibitions but becomes less so with some of the other types of discrimination. I have heard claims that the use of terms such as "single family housing" in declarations violates the section. The board has no power to amend unless the covenant actually violates *Section 12955*, and if that is not obvious, or if it is disputed, it almost forces a judicial determination to find out if the board has the power to act. If the board acts and turns out to be wrong then its actions and the amendment is void. Rather than having suit brought against it when the board is not sure it can or should act there should be a clear method to determine whether an amendment should be made and if the board has the power to make the amendment. Perhaps there should be an application to a court and the court determines and orders the amendment (or not) leaving the board out of the middle of a sometimes impossible situation..

- *Section 6200 through 6215*. Is there any reason after SB 800 for this procedure to exist in cases where SB 800 applies?

Very truly yours,

DUNCAN R. McPHERSON

DRM/clm

#J-1403

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft RECOMMENDATION

Trial Court Restructuring: Transfer of Case Based on Lack of Jurisdiction

February 2008

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SUMMARY OF RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions. One major restructuring reform was the unification of the trial courts. As a result of trial court unification, the ongoing relevance of Code of Civil Procedure Section 396 became unclear.

Under Section 396, if a court lacks subject matter jurisdiction of a case and another state court would have jurisdiction, the court without subject matter jurisdiction must transfer the case to the other court. After trial court unification, Section 396 is no longer relevant to a transfer between trial courts. Due to disagreement in the courts, it is unclear whether the section is obsolete or is relevant to a transfer from a trial court to an appellate court.

To resolve the ambiguity, the Commission recommends legislation to: (1) repeal Section 396, and (2) replace it with a new provision that clearly requires a trial court to transfer a case over which it lacks subject matter jurisdiction to an appellate court that would have jurisdiction.

This recommendation was prepared pursuant to Government Code Section 71674 and 2007 Cal. Stat. res. ch. 100.

TRIAL COURT RESTRUCTURING: TRANSFER OF CASE BASED ON LACK OF JURISDICTION

Over the past decade, California's trial court system has been dramatically restructured. One of the reforms was unification of the trial courts on a county-by-county basis.[1] Trial court operations have been consolidated in the superior court of each county and municipal courts no longer exist.[2]

As a result of trial court restructuring, hundreds of sections of the California codes became obsolete, in whole or in part. The Legislature authorized the Law Revision Commission to recommend changes to the statutes "that may be necessitated by court unification"[3] and directed the Commission to revise the statutes to eliminate material that became obsolete as a result of trial court restructuring.[4]

The Commission has completed a vast amount of work on trial court restructuring, and the Legislature has enacted several measures to implement the Commission's recommendations.[5] In this work, the Commission has sought to avoid making any substantive change, other than that necessary to implement the restructuring reform.[6]

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1. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220).

Other major trial court restructuring reforms include:

- State, as opposed to local, funding of trial court operations. See 1997 Cal. Stat. ch. 850; see generally Gov't Code §§ 77000-77655.
- Enactment of the Trial Court Employment Protection and Governance Act, which established a new personnel system for trial court employees. 2000 Cal. Stat. ch. 1010; see Gov't Code §§ 71600-71675.

2. Upon unification of the courts in Kings County, on February 8, 2001, the courts in all 58 counties had unified.

3. 2007 Cal. Stat. res. ch. 100.

4. Gov't Code § 71674.

5. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657 (1999); *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003), implemented by 2003 Cal. Stat. ch. 149; 1999 Cal. Stat. ch. 344; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43.

6. See, e.g., *Revision of Codes*, *supra* note 5; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 18-19, 28 (1994).

Code of Civil Procedure Section 396

Code of Civil Procedure Section 396 mandates that a trial court transfer a case, and prohibits dismissal of the case, when the trial court lacks subject matter jurisdiction and another state court would have such jurisdiction.

Before the municipal courts unified with the superior courts, the subject matter jurisdiction of the municipal court differed from the subject matter jurisdiction of the superior court.[7] When a municipal court lacked subject matter jurisdiction over a case, but the case was within the jurisdiction of the superior court, the municipal court transferred the case pursuant to Section 396 to the superior court, and vice versa.[8]

Now that the trial courts in each county have unified into a single court with broad subject matter jurisdiction, Section 396 is no longer relevant to a transfer between trial courts.[9] If a case is filed in the wrong division, department, or location of the superior court, other authority exists for a superior court to transfer the case to the proper division, department, or location.[10] Section 396 does not

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7. See former Cal. Const. art VI, § 10 (adopted Nov. 8, 1966) ("Superior courts have original jurisdiction in all causes except those given by statute to other trial courts."); Former Code Civ. Proc. § 86 (1997 Cal. Stat. ch. 527, § 2) (municipal court jurisdiction in specified civil proceedings); former Penal Code § 1462 (1972 Cal. Stat. ch. 809, § 1) (municipal court jurisdiction in specified criminal proceedings).

8. See e.g., Walker v. Superior Court, 53 Cal. 3d 257, 266-70, 807 P.2d 418, 279 Cal. Rptr. 576 (1991) (superior court to transfer to municipal court if verdict necessarily will be less than jurisdictional requirement that claim exceed $25,000); Cal. Employment Stabilization Comm'n v. Municipal Court, 62 Cal. App. 2d 781, 787, 145 P.2d 361 (1944) (municipal court to transfer to superior court when superior court, not municipal court, has jurisdiction).

9. See Cal. Const. art. VI, §§ 1, 4, 10; Code Civ. Proc. § 116.210 ("small claims" court is division of superior court); Snukal v. Flightways Mfg., Inc., 23 Cal. 4th 754, 763 n.2, 3 P.3d 286, 98 Cal. Rptr. 2d 1 (2000) ("On unification of the trial courts in a county, all causes will be within the original jurisdiction of the superior court.") (quoting *Revision of Codes*, *supra* note 5, at 64-65); Glade v. Glade, 38 Cal. App. 4th 1441, 1449, 45 Cal. Rptr. 2d 695 (1995) ("Even though a superior court is divided into branches or departments, pursuant to California Constitution, article VI, section 4, there is only one superior court in a county and jurisdiction is therefore vested in that court, not in any particular judge or department. Whether sitting separately or together, the judges hold but one and the same court."); 2 B. Witkin, California Procedure *Courts* § 225, at 293 (4th ed. 1996) (case in wrong department, often discussed as "wrong court," is distinct from lack of subject matter jurisdiction); 2 B. Witkin, California Procedure *Jurisdiction* § 289, at 860 (4th ed. 1997) ("[I]f the action or proceeding is in the right superior court but the wrong department, jurisdiction of the subject matter exists."); see also Eldridge v. Richfield Oil Corp., 247 F. Supp. 407, 411 n.8 (1965) (Section 396 does not apply to require transfer by federal trial court to state trial court).

