

## First Supplement to Memorandum 2013-34

**2013 Legislative Program (Status Report)**

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This supplement reports further on the status of Senate Bill 745 (Senate Committee on Transportation and Housing), and Senate Bill 752 (Roth), which together would implement three Commission recommendations relating to common interest developments.

Unless otherwise indicated, all statutory references in this supplement are to the Civil Code.

STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW  
(CLEAN-UP LEGISLATION)

Senate Bill 745 (Senate Committee on Transportation and Housing) would implement two Commission recommendations, *Statutory Clarification and Simplification of CID Law: Clean-Up Legislation* (Dec. 2012), and *Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation* (April 2013). (A draft of a revised version of the latter recommendation is scheduled to be considered by the Commission at its August meeting. See Memorandum 2013-42.)

Both recommendations propose minor clean-up revisions, following up on the enactment of a Commission recommendation to recodify the Davis-Stirling Common Interest Development Act (“Davis-Stirling Act”) (existing Sections 1350-1378, recodified as Sections 4000-6150). See 2012 Cal. Stat. ch. 180, *Statutory Clarification and Simplification of CID Law*, 40 Cal. L. Revision Comm’n Reports 249 (2010); 2012 Cal. Stat. ch. 180; 2012 Cal. Stat. ch. 181.

Each of the clean-up recommendations proposes a different revision of Section 4530 (a section in the recodified Davis-Stirling Act), with each revision accompanied by an approved Commission Comment. As the Commission

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

normally requests that legal publishers publish a single Commission Comment following the text of a section revised on Commission recommendation, the Commission should approve a merged single Comment that explains both recommended revisions of the section.

In addition, in drafting the two recommended revisions of Section 4530, the Office of Legislative Counsel reorganized the provisions of the section, to enhance the section's readability. This reorganization requires a further technical revision of the Commission Comment, in order to properly identify the location of the statutory revisions recommended by the Commission.

The first revision to Section 4530 recommended by the Commission would incorporate a 2012 amendment to the source provision for the section (Section 1368) that was chaptered out by the bill recodifying the Davis-Stirling Act. *Statutory Clarification and Simplification of CID Law: Clean-Up Legislation* (Dec. 2012), pp. 1, 13. The approved Comment corresponding to that revision reads as follows:

**Comment.** Subdivision (b) of Section 4530 is amended to continue, without substantive change, a revision to former Section 1368 made in 2012 by AB 2697 (Assembly Committee on Housing and Community Development). See 2012 Cal. Stat. ch. 770, § 4.5. This is a technical revision.

The second revision to Section 4530 recommended by the Commission would correct an erroneous cross-reference in the section. *Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation* (April 2013), pp. 3-4. The approved Comment corresponding to that revision reads as follows:

**Comment.** Paragraph (4) of subdivision (b) of Section 4530 is amended to correct an erroneous cross-reference.

After incorporating the reorganization of the section by the Office of Legislative Counsel, the staff recommends that **a revised consolidated Comment to Section 4530 read as follows:**

**Comment.** ~~Subdivision~~ Subdivisions (a) and (b) of Section 4530 ~~is~~ are amended to continue, without substantive change, a revision to former Section 1368 made in 2012 by AB 2697 (Assembly Committee on Housing and Community Development). See 2012 Cal. Stat. ch. 770, § 4.5. This is a technical revision.

~~Paragraph (4) of subdivision (b)~~ Subdivision (c) of Section 4530 is amended to correct an erroneous cross-reference.

## COMMERCIAL AND INDUSTRIAL COMMON INTEREST DEVELOPMENTS

Senate Bill 752 (Roth) would implement the Commission's recommendation on *Commercial and Industrial Common Interest Developments* (Aug. 2012). The bill would exempt exclusively commercial and industrial common interest developments ("CIDs") from the Davis-Stirling Act, and create a new statute (the "Commercial and Industrial Common Interest Development Act") that would apply only to these types of CIDs.

The language of most provisions of this new statute would substantially duplicate the language of corresponding provisions of the Davis-Stirling Act, in order to avoid an inference that corresponding provisions were intended to have different substantive meaning.

