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SCR-91 California Law Revision Commission: studies. (2017-2018)

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Senate Concurrent Resolution No. 91

CHAPTER 158

Relative to California Law Revision Commission.

[Filed with Secretary of State August 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SCR 91, Roth. California Law Revision Commission: studies.

Existing law requires the California Law Revision Commission to study, and limits the commission to studying, topics approved by resolution of the Legislature or by statute.

This measure would grant approval to the commission to continue its study of designated topics that the Legislature previously authorized or directed the commission to study. The measure also would authorize and request the commission to study and report on topics relating to hazardous waste control and hazardous substances.

The measure would require the commission, before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, to submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction, as specified. If a major change to the scope of work occurs during the course of the project, the measure would require the commission to submit a description of the change. The measure would invite commission staff members to appear and testify at committee hearings on bills to implement commission recommendations. The measure would request the commission to provide a copy of a commission recommendation to each member of a policy committee that is hearing a bill that would implement the recommendation.

Fiscal Committee: yes

WHEREAS, The California Law Revision Commission is authorized to study topics set forth in the calendar contained in its report to the Governor and the Legislature that have been or are thereafter approved for study by concurrent resolution of the Legislature, and topics that have been referred to the commission for study by concurrent resolution of the Legislature or by statute; and

WHEREAS, The commission, in its annual report covering its activities for 2017 and 2018, recommends continued study of 24 topics, all of which the Legislature has previously authorized or directed the commission to study; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for continued study by the California Law Revision Commission the topics listed below, all of which the Legislature has previously authorized or directed the commission to study:

- (1) Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters.
- (2) Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code, and related matters.
- (3) Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or relating to land, powers of termination, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant on assignment, subletting, termination, or abandonment of a lease, and related matters.
- (4) Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code.
- (5) Whether the law relating to discovery in civil cases should be revised.
- (6) Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.
- (7) Whether the Evidence Code should be revised.
- (8) Whether the law relating to arbitration, mediation, and other alternative dispute resolution techniques should be revised.
- (9) Whether there should be changes to administrative law.
- (10) Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised.
- (11) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California.
- (12) Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification.
- (13) Whether the law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters.
- (14) Whether the law governing common interest housing developments should be revised to clarify the law, eliminate unnecessary or obsolete provisions, consolidate existing statutes in one place in the codes, establish a clear, consistent, and unified policy with regard to formation and management of these developments and transaction of real property interests located within them, and to determine to what extent they should be subject to regulation.
- (15) Whether the statutes of limitation for legal malpractice actions should be revised to recognize equitable tolling or other adjustment for the circumstances of simultaneous litigation, and related matters.
- (16) Whether the law governing disclosure of public records and the law governing protection of privacy in public records should be revised to better coordinate them, including consolidation and clarification of the scope of required disclosure and creation of a single set of disclosure procedures, to provide appropriate enforcement mechanisms, and to ensure that the law governing disclosure of public records adequately treats electronic information, and related matters.
- (17) Whether the law governing criminal sentences for enhancements relating to weapons or injuries should be revised to simplify and clarify the law and eliminate unnecessary or obsolete provisions.
- (18) Whether the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code) and the Mitigation Fee Act (Chapter 5 (commencing with Section 66000), Chapter 6 (commencing with Section 66010), Chapter 7 (commencing with Section 66012), Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020) of Division 1 of Title 7 of the Government Code) should be revised to improve their organization, resolve inconsistencies, and clarify and rationalize provisions, and related matters.
- (19) Whether the Uniform Statute and Rule Construction Act (1995) should be adopted in California in whole or in part, and related matters.
- (20) Whether the law governing the place of trial in a civil case should be revised.

(21) Analysis of the legal and policy implications of treating a charter school as a public entity for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(22) Whether the Fish and Game Code and related statutory law should be revised to improve its organization, clarify its meaning, resolve inconsistencies, eliminate unnecessary or obsolete provisions, standardize terminology, clarify program authority and funding sources, and make other minor improvements, without making any significant substantive change to the effect of the law.

(23) (A) Analysis of the relationship under current law between mediation confidentiality and attorney malpractice and other misconduct, and the purposes for, and impact of, those laws on public protection, professional ethics, attorney discipline, client rights, the willingness of parties to participate in voluntary and mandatory mediation, and the effectiveness of mediation, as well as any other issues that the commission deems relevant. Among other matters, the commission shall consider the following:

(i) Sections 703.5, 958, and 1119 of the Evidence Code and predecessor provisions, as well as California court rulings, including, but not limited to, *Cassel v. Superior Court* (2011) 51 Cal.4th 113, *Porter v. Wyner* (2010) 183 Cal.App.4th 949, and *Wimsatt v. Superior Court* (2007) 152 Cal.App.4th 137.

(ii) The availability and propriety of contractual waivers.

(iii) The law in other jurisdictions, including the Uniform Mediation Act, as it has been adopted in other states, other statutory acts, scholarly commentary, judicial decisions, and any data regarding the impact of differing confidentiality rules on the use of mediation.

(B) In studying this matter, the commission shall request input from experts and interested parties, including, but not limited to, representatives from the California Supreme Court, the State Bar of California, legal malpractice defense counsel, other attorney groups and individuals, mediators, and mediation trade associations. The commission shall make any recommendations that it deems appropriate for the revision of California law to balance the competing public interests between confidentiality and accountability.

(24) The Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation as soon as possible, considering the commission's preexisting duties and workload demands, concerning revision of the California Public Records Act and related provisions, and that this legislation shall accomplish all of the following objectives.

(A) Reduce the length and complexity of current sections.

(B) Avoid unnecessary cross-references.

(C) Neither expand nor contract the scope of existing exemptions to the general rule that records are open to the public pursuant to the current provisions of the Public Records Act.

(D) To the extent compatible with (C), use terms with common definitions.

(E) Organize the existing provisions in such a way that similar provisions are located in close proximity to one another.

(F) Eliminate duplicative provisions.

(G) Clearly express legislative intent without any change in the substantive provisions; and be it further

Resolved, That the Legislature authorizes and requests that the California Law Revision Commission study, report on, and prepare recommended legislation to revise Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, and related provisions, to improve the organization and expression of the law. Such revisions may include, but are not limited to, grouping similar provisions together, reducing the length and complexity of sections, eliminating obsolete or redundant provisions, and correcting technical errors. The recommended revisions shall not make any substantive changes to the law. The commission's report shall also include a list of substantive issues that the commission identifies in the course of its work, for possible future study; and be it further

Resolved, That before commencing work on any project within the calendar of topics the Legislature has authorized or directed the commission to study, the commission shall submit a detailed description of the scope of work to the chairs and vice chairs of the Assembly Committee on Judiciary and the Senate Committee on Judiciary, and any other policy committee that has jurisdiction over the subject matter of the study, and if during the course of the project there is a major change to the scope of work, submit a description of the change; and be it further

Resolved, That the staff of the commission is invited to appear and testify at any committee hearing of a bill to implement a commission recommendation, for the purpose of explaining the recommendation and answering questions posed by committee

members, provided that the staff may not advocate for the passage or defeat of the legislation; and be it further

Resolved, That the commission is requested to provide a copy of a commission recommendation to each member of a policy committee that is hearing a bill that would implement the recommendation; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the California Law Revision Commission and to the author for appropriate distribution.