10. For example, Code of Civil Procedure section 402 authorizes the superior court to transfer a case to another location of the same court. See also, e.g., Code Civ. Proc. §§ 397(a) (court may, on motion, change place of trial when complaint designates wrong court), 403 (court may, on motion, transfer for coordination purposes), 403.040 (procedure to reclassify civil case as limited or unlimited), 404 (transfer for coordination purposes); People v. Superior Court, 104 Cal. App. 276, 281, 285 P. 871 (1930) ("The Juvenile Court is itself a Superior Court, although acting in a particular class of cases, and has an inherent power to transfer a case to another department of the same court."); Cal. R. Ct. 10.603(b)(1)(B) (superior court presiding judge may assign and reassign cases to departments in apportioning court business),

authorize such a transfer because the provision only applies, by its terms, when a court lacks subject matter jurisdiction.[11]

Although Section 396 is no longer relevant to a transfer between trial courts, it might serve another purpose. In a case decided before trial court unification, the Fifth District Court of Appeal held that if a superior court lacks jurisdiction of a case and a court of appeal or the Supreme Court (hereafter, "an appellate court") would have jurisdiction, Section 396 requires the superior court to transfer the case to the appropriate appellate court.[12] After unification, however, the Second District Court of Appeal disagreed with the Fifth District's opinion, and stated that Section 396 does not authorize a transfer by a superior court to an appellate court.[13]

The disagreement in the courts of appeal, and the ambiguity of the text of Section 396 as to its scope, make it unclear whether the provision requires a transfer by a superior court lacking subject matter jurisdiction to an appellate court that would have jurisdiction.[14] Because the meaning of the provision is unclear, in determining how to revise it, the Commission cannot simply follow the normal approach of avoiding any substantive change other than that necessary to account for trial court restructuring. Various options for how Section 396 could be handled, and the corresponding implications, are discussed below.

Leave Section 396 Alone

One approach would be to leave Section 396 as it is. This approach would continue the present ambiguity in the scope of the provision. By implication, however, it would endorse the position of the Fifth District and would imply that Section 396 requires a superior court without subject matter jurisdiction to transfer

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10.603(c)(1)(D) (superior court presiding judge to reassign cases between departments as convenience or necessity requires).

11. See Rosenberg v. Superior Court, 67 Cal. App. 4th 860, 867, 79 Cal. Rptr. 2d 365 (1988) ("The plain language of Code Civ. Proc., § 396, permits transfer only when the transferring court lacks jurisdiction of the subject matter."); see also *supra* note 9.

12. Padilla v. Dep't of Alcoholic Beverage Control, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Section 396 applies to "proceedings filed in the superior court which, by statute, may only be filed in the Supreme Court or the Court of Appeal").

13. TrafficSchoolOnline, Inc. v. Superior Court, 89 Cal. App. 4th 222, 225, 234-35, 107 Cal. Rptr. 2d 412 (2001) (stating disagreement with *Padilla* court and concluding that "the superior court is not vested with the authority by Code of Civil Procedure section 396 to transfer a case to the Court of Appeal or the Supreme Court").

14. See Pajaro Valley Mgmt. Agency v. McGrath, 128 Cal. App. 4th 1093, 1104 n. 4, 27 Cal. Rptr. 3d 741 (2005) (commenting on split in courts of appeal and speculating that Section 396 might retain "vitality as empowering the superior court to transfer cases" within exclusive jurisdiction of court of appeal or Supreme Court); 3 B. Witkin, California Procedure *Jurisdiction* § 393A, at 321-22 (4th ed. 2007 Supp.) (stating Section 396 "is not inapplicable" to transfer from superior court to court of appeal or Supreme Court and discussing cases comprising split).

a case to an appellate court that would have jurisdiction.[15] If the provision was not construed to authorize such a transfer, there would be no justification for leaving it in place.

Revise Section 396

Another approach would be to revise Section 396 to delete the language that is only applicable to a transfer between trial courts. This approach would also endorse the Fifth District's opinion.[16] It would imply, more strongly than leaving Section 396 alone, that the provision requires a superior court to transfer a case over which it lacks subject matter jurisdiction to an appellate court that would have jurisdiction.

Repeal Section 396

Conversely, a repeal of Section 396 would reject the Fifth District's view.[17] Repealing Section 396 would reflect a determination that the provision is no longer useful. Taking that step would thus endorse the Second District's view that the provision does not apply to a transfer by a superior court to an appellate court.[18]

Repeal Section 396 and Enact a New Section 396

Another approach would be to repeal Section 396 and enact a new provision in its place, which would clearly require a superior court to transfer a matter over which it lacks jurisdiction to an appellate court that would have jurisdiction. This approach would eliminate the uncertainty regarding the scope of Section 396.

The Commission recommends this approach. It would carry forward a widespread, long-standing policy behind Section 396 that allows a matter to be considered on its merits in the proper tribunal, despite a previous misfiling in the wrong court.[19]

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15. See *supra* note 12.

16. *Id.*

17. *Id.*

18. See *supra* note 13.

19. See Friends of Mammoth v. Bd. of Supervisors, 8 Cal. 3d 247, 268-69, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972) (naming Section 396 and applying its policy to petition for writ of mandamus that was promptly re-filed in superior court after dismissal from court of appeal); Nichols v. Canoga Indus., 83 Cal. App. 3d 956, 959, 962, 148 Cal. Rptr. 459 (1978) (identifying established policy of relieving litigant that timely filed in wrong forum from statute of limitations, and concluding that federal court filing tolled state statute of limitations to allow re-filing in state court); Morgan v. Somervell, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940) (Section 396 furthers "policy frequently exemplified in legislative acts" to consider timely filed matter on merits "notwithstanding defects in the form … or *mistake in the tribunal invoked*." (emphasis in original)).

