

AMENDED IN SENATE MAY 26, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## Assembly Concurrent Resolution

No. 148

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**Introduced by Assembly Member Chau**  
(Coauthor: Senator Roth)

March 3, 2016

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

### LEGISLATIVE COUNSEL’S DIGEST

ACR 148, as amended, 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~~ *California Public Records Act and related provisions* 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

1 adopt, in whole or in part, the Uniform Probate Code, and related  
2 matters.

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

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

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

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

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

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

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

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

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

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

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

37 (14) Whether the law governing common interest housing  
38 developments should be revised to clarify the law, eliminate  
39 unnecessary or obsolete provisions, consolidate existing statutes  
40 in one place in the codes, establish a clear, consistent, and unified

1 policy with regard to formation and management of these  
2 developments and transaction of real property interests located  
3 within them, and to determine to what extent they should be subject  
4 to regulation.

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

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

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

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

30 (19) Whether the Uniform Statute and Rule Construction Act  
31 (1995) should be adopted in California in whole or in part, and  
32 related matters.

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

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

39 (22) Whether the Fish and Game Code and related statutory law  
40 should be revised to improve its organization, clarify its meaning,

1 resolve inconsistencies, eliminate unnecessary or obsolete  
2 provisions, standardize terminology, clarify program authority and  
3 funding sources, and make other minor improvements, without  
4 making any significant substantive change to the effect of the law.

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

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

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

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

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

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

- 1 (1) Reduce the length and complexity of current sections.
- 2 (2) Avoid unnecessary cross-references.
- 3 (3) Neither expand nor contract the scope of existing exemptions
- 4 to the general rule that records are open to the public pursuant to
- 5 the current provisions of the Public Records Act.
- 6 (4) To the extent compatible with (3), use terms with common
- 7 definitions.
- 8 (5) Organize the existing provisions in such a way that similar
- 9 provisions are located in close proximity to one another.
- 10 (6) Eliminate duplicative provisions.
- 11 (7) Clearly express legislative intent without any change in the
- 12 substantive provisions; and be it further

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

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

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

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