

Memorandum 2008-64

Statutory Clarification and Simplification of CID Law: Status Report

In December 2007, the Commission finalized a recommendation on the statutory clarification and simplification of CID law. The Commission developed the proposed law over two and a half years of open public meetings, with all materials widely distributed to interested groups and individuals. On finalizing its recommendation, all substantive concerns raised by stakeholders had been addressed.

AB 1921 (Saldaña) was introduced in 2008 to implement that recommendation. Unfortunately, many of the groups and individuals that received the Commission's materials during the development of the recommendation did not raise objections to the proposed law until after AB 1921 had been introduced.

Considerable staff resources were required to address those late arising concerns, and a number of amendments were made. Most of the amendments were made to reverse substantive changes to existing law that the Commission had thought to be noncontroversial.

The time involved in working with the various interest groups delayed the bill in the Assembly. This led to a very short time for consideration of the bill in the Senate. The bill was referred to two policy committees. Each committee would have had little more than a week to review the 244-page bill.

That imposed an unreasonable burden on legislative committees charged with reviewing the bill. To complicate matters, an ad hoc group of CID attorneys raised new issues in the Senate and were actively opposed to the bill. In light of those events, the staff was informally asked to withdraw the bill for possible reintroduction later. The expectation was that the Commission would work with the Attorney Group to identify and address their concerns before reintroducing the proposed law. The bill was withdrawn.

On August 4, 2008, Commissioner Edmund Regalia and Executive Secretary Brian Hebert met with eight representatives of the Attorney Group: Sandra

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Bonato, Paul Dubrasich, Mary Filson, Mary Howell, F. Scott Jackson, Duncan McPherson, Deon Stein, and David Van Atta.

The purpose of the meeting was to discuss how the Attorney Group and the Commission could work together to address the Attorney Group's concerns about the proposed law. The meeting was congenial and productive.

It was decided that the Attorney Group would work to review the proposed law, under the auspices of a working group formed by the Real Property Section of the State Bar. They would aim to have a completed analysis of the proposed law, setting out their concerns, by the end of this year.

The Commission could then take as much time as is necessary in 2009 to work through whatever issues were identified and then prepare a revised draft of the proposed law. That draft could be circulated for further public review and comment. A revised final recommendation could be completed either that year or in 2010. This timeline would fit well with the practical necessity of introducing such a large bill in the first year of a legislative session (i.e., 2011), so that it can be considered as a "two-year bill" if necessary.

The staff has discussed this approach informally with legislative staff, who uniformly agree that this would be the best way to proceed. To push for reintroduction in 2009, without first giving full consideration of the Attorney Group's concerns, is not seen as a workable approach.

The staff has been in continued contact with the Attorney Group's working group, through its liaison, Curtis Sproul. Mr. Sproul reports that the group may not make its target of completing its review by the end of this year, but is making substantial progress and is committed to the process. Mr. Sproul is expected to provide the Commission with a letter summarizing the working group's progress to date and the work that remains to be done. That letter should be received in time for consideration at the December meeting.

Although it would be best if the working group's report were completed by the end of this year, as originally hoped, the staff is convinced that the working group is making a good faith effort and is on track to finish its work in a reasonable time frame. **The staff strongly recommends that the Commission wait for the results of this process before seeking reintroduction of implementing legislation.**

To do otherwise would put an unfair burden on the legislative committees charged with reviewing the proposed law and would very likely be counter-productive.

Respectfully submitted,

Brian Hebert
Executive Secretary