Furthermore, a transfer of a matter to another court is broadly authorized in several other situations. See, e.g., Cal. Const. art. VI, § 12(a) (authorizing Supreme Court to transfer cases between itself and court of appeal); Code Civ. Proc. § 911 (granting court of appeal discretion to order transfer from superior court

Absent authority to transfer, a court must dismiss a matter over which it lacks jurisdiction.[20] If a superior court dismisses a petition or appeal because it is within the exclusive jurisdiction of the courts of appeal or the Supreme Court, the time to re-file in the proper court might have expired.[21] That would bar consideration of the petition or appeal on the merits and would undermine the long-standing policy underlying Section 396. That undesirable result could be avoided, however, by repealing Section 396 and enacting proposed Section 396, which would clearly direct a superior court to transfer a case over which it lacks jurisdiction to an appellate court that would have jurisdiction.[22]

FURTHER WORK

This recommendation does not deal with all remaining statutes that need revision due to trial court restructuring.[23] The Commission will continue to make recommendations addressing obsolete statutes as issues are resolved and time

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to promote uniformity or settle important legal question); Gov't Code § 68915 (prohibiting dismissal and requiring transfer by Supreme Court and courts of appeal when appeal taken to wrong court); Penal Code § 1471 (granting court of appeal discretion to order transfer from superior court to promote uniformity or settle important legal question); People v. Nickerson, 128 Cal. App. 4th 33, 39-40, 26 Cal. Rptr. 3d 563 (2005) (court of appeal empowered by inherent authority and Government Code Section 68915 to transfer appeal, misdirected by court clerk, to appellate division of superior court); Cal. R. Ct. 10.1000(a) (Supreme Court may transfer case between courts and divisions of courts of appeal).

20. See Goodwine v. Superior Court, 63 Cal. 2d 481, 484, 407 P.2d 1, 47 Cal. Rptr. 201 (1965) (court lacking subject matter jurisdiction must dismiss on own motion).

21. See, e.g., Bus. & Prof. Code § 23090 (authorizing review of final order by Alcoholic Beverage Control Board in court of appeal or Supreme Court within 30 days); Code Civ. Proc. § 170.3(d) (review of judge disqualification order only by writ of mandate in court of appeal within 10 days); Welf. & Inst. Code § 366.26(*l*) (order to hold hearing pursuant to Section 366.26 — regarding placement of juvenile court dependents and parental rights termination — only appealable if extraordinary writ petition is timely filed); Cal. R. Ct. 8.452 (10 days to file writ to challenge order for Section 366.26 hearing); see also Cal. R. Ct. 8.751(a) (time to appeal).

22. The proposed new provision is modeled on Government Code Section 68915, which requires the courts of appeal and the Supreme Court to transfer, not dismiss, an appeal that is filed in the wrong court.

Like Government Code Section 68915, the new provision would apply to an appeal. Determining whether jurisdiction over a particular appeal is in the appellate division of the superior court or in the court of appeal can be difficult. The filing of an appeal in the wrong court could occur by no fault of the appellant. See *Nickerson*, 128 Cal. App. 4th at 35-36 (discussing difficulty in determining appellate jurisdiction of felony now that all notices of appeal are filed in unified superior court, and transferring appeal, misdirected by court clerk, to appellate division of superior court).

In contrast to Government Code Section 68915, the proposed new provision would expressly apply to a petition for a writ, for two reasons. First, it was in the context of a writ petition that the Fifth District held that Section 396 mandates a transfer from a superior court lacking jurisdiction to an appellate court that would have jurisdiction. See Padilla v. Dep't of Alcoholic Beverage Control, 43 Cal. App. 4th 1151, 1155, 51 Cal. Rptr. 2d 133 (1996). Second, the California Supreme Court has expressly applied the policy behind Section 396 to a writ. See *Friends of Mammoth*, 8 Cal. 3d at 268-69 (writ petition filed after deadline should be considered on merits, where petition had been dismissed but promptly re-filed in proper court).

23. For a detailed summary of the work that remained to be done as of February 2006, see Commission Staff Memorandum 2006-9 (available from the Commission, www.clrc.ca.gov).

warrants. Failure to address a particular statute in this recommendation should not be construed to mean that the Commission has decided the statute should be preserved. The statute may be the subject of a future recommendation by the Commission.

PROPOSED LEGISLATION

Code Civ. Proc. § 396 (repealed). Court without jurisdiction

SEC. ____. Section 396 of the Code of Civil Procedure is repealed.

~~396. (a) If an action or proceeding is commenced in a court that lacks jurisdiction of the subject matter thereof, as determined by the complaint or petition, if there is a court of this state that has subject matter jurisdiction, the action or proceeding shall not be dismissed (except as provided in Section 399, and paragraph (1) of subdivision (b) of Section 581) but shall, on the application of either party, or on the court's own motion, be transferred to a court having jurisdiction of the subject matter that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof, and it shall thereupon be entered and prosecuted in the court to which it is transferred as if it had been commenced therein, all prior proceedings being saved. In that case, if summons is served prior to the filing of the action or proceeding in the court to which it is transferred, as to any defendant, so served, who has not appeared in the action or proceeding, the time to answer or otherwise plead shall date from service upon that defendant of written notice of filing of the action or proceeding in the court to which it is transferred.~~

~~(b) If an action or proceeding is commenced in or transferred to a court that has jurisdiction of the subject matter thereof as determined by the complaint or petition, and it thereafter appears from the verified pleadings, or at the trial, or hearing, that the determination of the action or proceeding, or of a cross-complaint, will necessarily involve the determination of questions not within the jurisdiction of the court, in which the action or proceeding is pending, the court, whenever that lack of jurisdiction appears, must suspend all further proceedings therein and transfer the action or proceeding and certify the pleadings (or if the pleadings be oral, a transcript of the same), and all papers and proceedings therein to a court having jurisdiction thereof that may be agreed upon by the parties, or, if they do not agree, to a court having subject matter jurisdiction that is designated by law as a proper court for the trial or determination thereof.~~