### **Coordination with SB 745**

As discussed above, Senate Bill 745, which is also presently pending before the Legislature, proposes a number of clean-up amendments to the Davis-Stirling Act that have been recommended by the Commission.

In order to maintain parallelism between the new commercial and industrial CID statute and the Davis-Stirling Act, the Commission authorized the staff to seek amendments to SB 752 to parallel the Commission-recommended revisions that would be implemented by SB 745. Minutes (June 2013), p. 3. Those amendments to SB 752 have been made, and now require revision of the Commission Comments corresponding to the amended sections.

The revisions recommended by the staff are presented below.

#### *Hierarchy of Governing Authority*

Senate Bill 745 would implement a recommendation by the Commission to revise Section 4205, a section of the Davis-Stirling Act relating to governing authority. *Statutory Clarification and Simplification of CID Law: Further Clean-Up Legislation* (April 2013), p. 3. A corresponding revision to proposed Section 6600, the section in the new commercial and industrial CID statute that would parallel Section 4205, has been incorporated in SB 752 as follows:

6600. (a) To the extent of any ~~inconsistency~~ conflict between the governing documents and the law, the law ~~controls~~ shall prevail.

(b) To the extent of any ~~inconsistency~~ conflict between the articles of incorporation and the declaration, the declaration ~~controls~~ shall prevail.

(c) To the extent of any ~~inconsistency~~ conflict between the bylaws and the articles of incorporation or declaration, the articles of incorporation or declaration ~~control~~ shall prevail.

(d) To the extent of any ~~inconsistency~~ conflict between the operating rules and the bylaws, articles of incorporation, or declaration, the bylaws, articles of incorporation, or declaration ~~control~~ shall prevail.

The Comment language approved by the Commission to explain the amendment to Section 4205 reads as follows:

**Comment.** Section 4205 is amended to clarify its meaning. The section is intended to provide guidance on how to resolve a conflict between the specified authorities. It is not intended to state a rule for determining when such a conflict exists.

The amendment would conform the terminology used in Section 4205 to that used in numerous other statutory provisions that establish a rule of supremacy between authority without exhaustively specifying the circumstances in which the rule is to be applied. See, e.g., Civ. Code §§ 799.10, 2924h, 5100(e); Educ. Code §§ 24953(h), 69522; Fish & Game Code § 7090(h); Food & Agric. Code § 13169; Health & Safety Code §§ 1568.065, 1787; Ins. Code § 11580.2; Pub. Res. Code §§ 2770.6, 2772.5, 71530; Pub. Util. Code § 5142; Veh. Code § 15200.

*Id.*

The staff recommends that **the Commission incorporate that language in a revision of the Comment to Section 6600, as follows:**

**Comment.** Section 6600 is added to clarify the relationship between the law and the most common types of governing documents. The section is intended to provide guidance on how to resolve a conflict between the specified authorities. It is not intended to state a rule for determining when such a conflict exists.

The terminology used is consistent with that used in numerous other statutory provisions that establish a rule of supremacy between authority without exhaustively specifying the circumstances in which the rule is to be applied. See, e.g., Civ. Code §§ 799.10, 2924h, 5100(e); Educ. Code §§ 24953(h), 69522; Fish & Game Code § 7090(h); Food & Agric. Code § 13169; Health & Safety Code §§ 1568.065, 1787; Ins. Code § 11580.2; Pub. Res. Code §§ 2770.6, 2772.5, 71530; Pub. Util. Code § 5142; Veh. Code § 15200.

Nothing in the section is intended to create an affirmative duty to amend a governing document to delete superseded material.

Subdivisions (a) and (b) of Section 6600 are new.

Subdivision (c) is consistent with Corporations Code Section 7151(c), providing that the bylaws shall be consistent with the articles of incorporation.

Subdivision (d) is drawn from Section 1357.110, providing that an operating rule may not be inconsistent with the declaration, articles of incorporation, or bylaws of the association.

See also Sections 6546 (“declaration”), 6552 (“governing documents”).

For a similar provision in the Davis-Stirling Common Interest Development Act, see Section 4205.

