

Introduced by Senator Monning

February 20, 2014

Senate Concurrent Resolution No. 83—Relative to the California Law Revision Commission.

LEGISLATIVE COUNSEL'S DIGEST

SCR 83, as introduced, Monning. 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.

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 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 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. The measure would also invite a staff member of the commission to appear and testify at any committee hearing of a bill to implement a commission recommendation. The measure would also 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: no.

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

8 WHEREAS, The commission, in its annual report covering its
9 activities for 2013 and 2014, recommends continued study of 23
10 topics, all of which the Legislature has previously authorized or
11 directed the commission to study; now, therefore, be it

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

17 (1) Whether the law should be revised that relates to creditors'
18 remedies, including, but not limited to, attachment, garnishment,
19 execution, repossession of property (including the claim and
20 delivery statute, self-help repossession of property, and the
21 Commercial Code provisions on repossession of property),
22 confession of judgment procedures, default judgment procedures,
23 enforcement of judgments, the right of redemption, procedures
24 under private power of sale in a trust deed or mortgage, possessory
25 and nonpossessory liens, insolvency, and related matters.

26 (2) Whether the California Probate Code should be revised,
27 including, but not limited to, the issue of whether California should
28 adopt, in whole or in part, the Uniform Probate Code, and related
29 matters.

30 (3) Whether the law should be revised that relates to real and
31 personal property, including, but not limited to, a marketable title
32 act, covenants, servitudes, conditions, and restrictions on land use
33 or relating to land, powers of termination, escheat of property and
34 the disposition of unclaimed or abandoned property, eminent
35 domain, quiet title actions, abandonment or vacation of public
36 streets and highways, partition, rights and duties attendant on
37 assignment, subletting, termination, or abandonment of a lease,
38 and related matters.

39 (4) Whether the law should be revised that relates to family law,
40 including, but not limited to, community property, the adjudication

1 of child and family civil proceedings, child custody, adoption,
2 guardianship, freedom from parental custody and control, and
3 related matters, including other subjects covered by the Family
4 Code.

5 (5) Whether the law relating to discovery in civil cases should
6 be revised.

7 (6) Whether the law relating to the rights and disabilities of
8 minors and incompetent persons should be revised.

9 (7) Whether the Evidence Code should be revised.

10 (8) Whether the law relating to arbitration, mediation, and other
11 alternative dispute resolution techniques should be revised.

12 (9) Whether there should be changes to administrative law.

13 (10) Whether the law relating to the payment and the shifting
14 of attorney's fees between litigants should be revised.

15 (11) Whether the Uniform Unincorporated Nonprofit
16 Association Act, or parts of that uniform act, and related provisions
17 should be adopted in California.

18 (12) Recommendations to be reported pertaining to statutory
19 changes that may be necessitated by court unification.

20 (13) Whether the law of contracts should be revised, including
21 the law relating to the effect of electronic communications on the
22 law governing contract formation, the statute of frauds, the parol
23 evidence rule, and related matters.

24 (14) Whether the law governing common interest housing
25 developments should be revised to clarify the law, eliminate
26 unnecessary or obsolete provisions, consolidate existing statutes
27 in one place in the codes, establish a clear, consistent, and unified
28 policy with regard to formation and management of these
29 developments and transaction of real property interests located
30 within them, and to determine to what extent they should be subject
31 to regulation.

32 (15) Whether the statutes of limitation for legal malpractice
33 actions should be revised to recognize equitable tolling or other
34 adjustment for the circumstances of simultaneous litigation, and
35 related matters.

36 (16) Whether the law governing disclosure of public records
37 and the law governing protection of privacy in public records
38 should be revised to better coordinate them, including consolidation
39 and clarification of the scope of required disclosure and creation
40 of a single set of disclosure procedures, to provide appropriate

1 enforcement mechanisms, and to ensure that the law governing
2 disclosure of public records adequately treats electronic
3 information, and related matters.

4 (17) Whether the law governing criminal sentences for
5 enhancements relating to weapons or injuries should be revised to
6 simplify and clarify the law and eliminate unnecessary or obsolete
7 provisions.

8 (18) Whether the Subdivision Map Act (Division 2 (commencing
9 with Section 66410) of Title 7 of the Government Code) and the
10 Mitigation Fee Act (Chapter 5 (commencing with Section 66000),
11 Chapter 6 (commencing with Section 66010), Chapter 7
12 (commencing with Section 66012), Chapter 8 (commencing with
13 Section 66016), and Chapter 9 (commencing with Section 66020)
14 of Division 1 of Title 7 of the Government Code) should be revised
15 to improve their organization, resolve inconsistencies, and clarify
16 and rationalize provisions, and related matters.

17 (19) Whether the Uniform Statute and Rule Construction Act
18 (1995) should be adopted in California in whole or in part, and
19 related matters.

20 (20) Whether the law governing the place of trial in a civil case
21 should be revised.

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

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

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

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

6 (ii) The availability and propriety of contractual waivers.

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

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

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

30 *Resolved*, That the staff of the commission is invited to appear
31 and testify at any committee hearing of a bill to implement a
32 commission recommendation, for the purpose of explaining the
33 recommendation and answering questions posed by committee
34 members, provided that the staff may not advocate for the passage
35 or defeat of the legislation; and be it further

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

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

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