~~(c) An action or proceeding that is transferred under the provisions of this section shall be deemed to have been commenced at the time the complaint or petition was filed in the court from which it was originally transferred.~~

~~(d) This section may not be construed to preclude or affect the right to amend the pleadings as provided in this code.~~

~~(e) Upon the making of an order for transfer, proceedings shall be had as provided in Section 399, the costs and fees thereof, and of filing the case in the court to which transferred, to be paid by the party filing the pleading in which the~~

~~question outside the jurisdiction of the court appears unless the court ordering the transfer shall otherwise direct.~~

Comment. Section 396 is repealed due to trial court unification. The provision directed a court not to dismiss but to transfer a case if the court lacked subject matter jurisdiction and another state court would have such jurisdiction. The provision was often invoked when a municipal court transferred a case outside its jurisdiction to the superior court, or vice versa. See, e.g., Walker v. Superior Court, 53 Cal. 3d 257, 807 P.2d 418, 279 Cal. Rptr. 576 (1991); Cal. Employment Stabilization Comm'n v. Municipal Court, 62 Cal. App. 2d 781, 145 P.2d 361 (1944). After unification of the municipal and superior courts, it no longer served that purpose.

There was a split of authority regarding whether the provision authorized a superior court lacking jurisdiction to transfer a case to a court of appeal or the state Supreme Court. Compare TrafficSchoolOnline, Inc. v. Superior Court, 89 Cal. App. 4th 222, 225, 107 Cal. Rptr. 2d 412 (2001) ("[T]he superior court is not vested with the authority by Code of Civil Procedure Section 396 to transfer a case to the Court of Appeal or the Supreme Court."), with Padilla v. Dep't of Alcoholic Beverage Control, 43 Cal. App. 4th 1151, 1154, 51 Cal. Rptr. 2d 133 (1996) (Transfer requirement of Section 396 applies "in the case of proceedings filed in the superior court which, by statute, may be filed only in the Supreme Court or the Court of Appeal."); see also Pajaro Valley Water Mgmt. Agency v. McGrath, 128 Cal. App. 4th 1093, 1104 n.4, 27 Cal. Rptr. 3d 741 (2005) ("It is possible, though a point of disagreement, that [Section 396] retains vitality as empowering the *superior* court to transfer cases within the exclusive original jurisdiction of the *appellate* courts." (emphasis in original)).

Consistent with the key policy of deciding a case on its merits even if it is filed in the wrong tribunal, new Section 396 makes clear that if a superior court lacks jurisdiction of a matter and a state appellate court would have jurisdiction, the superior court must transfer the matter instead of dismissing it.

Code Civ. Proc. § 396 (added). Court without jurisdiction

SEC. ____. Section 396 is added to the Code of Civil Procedure, to read:

396. No appeal or petition filed in the superior court shall be dismissed solely because the appeal or petition was not filed in the proper state court. If the superior court lacks jurisdiction of an appeal or petition, and a court of appeal or the Supreme Court would have jurisdiction, the appeal or petition shall be transferred to the court having jurisdiction upon terms as to costs or otherwise as may be just, and proceeded with as if regularly filed therein.

Comment. Section 396 requires a superior court to transfer an appeal or petition over which the superior court lacks jurisdiction to an appellate court that has jurisdiction. The provision continues a policy that requires transfer and prohibits dismissal of a cause simply because it was filed in the wrong court. See, e.g., former Section 396 (2002 Cal. Stat. ch. 806, § 9); Gov't Code § 68915; see Friends of Mammoth v. Bd. of Supervisors, 8 Cal. 3d 247, 268-69, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972); Morgan v. Somervell, 40 Cal. App. 2d 398, 400, 104 P.2d 866 (1940).

#J-1403

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft RECOMMENDATION

Statutes Made Obsolete by Trial Court Restructuring: Part 4

February 2008

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

In the past decade, the trial court system has been dramatically restructured, necessitating revision of hundreds of code provisions.

By statute, the Law Revision Commission is responsible for revising the codes to reflect trial court restructuring. The Commission has done extensive work in response to this directive, and several major reforms have been enacted.

Of the work that remains, this recommendation addresses the following:

- Municipal court action specifying the number, qualifications, or compensation of municipal court officers or employees.
- Statutes made obsolete by implementation of the fiscal provisions of the Trial Court Funding Act of 1985.
- Jurisdiction over a minor charged with certain motor vehicle offenses.

The Commission is continuing its work on trial court restructuring and plans to address other subjects in future recommendations.

This recommendation was prepared pursuant to Government Code Section 71674 and 2007 Cal. Stat. res. ch. 100.

STATUTES MADE OBSOLETE BY TRIAL COURT RESTRUCTURING: PART 4

Over the past decade, California's trial court system has been dramatically restructured. Major reforms include:

- State, as opposed to local, funding of trial court operations.[1]
- Trial court unification on a county-by-county basis, eventually occurring in all counties. Trial court operations have been consolidated in the superior court of each county and municipal courts no longer exist.[2]
- Enactment of the Trial Court Employment Protection and Governance Act, which established a new personnel system for trial court employees.[3]

As a result of these reforms, hundreds of sections of the California codes became obsolete, in whole or in part. The Legislature directed the Law Revision Commission to revise the codes to eliminate material that became obsolete as a result of trial court restructuring.[4]

The Commission has completed a vast amount of work on trial court restructuring, and the Legislature has enacted several measures to implement the Commission's recommendations.[5] In this work, the approach has been to avoid making any substantive change, other than that necessary to implement the restructuring reform.[6]

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1. The Lockyer-Isenberg Trial Court Funding Act, enacted in 1997, made the state responsible for funding trial court operations. See 1997 Cal. Stat. ch. 850; see generally Gov't Code §§ 77000-77655.

2. In 1998, California voters approved a measure that amended the California Constitution to permit the municipal and superior courts in each county to unify on a vote of a majority of the municipal court judges and a majority of the superior court judges in the county. Former Cal. Const. art. VI, § 5(e), approved by the voters June 2, 1998 (Proposition 220). Upon unification of the courts in Kings County, on February 8, 2001, the courts in all 58 counties had unified.