### *Validity of Operating Rule*

Senate Bill 745 would also implement a recommendation by the Commission to revise Section 4350, a provision relating to the validity of operating rules. Memorandum 2013-23, pp. 4-5; Minutes (June 2013), p. 4. A corresponding revision to proposed Section 6632, the section in the new commercial and industrial CID statute that would parallel Section 4350, has been incorporated in SB 752 as follows:

6632. An operating rule is valid and enforceable only if all of the following requirements are satisfied:

(a) The rule is in writing.

(b) The rule is within the authority of the board conferred by law or by the declaration, articles of incorporation or association, or bylaws of the association.

(c) The rule is not ~~inconsistent~~ in conflict with governing law and the declaration, articles of incorporation or association, ~~and~~ or bylaws of the association.

(d) The rule is reasonable, and is adopted, amended, or repealed in good faith.

The Comment language approved by the Commission to explain the amendment to Section 4350 reads as follows:

**Comment.** Section 4350 is amended to conform the terminology used in subdivision (c) to that used in Section 4205.

*Id.*

The staff recommends that **the Commission incorporate that language in a revision of the Comment to Section 6632, as follows:**

**Comment.** With respect to a commercial or industrial common interest development, Section 6632 continues Section 1357.110(a)-(c), the first part of (d), and (e), without change, except as indicated below.

The following nonsubstantive ~~change is~~ changes are made:

- The words “board of directors of the association” are replaced with “board.” See Section 6530 (“board”).

- Terminology used in subdivision (c) is conformed to that used in Section 6600.

See also Sections 6528 (“association”), 6546 (“declaration”), 6630 (“operating rule”).

For a similar provision in the Davis-Stirling Common Interest Development Act, see Section 4350.

#### *Approval by Majority of Quorum of Members*

Senate Bill 745 would also implement a recommendation by the Commission to revise Section 4070, a provision relating to voting in a CID. Memorandum 2013-23, pp. 2-3; Minutes (June 2013), pp. 3-4. A corresponding revision to proposed Section 6524, the section in the new commercial and industrial CID statute that would parallel Section 4070, has been incorporated in SB 752 as follows:

6524. If a provision of this act requires that an action be approved by a majority of a quorum of the members, the action shall be approved or ratified by an affirmative vote of a majority of the votes represented and voting ~~at a duly held meeting at which a quorum is present~~ in a duly held election in which a quorum is represented, which affirmative votes also constitute a majority of the required quorum.

The Comment language approved by the Commission to explain the amendment to Section 4070 reads as follows:

**Comment.** Section 4070 is amended to make clear that it applies to any lawfully conducted member election, whether conducted at a meeting, by mailed ballot pursuant to Sections 5100-5145, or by any other lawful means.

*Id.*

This language cannot be fully incorporated in the previously approved Comment to Section 6524, because it references statutory provisions that do not exist in the new commercial and industrial CID statute. The staff therefore recommends that **the Commission approve a revised Comment to Section 6524 that incorporates as much of the language above as possible, as follows:**

**Comment.** Section 6524 is new. It is added for drafting convenience. This section only ~~governs an~~ applies to any member election conducted pursuant to a provision of this act (i.e., the Commercial and Industrial Common Interest Development Act), whether conducted at a meeting, by mailed ballot, or by any other lawful means. An election that is not required by this act would be governed by the association’s governing documents.

See also Section 6554 (“member”).  
For a similar provision in the Davis-Stirling Common Interest Development Act, see Section 4070.

### **Implementation of Recommendation on Commercial and Industrial Subdivisions**

At its April 2013 meeting, the Commission approved a recommendation on *Commercial and Industrial Subdivisions* (April 2013). Minutes (Apr. 2013), p. 3. That recommendation clarified the meaning of what constitutes a “commercial or industrial” subdivision for purposes of the Subdivided Lands Act, and made a parallel clarification relating to what constitutes a “commercial or industrial” CID for purposes of the Davis-Stirling Act.

Because of the close relationship between that recommendation and the law proposed in SB 752, the staff requested that SB 752 be amended to include the reforms proposed in the recommendation on *Commercial and Industrial Subdivisions*.

