

Assembly Concurrent Resolution

No. 148

Introduced by Assembly Member Chau
(Coauthor: Senator Roth)

March 3, 2016

Assembly Concurrent Resolution No. 148—Relative to the California Law Revision Commission.

LEGISLATIVE COUNSEL'S DIGEST

ACR 148, as introduced, Chau. 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 would also authorize and request the commission to study, report on, and prepare recommended legislation as soon as possible concerning the revision of the portions of the Government Code relating to public records that would accomplish specified goals, including, among other things, reducing the length and complexity of current sections and clearly expressing legislative intent without any change in the substantive provisions.

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, to 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: yes.

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 2015 and 2016, 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 Assembly of the State of California, the Senate*
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.

1 (3) Whether the law should be revised that relates to real and
2 personal property, including, but not limited to, a marketable title
3 act, covenants, servitudes, conditions, and restrictions on land use
4 or relating to land, powers of termination, escheat of property and
5 the disposition of unclaimed or abandoned property, eminent
6 domain, quiet title actions, abandonment or vacation of public
7 streets and highways, partition, rights and duties attendant on
8 assignment, subletting, termination, or abandonment of a lease,
9 and related matters.

10 (4) Whether the law should be revised that relates to family law,
11 including, but not limited to, community property, the adjudication
12 of child and family civil proceedings, child custody, adoption,
13 guardianship, freedom from parental custody and control, and
14 related matters, including other subjects covered by the Family
15 Code.

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

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

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

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

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

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

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

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

31 (13) Whether the law of contracts should be revised, including
32 the law relating to the effect of electronic communications on the
33 law governing contract formation, the statute of frauds, the parol
34 evidence rule, and related matters.

35 (14) Whether the law governing common interest housing
36 developments should be revised to clarify the law, eliminate
37 unnecessary or obsolete provisions, consolidate existing statutes
38 in one place in the codes, establish a clear, consistent, and unified
39 policy with regard to formation and management of these
40 developments and transaction of real property interests located

1 within them, and to determine to what extent they should be subject
2 to regulation.

3 (15) Whether the statutes of limitation for legal malpractice
4 actions should be revised to recognize equitable tolling or other
5 adjustment for the circumstances of simultaneous litigation, and
6 related matters.

7 (16) Whether the law governing disclosure of public records
8 and the law governing protection of privacy in public records
9 should be revised to better coordinate them, including consolidation
10 and clarification of the scope of required disclosure and creation
11 of a single set of disclosure procedures, to provide appropriate
12 enforcement mechanisms, and to ensure that the law governing
13 disclosure of public records adequately treats electronic
14 information, and related matters.

15 (17) Whether the law governing criminal sentences for
16 enhancements relating to weapons or injuries should be revised to
17 simplify and clarify the law and eliminate unnecessary or obsolete
18 provisions.

19 (18) Whether the Subdivision Map Act (Division 2 (commencing
20 with Section 66410) of Title 7 of the Government Code) and the
21 Mitigation Fee Act (Chapter 5 (commencing with Section 66000),
22 Chapter 6 (commencing with Section 66010), Chapter 7
23 (commencing with Section 66012), Chapter 8 (commencing with
24 Section 66016), and Chapter 9 (commencing with Section 66020)
25 of Division 1 of Title 7 of the Government Code) should be revised
26 to improve their organization, resolve inconsistencies, and clarify
27 and rationalize provisions, and related matters.

28 (19) Whether the Uniform Statute and Rule Construction Act
29 (1995) should be adopted in California in whole or in part, and
30 related matters.

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

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

37 (22) Whether the Fish and Game Code and related statutory law
38 should be revised to improve its organization, clarify its meaning,
39 resolve inconsistencies, eliminate unnecessary or obsolete
40 provisions, standardize terminology, clarify program authority and

1 funding sources, and make other minor improvements, without
2 making any significant substantive change to the effect of the law.

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

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

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

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

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

31 *Resolved*, That the Legislature authorizes and requests that the
32 California Law Revision Commission study, report on, and prepare
33 recommended legislation as soon as possible, considering the
34 commission's preexisting duties and workload demands,
35 concerning the revision of the portions of the Government Code
36 relating to public records, and that this legislation shall accomplish
37 all of the following objectives:

38 (1) Reduce the length and complexity of current sections.

39 (2) Avoid unnecessary cross-references.

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

4 (4) To the extent compatible with (3), use terms with common
5 definitions.

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

8 (6) Eliminate duplicative provisions.

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

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

20 *Resolved*, That the staff of the commission is invited to appear
21 and testify at any committee hearing of a bill to implement a
22 commission recommendation, for the purpose of explaining the
23 recommendation and answering questions posed by committee
24 members, provided that the staff may not advocate for the passage
25 or defeat of the legislation; and be it further

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

30 *Resolved*, That the Chief Clerk of the Assembly transmit copies
31 of this resolution to the California Law Revision Commission and
32 to the author for appropriate distribution.