3. 2000 Cal. Stat. ch. 1010; see Gov't Code §§ 71600-71675.

4. Gov't Code § 71674. The Commission is also authorized to make recommendations "pertaining to statutory changes that may be necessitated by court unification." 2007 Cal. Stat. ch. 100.

5. See *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998), implemented by 1998 Cal. Stat. ch. 931 (revising the codes to accommodate trial court unification) (hereafter, *Revision of Codes*); *Report of the California Law Revision Commission on Chapter 344 of the Statutes of 1999 (Senate Bill 210)*, 29 Cal. L. Revision Comm'n Reports 657 (1999); *Statutes Made Obsolete by Trial Court Restructuring: Part 1*, 32 Cal. L. Revision Comm'n Reports 1 (2002), implemented by 2002 Cal. Stat. ch. 784 & ACA 15, approved by the voters Nov. 5, 2002 (Proposition 48); *Statutes Made Obsolete by Trial Court Restructuring: Part 2*, 33 Cal. L. Revision Comm'n Reports 169 (2003), implemented by 2003 Cal. Stat. ch. 149; 1999 Cal. Stat. ch. 344; *Statutes Made Obsolete by Trial Court Restructuring: Part 3*, 36 Cal. L. Revision Comm'n Reports 305 (2006), implemented by 2007 Cal. Stat. ch. 43.

6. See, e.g., *Revision of Codes*, *supra* note 5; *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 18-19, 28 (1994).

Of the topics that still require attention, this recommendation addresses the following:

- Municipal court action specifying the number, qualifications, or compensation of municipal court officers or employees.
- Statutes made obsolete by implementation of the fiscal provisions of the Trial Court Funding Act of 1985.[7]
- Jurisdiction over a minor charged with certain motor vehicle offenses.

The Commission has studied each of these topics and reached conclusions on how to revise the pertinent statutes to reflect trial court restructuring.

MUNICIPAL COURT ACTION SPECIFYING NUMBER, QUALIFICATIONS, OR COMPENSATION OF MUNICIPAL COURT OFFICERS OR EMPLOYEES

Government Code Section 71617 provides that "any action by the municipal court specifying the number, qualification, or compensation of [its] officers or employees … which differs from that prescribed by the Legislature" shall remain in effect for no more than two years, unless extended by the Legislature.

By February 2001, the trial courts in each county had unified, and the municipal courts were subsumed into a unified superior court.[8] Because no municipal court has existed since February 2001, no municipal court action pursuant to Government Code Section 71617 could be in effect after February 2003. Therefore, Government Code Section 71617 is obsolete, and the Commission recommends that the provision be repealed.

STATUTES MADE OBSOLETE BY IMPLEMENTATION OF THE FISCAL PROVISIONS OF THE TRIAL COURT FUNDING ACT OF 1985

The Bergeson-Costa-Nielsen County Revenue Stabilization Act (hereafter, "the Act" or "the County Revenue Stabilization Act") comprises a short chapter in the Government Code.[9] The Act enables counties to receive state funding for certain services, including "justice programs."[10] Funding of justice programs under the

7. Government Code Section 71674 directs the Commission to determine statutory obsolescence as a result of the Lockyer-Isenberg Trial Court Funding Act of 1997, not earlier measures. However, the issue of statutory obsolescence resulting from the Trial Court Funding Act of 1985 is reasonably related to the Commission's work on trial court restructuring and is within its authority to correct technical and minor substantive statutory defects. See Gov't Code § 8298.

8. See *supra* note 2.

9. See Gov't Code §§ 16265-16265.7.

10. "Justice programs" include trial courts, district attorney and public defender services, probation, and correctional facilities. See Gov't Code § 16265.2(c).

Act is to cease upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985.[11]

The Trial Court Funding Act of 1985 has been repealed.[12] Significantly, however, the substance of its fiscal provisions has been fully implemented by later-enacted provisions providing for full trial court funding by the state.[13]

Because the substance of the fiscal provisions of the Trial Court Funding Act of 1985 has been fully implemented, justice programs are no longer to be funded under the County Revenue Stabilization Act.[14] As a result, provisions in that Act relating to justice programs are no longer necessary.

While the Commission was studying those provisions, other obsolete material became apparent. To remove the obsolete material from the County Revenue Stabilization Act, the Commission recommends the following reforms:

- Revise the provisions relating to justice programs to reflect that they are no longer funded under the Act.[15]
- Delete the provision specifying when funding of justice programs under the Act is to cease.[16]
- Delete a reference to Revenue and Taxation Code Section 11003.3, which has been repealed.[17]
- Delete obsolete dates.[18]
- Repeal a provision that only operated in a past year.[19]
- Make various adjustments to the remaining provisions to fully implement the removal of obsolete material.[20]

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11. See Gov't Code § 16562.6.

12. 1988 Cal. Stat. ch. 945, § 9.

13. 1998 Cal. Stat. ch. 146, § 6 (amending Government Code Sections 77200 *et seq.*, giving state ongoing responsibility of trial court funding); 1997 Cal. Stat. ch. 850, § 46 (enacting Government Code Sections 77200 *et seq.*, providing for full funding by state for one year); see also Gov't Code § 77201.1(a) (amounts counties pay to state).

14. See *supra* note 11.

15. See proposed amendments to Gov't Code §§ 16265.1 (deleting references to justice programs), 16265.4 (deleting provisions for funding justice programs), 16265.5 (deleting reference to justice programs) & Comments *infra*.

16. See proposed repeal of Gov't Code § 16265.6 & Comment *infra*.

17. See proposed amendment to Gov't Code § 16265.2 & Comment *infra*.

18. See proposed amendment to Gov't Code § 16265.4 & Comment *infra*.

19. See proposed repeal of Gov't Code § 16265.3 (prescribing calculation of funding in 1988 only) & Comment *infra*.

20. For example, because Government Code Section 16265.4 refers to a calculation scheme in Section 16265.3, which is recommended for repeal, Section 16265.4 would be amended to include the calculation scheme. See proposed amendment to Gov't Code § 16265.4 & Comment *infra*.