One of those recommended reforms is the proposed amendment of Section 4202, which defines what constitutes a “commercial or industrial CID” for purposes of that act:

#### **Civ. Code § 4202 (amended). Nonresidential common interest development exemptions**

SEC. 3. Section 4202 of the Civil Code is amended to read:

4202. (a) ~~The following provisions do not apply to a commercial or industrial common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:~~

....

(c) For the purposes of this section:

(1) “Commercial or industrial common interest development” means a common interest development that is limited to industrial or commercial uses by law or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located.

(2) “Commercial use” includes, but is not limited to, the operation of a business that provides facilities for the overnight stay of its customers, employees, or agents.

**Comment.** Section 4202 is amended to make clear that the section applies when any law, not just a zoning law, limits a subdivision to commercial or industrial uses. See, e.g., Health &

Safety Code § 25232(b) (restricting residential use of property that is on the “border-zone” of hazardous contamination). See also Health & Safety Code § 25117.4 (“border-zone property” defined).

Paragraph (c)(2) is new. It is added to make clear that the operation of a business that provides facilities for overnight stays by its customers, employees, or agents is a commercial use. For example, under this provision the operation of a hotel, inpatient medical facility, or apartment complex is a commercial use. Similarly, the operation of a business that provides overnight living space to its employees and agents is a commercial use.

This proposed amendment of Section 4202 has been incorporated in SB 752. Further, in order to maintain parallelism between Section 4202 and the section defining “commercial or industrial CID” in the new commercial and industrial CID statute (Section 6531), a corresponding amendment was made to Section 6531:

6531. A “commercial or industrial common interest development” means a common interest development that is limited to industrial or commercial uses by ~~zoning law~~ or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located. For the purposes of this section, “commercial use” includes, but is not limited to, the operation of a business that provides facilities for the overnight stay of its customers, employees, or agents.

However, this amendment to Section 6531 now requires a revision of the previously approved Commission Comment for the section.

The staff recommends that **the Commission do so by incorporating language from the approved Comment relating to the amendment of Section 4202, so that a revised Comment to Section 6531 reads as follows:**

**Comment.** Section 6531 is drawn from Section 1373(a). ~~It is added for drafting convenience.~~ However, Section 6531 makes clear that it applies when any law, not just a zoning law, limits a subdivision to commercial or industrial uses. See, e.g., Health & Safety Code § 25232(b) (restricting residential use of property that is on the “border-zone” of hazardous contamination). See also Health & Safety Code § 25117.4 (“border-zone property” defined).

The last sentence of Section 6531 is new. It is added to make clear that the operation of a business that provides facilities for overnight stays by its customers, employees, or agents is a commercial use. For example, under this provision the operation of a hotel, inpatient medical facility, or apartment complex is a commercial use. Similarly, the operation of a business that provides



overnight living space to its employees and agents is a commercial use.

See also Section 6534 (“common interest development”).

For a similar provision in the Davis-Stirling Common Interest Development Act, see Section 4202.

### **Amendment Requested by Community Associations Institute**

At its June meeting, the Commission found an amendment to SB 752 requested by the Community Associations Institute – California Legislative Action Committee (“CAI-CLAC”) to be compatible with the Commission’s recommendation. Memorandum 2013-22, pp. 3-4; Minutes (June 2013), p. 3. That amendment, to proposed Section 6512, appears below:

6512. (a) If a provision of this act requires that a document be delivered to an association, the document shall be delivered to the person designated to receive documents on behalf of the association, in a written notice delivered by the association to members by individual delivery. If notice of this designation has not been given, the document shall be delivered to the president or secretary of the association.

(b) A document delivered pursuant to this section may be delivered by any of the following methods:

(1) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier.

(2) By email, facsimile, or other electronic means, if the association has assented to that method of delivery.

(3) By personal delivery, if the association has assented to that method of delivery. If the association accepts a document by personal delivery it shall provide a written receipt acknowledging delivery of the document.