The Commission also recommends the repeal of a provision that is not part of the County Revenue Stabilization Act, but refers to the Trial Court Funding Act of 1985. By its own terms, this provision ceased to operate in 1992.[21]

JURISDICTION OVER MINOR CHARGED WITH CERTAIN MOTOR VEHICLE OFFENSES

Welfare and Institutions Code Section 603.5 provides a mechanism for a county to give jurisdiction over a minor charged with certain motor vehicle offenses to the "municipal court or the superior court in a county in which there is no municipal court," instead of to the juvenile court.[22]

Because the municipal court no longer exists, the references to the municipal court are obsolete.[23] Accordingly, the Commission recommends deleting those references from Section 603.5.[24]

FURTHER WORK

This recommendation does not deal with all remaining statutes that need revision due to trial court restructuring.[25] The Commission will continue to make recommendations addressing obsolete statutes as issues are resolved and time warrants. Failure to address a particular statute in this recommendation should not be construed to mean that the Commission has decided the statute should be preserved. The statute may be the subject of a future recommendation by the Commission.

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21. See proposed repeal of Gov't Code § 68618 *infra*.

22. The superior court is referred to as the juvenile court when the superior court applies "juvenile court law." Welf. & Inst. Code § 245; see also Welf. & Inst. Code § 200 ("juvenile court law" is Welf. & Inst. Code §§ 200-987).

23. See *supra* note 2.

24. See proposed amendment to Welf. & Inst. Code § 603.5 *infra*.

The Commission explored the possibility of also revising Section 603.5 to reflect enactment of Vehicle Code Sections 40200-40230, which establish civil administrative enforcement procedures and civil penalties for any non-misdemeanor parking or standing violation. The matter is complicated and is unrelated to trial court restructuring, so the Commission decided not to propose any revisions along these lines. See Tentative Recommendation on *Statutes Made Obsolete by Trial Court Restructuring: Part 4* at 8-9, 20-22 (Aug. 2007); Commission Staff Memorandum 2007-50 (available from the Commission, www.clrc.ca.gov).

25. For a detailed summary of the work that remained to be done as of February 2006, see Commission Staff Memorandum 2006-9 (available from the Commission, www.clrc.ca.gov).

Contents

PROPOSED LEGISLATION

Gov't Code § 16265.1 (amended). Legislative intent

SEC. ____. Section 16265.1 of the Government Code is amended to read:

16265.1. The Legislature finds and declares all of the following:

(a) The provision of basic social welfare~~,~~ and public health~~, and justice~~ programs by counties is a matter of statewide interest.

(b) In some cases, the costs of these programs have grown more quickly than the counties' own general purpose revenues.

(c) A county should not be required to drastically divert its own general purpose revenues from other public programs in order to pay for basic social welfare~~,~~ and public health~~, and justice~~ programs.

(d) California residents should not be denied the benefits of these programs because counties are hampered by a severe lack of funds for these purposes.

(e) Accordingly, it is the intent of the Legislature in enacting this chapter to protect the public peace, health, and safety by stabilizing counties' revenues.

Comment. Section 16265.1 is amended to delete obsolete references to justice programs. The funding under this chapter relating to justice programs was to discontinue upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985. See former Section 16265.6. That has been achieved; the trial courts are now fully funded by the state. See Sections 77200-77213.

Gov't Code § 16265.2 (amended). Definitions

SEC. ____. Section 16265.2 of the Government Code is amended to read:

16265.2. As used in this chapter:

(a) "County" means a county and a city and county.

(b) "County costs of eligible programs" means the amount of money other than federal and state funds, as reported by the State Department of Social Services to the Department of Finance or as derived from the Controller's "Annual Report of Financial Transactions Concerning Counties of California," that each county spends for each of the following:

(1) The Aid to Families with Dependent Children for Family Group and Unemployed Parents programs plus county administrative costs for each program minus the county's share of child support collections for each program, as described in Sections 10100, 10101, and 11250 of, and subdivisions (a) and (b) of Section 15200 of, the Welfare and Institutions Code.

(2) The county share of the cost of service provided for the In-Home Supportive Services Program, as described in Sections 10100, 10101, and 12306 of the Welfare and Institutions Code.

(3) The community mental health program, as described in Section 5705 of the Welfare and Institutions Code.

(4) The county share of the Food Stamp Program, as described in Section 18906.5 of the Welfare and Institutions Code.

(c) ~~"County costs of justice programs" means the amount of money other than federal and state funds, as reported in the Controller's "Annual Report of Financial Transactions Concerning Counties of California," that each county spends for each of the following:~~

~~(1) Superior courts.~~

~~(2) District attorney.~~

~~(3) Public defender.~~

~~(4) Probation.~~

~~(5) Correctional facilities.~~

~~"County costs of justice programs" does not include any costs eligible for reimbursement to the county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3.~~

~~(d)~~ "General purpose revenues" means revenues received by a county whose purpose is not restricted by state law to a particular purpose or program, as reported in the Controller's "Annual Report of Financial Transactions Concerning Counties of California." "General purpose revenues" are limited to all of the following:

(1) Property tax revenues, exclusive of those revenues dedicated to repay voter approved indebtedness, received pursuant to Part 0.5 (commencing with Section 50) of Division 1 of the Revenue and Taxation Code, or received pursuant to Section 33401 of the Health and Safety Code.

(2) Sales tax revenues received pursuant to Part 1 (commencing ~~the~~ with Section 6001) of Division 2 of the Revenue and Taxation Code.

(3) Any other taxes levied by a county.

(4) Fines and forfeitures.

(5) Licenses, permits, and franchises.

(6) Revenue derived from the use of money and property.

(7) Vehicle license fees received pursuant to Section 11005 of the Revenue and Taxation Code.

(8) ~~Trailer coach fees received pursuant to Section 11003.3 of the Revenue and Taxation Code.~~

~~(9)~~ Revenues from cigarette taxes received pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.

~~(10)~~ (9) Revenue received as open-space subventions pursuant to Chapter 3 (commencing with Section 16140) of Part 1.

~~(11)~~ (10) Revenue received as homeowners' property tax exemption subventions pursuant to Chapter 2 (commencing with Section 16120) of Part 1.

~~(12)~~ (11) General revenue sharing funds received from the federal government.

"General purpose revenues" does not include revenues received by a county pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3.

Comment. Subdivision (c) of Section 16265.2, which defined "county costs of justice programs," is deleted as obsolete. This definition was relevant only to a funding scheme that is no longer in effect. See Section 16265.4 & Comment; former Section 16265.6 (1987 Cal. Stat. ch. 1286, § 3) & Comment.

Paragraph (2) of subdivision (d) (relabeled as subdivision (c)) is amended to correct a grammatical mistake.

Paragraph (8) of the same subdivision is deleted as obsolete. Former Revenue and Taxation Code Section 11003.3 was repealed in 1992. 1992 Cal. Stat. ch. 699, §§ 17-19 (effective Sept. 15, 1992).

Gov't Code § 16265.3 (repealed). 1988 funding

SEC. ____. Section 16265.3 of the Government Code is repealed.

~~16265.3. (a) On or before October 31, 1988, the Director of Finance shall:~~

~~(1) Determine for each county the county costs of eligible programs and each county's general purpose revenues for the 1981-82 fiscal year.~~

~~(2) Determine a percentage for each county by dividing the county costs of eligible programs by the general purposes revenues for the 1981-82 fiscal year.~~

~~(3) Make the determination as prescribed in paragraphs (1) and (2) for each county for the 1986-87 fiscal year.~~

~~(4) Compare the percentage determined pursuant to paragraph (3) with the percentage determined pursuant to paragraph (2).~~

~~(5) If the percentage determined pursuant to paragraph (3) is greater than the percentage determined pursuant to paragraph (2), determine an amount necessary to offset the difference.~~

~~(6) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5).~~

~~(b) On or before October 31, 1988, the Director of Finance shall:~~

~~(1) Determine for each county the county costs of justice programs and each county's general purpose revenues for the 1981-82 fiscal year.~~

~~(2) Determine a percentage for each county by dividing the county costs of justice programs by the general purpose revenues for the 1981-82 fiscal year.~~

~~(3) Make the determination as prescribed in paragraphs (1) and (2) for each county for the 1986-87 fiscal year.~~

~~(4) Compare the percentage determined pursuant to paragraph (3) with the percentage determined pursuant to paragraph (2).~~

~~(5) If the percentage determined pursuant to paragraph (3) is greater than the percentage determined pursuant to paragraph (2), determine an amount necessary to offset the difference, provided that the amount shall not be greater than one million dollars ($1,000,000).~~

~~(6) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5).~~

~~(7) Determine a percentage for each county by dividing the amount determined for that county pursuant to paragraph (5) by the amount for all counties determined pursuant to paragraph (6).~~

~~(8) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5) of subdivision (a).~~

~~(9) Determine an amount by subtracting the amount determined pursuant to paragraph (8) from fifteen million dollars ($15,000,000).~~

~~(10) Determine an amount for each county by multiplying the amount determined pursuant to paragraph (9) by the percentage determined pursuant to paragraph (7).~~

~~(c) On or before October 31, 1988, the Director of Finance shall certify the amounts determined for each county pursuant to paragraph (5) of subdivision (a) and paragraph (10) of subdivision (b).~~

~~(d) On or before November 30, 1988, the Controller shall issue a warrant to each county, as applicable, in the amount certified by the Director of Finance under subdivision (c).~~

Comment. Section 16265.3 is repealed as obsolete because it prescribes funding for a past fiscal year.

Gov't Code § 16265.4 (amended). State funding of county programs

SEC. ____. Section 16265.4 of the Government Code is amended to read:

16265.4. (a) On or before October 31~~, 1989, and~~ of each year ~~thereafter~~, the Director of Finance shall:

(1) Determine ~~the percentage~~ for each county ~~which was determined for the 1981-82 fiscal year pursuant to paragraph (2) of subdivision (a) of Section 16265.3~~ the county costs of eligible programs and each county's general purpose revenues for the 1981-82 fiscal year.

(2) Determine a percentage for each county by dividing the county costs of eligible programs by the general purpose revenues for the 1981-82 fiscal year.

~~(2)~~ (3) Make the determination as prescribed by paragraphs (1) and (2) ~~of subdivision (a) of Section 16265.3~~ for each county ~~for the 1987-88 fiscal year, and~~ for each fiscal year ~~thereafter~~.

~~(3)~~ (4) Compare the percentage determined pursuant to paragraph ~~(2)~~ (3) with the percentage determined pursuant to paragraph ~~(1)~~ (2).

~~(4)~~ (5) For any fiscal year in which the percentage determined pursuant to paragraph ~~(2)~~ (3) is greater than the percentage determined pursuant to paragraph ~~(1)~~ (2), ~~make the determinations prescribed by paragraphs (5) and (6) of subdivision (a) of Section 16265.3~~ determine an amount necessary to offset the difference.

(6) Determine an amount which is the sum of the amounts for all counties determined pursuant to paragraph (5).

(b) ~~On or before October 31, 1989, and on or before October 31 of each year thereafter, the Director of Finance shall:~~

~~(1) Determine the percentage for each county which was determined for the 1981-82 fiscal year pursuant to paragraph (2) of subdivision (b) of Section 16265.3.~~

~~(2) Make the determination prescribed by paragraphs (1) and (2) of subdivision (b) of Section 16265.3 for each county for the 1987-88 fiscal year, and for each fiscal year thereafter.~~

~~(3) Compare the percentage determined pursuant to paragraph (2) with the percentage determined pursuant to paragraph (1).~~

~~(4) For any fiscal year in which the percentage determined pursuant to paragraph (2) is greater than the percentage determined pursuant to paragraph (1), make the determinations prescribed by paragraphs (5) to (10), inclusive, of subdivision (b) of Section 16265.3.~~

~~(c)~~ On or before October 31~~, 1989, and on or before October 31~~ of each year ~~thereafter~~, the Director of Finance shall determine an amount for each county as prescribed by paragraph (5) ~~of subdivision (a) of Section 16265.3~~ for the applicable fiscal year ~~and paragraph (4) of subdivision (b)~~.