This revision to Section 6512 is not a part of any Commission recommendation. Nevertheless, it has been the Commission’s historical practice in such a scenario to approve and publish a revised Comment corresponding to the revised section, if doing so would clarify the meaning of the revised section without implying Commission authorship of the revision.

In this case, an appropriate revision to the Commission’s previously approved Comment to Section 6512 would simply incorporate a helpful reference to a statutorily defined term.

The staff therefore recommends that **the Commission approve the following revision to the Comment to Section 6512:**

**Comment.** Section 6512 is new. It provides a standard rule for delivery of a document to the association.

See also ~~Section~~ Sections 6514 (individual delivery), 6520 (electronic delivery).

See also Section 6528 (“association”).

For a similar provision in the Davis-Stirling Common Interest Development Act, see Section 4035.

### **Possible Amendments to Address Fiscal Concerns**

The Secretary of State’s office recently contacted Senator Roth’s staff to express concern about the fiscal effect of SB 752. Specifically, they are concerned that the bill would impose significant implementation costs on their agency. Their concerns arise from two changes that the bill would make, both of which relate to statutory filing requirements. Those concerns, and the amendments proposed to address them, are discussed below.

#### *Articles of Incorporation and Biennial Statement*

Existing Section 4280 (which continues former Section 1363.5) provides special rules that a CID must follow when filing its articles of incorporation and when filing the biennial statement required by Corporations Code Section 8210:

4280. (a) The articles of incorporation of an association filed with the Secretary of State shall include a statement, which shall be in addition to the statement of purposes of the corporation, that does all of the following:

(1) Identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

(2) States the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the front street and nearest cross street for the physical location of the common interest development.

(3) States the name and address of the association’s managing agent, if any.

(b) The statement filed by an incorporated association with the Secretary of State pursuant to Section 8210 of the Corporations Code shall also contain a statement identifying the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

Proposed Section 6622 would continue that requirement for commercial and industrial CIDs, with minor adjustments to reflect the different statute that would govern such CIDs:

6622. (a) The articles of incorporation of an association filed with the Secretary of State shall include a statement, which shall be

in addition to the statement of purposes of the corporation, that does all of the following:

(1) Identifies the corporation as an association formed to manage a common interest development *under the Commercial and Industrial Common Interest Development Act*.

(2) States the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the front street and nearest cross street for the physical location of the common interest development.

(3) States the name and address of the association's managing agent, if any.

(b) The statement filed by an incorporated association with the Secretary of State pursuant to Section 8210 of the Corporations Code shall also contain a statement identifying the corporation as an association formed to manage a common interest development *under the Commercial and Industrial Common Interest Development Act*.

(Emphasis added.)

The Secretary of State is concerned that the changes in Section 6622 could increase their workload. The concern seems to be that the changes might be seen as invalidating previously filed documents (which would not include the newly required language shown in italics above). This could lead some commercial and industrial CIDs to conclude that they must file new documents.

The proposed solution is to add a savings clause to Sections 4280 and 6622, making clear that the new law does not invalidate previously filed documents, thus:

(c) Documents filed prior to January 1, 2014, in compliance with former Section 1363.5, are deemed to be in compliance with this section.

That strikes the staff as a reasonable rule. The Commission had no intention that the new commercial CID law would invalidate previously filed documents. **The staff recommends that the Commission assent to such an amendment, if Senator Roth decides to make it.**

If those amendments are made, **the staff recommends that the Commission make conforming revisions to its Comments**, thus:

#### **Civ. Code § 6622 (amended). Content of articles**

**Comment.** With respect to a commercial or industrial common interest development, Section 6622 continues Section 1363.5 without change, except as indicated below.

The following substantive ~~change is~~ changes are made:

- A cross-reference to the definition of “managing agent” is not continued.
- A reference to this act is substituted for a reference to the Davis Stirling Common Interest Development Act.

The following nonsubstantive ~~change is~~ changes are made:

- References to “common interest development association” have been standardized.
- Subdivision (c) is added to make clear that the section does not invalidate documents that were filed in compliance with former law.

Nothing in paragraph (a)(3) precludes an owner of a separate interest from serving as the association’s managing agent.