~~(d)~~ (c) On or before October 31~~, 1989, and on or before October 31~~ of each year ~~thereafter~~, the Director of Finance shall certify the amount determined for each county pursuant to subdivision ~~(c)~~ (b) to the Controller.

~~(e)~~ (d) On or before November 30~~, 1989, and on or before November 30~~ of each year ~~thereafter~~, the Controller shall issue a warrant to each county, as applicable, in the amount certified by the Director of Finance under subdivision ~~(d)~~ (c).

Comment. Subdivision (a) of Section 16265.4 is amended to reflect the repeal of former Section 16265.3 (1987 Cal. Stat. ch. 1286, § 3). Formerly, subdivision (a) incorporated the calculation scheme of Section 16265.3 by reference. Due to the repeal of Section 16265.3, the calculation scheme is now stated in subdivision (a) itself.

Subdivision (a) is also amended to delete an obsolete reference to October 31, 1989.

Subdivision (b) is deleted as obsolete. The Director of Finance was to use the funding scheme prescribed in it only until the fiscal provisions of the Trial Court Funding Act of 1985 were fully implemented. See former Section 16265.6 (1987 Cal. Stat. ch. 1286, § 3). That has been achieved; the trial courts are now fully funded by the State. See Sections 77200-77213.

Former subdivisions (c)-(e) are relabeled as subdivisions (b)-(d). Those provisions are also amended to correct cross-references and delete obsolete references to dates in 1989.

Gov't Code § 16265.5 (amended). Allocations over $15,000,000

SEC. ____. Section 16265.5 of the Government Code is amended to read:

16265.5. If a statute appropriates more than fifteen million dollars ($15,000,000) for the purposes of this chapter in a fiscal year, then ~~Sections 16265.3 and~~ Section 16265.4 shall not apply to the allocation of that amount of money which is greater than fifteen million dollars ($15,000,000). It is the intent of the Legislature to allocate any amount of money greater than fifteen million dollars ($15,000,000) based on criteria which shall consider the costs to counties of welfare~~, justice programs,~~ and indigent health care.

Comment. Section 16265.5 is amended to reflect the repeal of former Section 16265.3 (1987 Cal. Stat. ch. 1286, § 3).

Section 16265.5 is also amended to delete an obsolete reference to justice programs. The funding under this chapter relating to justice programs was to discontinue upon full implementation of the fiscal provisions of the Trial Court Funding Act of 1985. See former

Section 16265.6 (1987 Cal. Stat. ch. 1286, § 3). That has been achieved; the trial courts are now fully funded by the state. See Sections 77200-77213.

Gov't Code § 16265.6 (repealed). Implementation of Trial Court Funding Act of 1985

SEC. ____. Section 16265.6 of the Government Code is repealed.

~~16265.6. Notwithstanding any other provision of this chapter, once the Legislature has fully implemented the fiscal provisions of the Trial Court Funding Act of 1985, as contained in Chapter 13 (commencing with Section 77000) of Title 8, the Director of Finance shall not make the determinations pursuant to subdivision (b) of Section 16265.3 and subdivisions (b) of Section 16265.4.~~

Comment. Section 16265.6 is repealed. It is no longer necessary due to the full implementation of the fiscal provisions of the Trial Court Funding Act of 1985, which provided a scheme of state funding for trial courts of participating counties. See 1985 Cal. Stat. ch. 1607, § 21. Although that Act was repealed in 1988, the trial courts have been fully funded by the state since the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997. See 1998 Cal. Stat. ch. 146, § 6; Sections 77200-77213; 1997 Cal. Stat. ch. 850, § 46 (enacting Lockyer-Isenberg Trial Court Funding Act); 1988 Cal. Stat. ch. 945, § 9 (repealing Trial Court Funding Act of 1985).

Gov't Code § 68618 (repealed). Delay reduction program

SEC. ____. Section 68618 of the Government Code is repealed.

~~68618. In each county which has opted under the Trial Court Funding Act of 1985 (Chapter 13 (commencing with Section 77000)), the superior court, at the option of the presiding judge, may elect to establish an exemplary delay reduction program pursuant to this article.~~

~~The presiding judge of a superior court electing to establish an exemplary delay reduction program shall notify the Judicial Council of that election, along with the identity of the judges who will participate in the program, and the date the program is scheduled to begin.~~

~~This section shall cease to be operative on July 1, 1992.~~

Comment. Section 68618 is repealed as obsolete. By its own terms, the provision ceased to operate on July 1, 1992.

Gov't Code § 71617 (repealed). Municipal court employees

SEC. ____. Section 71617 of the Government Code is repealed.

~~71617. To the extent this chapter applies to a municipal court, any action by the municipal court specifying the number, qualification, or compensation of officers or employees of the municipal court which differs from that prescribed by the Legislature pursuant to Section 5 of Article VI of the California Constitution shall remain in effect for a period of no more than two years unless prescribed by the Legislature within that period.~~

Comment. Section 71617 is repealed to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Welf. & Inst. Code § 603.5 (amended). Jurisdiction over minor charged with certain motor vehicle offenses

SEC. ____. Section 603.5 of the Welfare and Institutions Code is amended to read:

603.5. (a) Notwithstanding any other provision of law, in ~~counties which adopt~~ a county that adopts the provisions of this section, jurisdiction over the case of a minor alleged to have committed only a violation of the Vehicle Code classified as an infraction or a violation of a local ordinance involving the driving, parking, or operation of a motor vehicle, is with ~~the municipal court or~~ the superior court ~~in a county in which there is no municipal court~~, except that the court may refer to the juvenile court for adjudication, cases involving a minor who has been adjudicated a ward of the juvenile court, or who has other matters pending in the juvenile court.

(b) The cases specified in subdivision (a) shall not be governed by the procedures set forth in the juvenile court law.

(c) Any provisions of juvenile court law requiring that confidentiality be observed as to cases and proceedings, prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings shall not apply. The procedures for bail specified in Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of the Penal Code shall apply.

(d) The provisions of this section shall apply in a county in which the trial courts make the section applicable as to any matters to be heard and the court has determined that there is available funding for any increased costs.

Comment. Subdivision (a) of Section 603.5 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

Subdivision (a) is further amended to make stylistic revisions.