See also Corp. Code §§ 1502 (annual statement), 7130-7135 (content of articles of incorporation), 7810-7820 (amendment of articles of incorporation), 7150-7153 (content and amendment of bylaws).

See also Sections 6528 (“association”), 6534 (“common interest development”).

For a similar provision in the Davis-Stirling Common Interest Development Act, see Section 4280.

**Civ. Code § 4280 (amended). Content of articles**

**Comment.** Subdivision (c) is new. It makes clear that the section does not invalidate documents that were filed in compliance with former law.

*Informational Filing*

Existing Section 5405 (which continues former Section 1363.6) requires that CIDs file a special informational statement with the Secretary of State. The Commission had recommended that the requirement continue to apply to commercial and industrial CIDs, thus:

6760. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars (\$30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the Commercial and Industrial Common Interest Development Act.

(2) The name of the association.

(3) The street address of the business or corporate office of the association, if any.

(4) The street address of the association's onsite office if different from the street address of the business or corporate office, or if there is no onsite office, the street address of the responsible officer or managing agent of the association.

(5) The name, address, and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent.

(6) The name, street address, and daytime telephone number of the association's managing agent, if any.

(7) The county, and, if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.

(8) If the development is in an unincorporated area, the city closest in proximity to the development.

(9) The front street and nearest cross street of the physical location of the development.

(10) The type of common interest development managed by the association.

(11) The number of separate interests in the development.

(b) The association shall submit the information required by this section as follows:

(1) By incorporated associations, within 90 days after the filing of its original articles of incorporation, and thereafter at the time the association files its statement of principal business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

(2) By unincorporated associations, in July of 2003, and in that same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).

(c) The association shall notify the Secretary of State of any change in the street address of the association's onsite office or of the responsible officer or managing agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.

(d) The penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

(e) The statement required by this section may be filed, notwithstanding suspension of the corporate powers, rights, and privileges under this section or under provisions of the Revenue and Taxation Code. Upon the filing of a statement under this section by a corporation that has suffered suspension under this section, the Secretary of State shall certify that fact to the Franchise

Tax Board and the corporation may thereupon be relieved from suspension, unless the corporation is held in suspension by the Franchise Tax Board by reason of Section 23301, 23301.5, or 23775 of the Revenue and Taxation Code.

(f) The Secretary of State shall make the information submitted pursuant to paragraph (5) of subdivision (a) available only for governmental purposes and only to Members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The information submitted pursuant to this section shall be made available for governmental or public inspection.

(g) Whenever any form is filed pursuant to this section, it supersedes any previously filed form.

(h) The Secretary of State may destroy or otherwise dispose of any form filed pursuant to this section after it has been superseded by the filing of a new form.

When the bill was being considered in the Senate, the staff of the Senate Committee on Transportation and Housing suggested that Section 6760 be removed from the bill. Senator Roth agreed to do so and the bill was amended accordingly. The Commission assented to that change. See First Supplement to Memorandum 2013-10, pp. 1-4, Minutes (April 2013), p. 2.

The Secretary of State has concluded that discontinuation of the filing requirement (by deleting proposed Section 6760) would create significant administrative costs for their agency, as they would need to retool their programs and processes to account for the change in practice that would result.

It is not yet known whether Senator Roth will decide to restore proposed Section 6760 to his bill. However, there is no need for the Commission to assent to such a change in advance, as it would simply restore a provision that the Commission has already recommended.

However, there is one minor wrinkle worth mentioning. In proposing that Section 6760 be restored, the Secretary of State's office also suggested adding a new piece of information to the disclosures that the section requires. They would also require that the CID state whether it is "limited to commercial or industrial purposes by law or by a recorded declaration of covenants, conditions, or restrictions." That language is drawn from the proposed definition of "commercial or industrial" CID, which requires such a limitation. See proposed Section 6531.

While the staff is somewhat skeptical of the benefit of adding the new requirement, it is probably harmless. **Does the Commission have any view on whether such a provision should be added (if the section is restored to the bill)?**

Respectfully submitted,

Steve Cohen  
Staff Counsel

Brian Hebert  
Executive Director