California Legislation: Sources Unlimited

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EMIL STECK, JR.*

America has long been viewed as a nation which affords its citizens freedoms unmatched in comparison with those available elsewhere. However, no extended thought is required to realize that, without appreciable exception, our personal conduct and our property and its use are increasingly subject to prohibitory, regulatory, and revenue producing legislation. Even after our passing, today's legislation will continue to govern the taxation of our lifetime acquisitions, and the disposition of the balance of such acquisitions among our donees and creditors.

Obviously, our "freedom" is not found in any ability to pursue our objectives unhampered by legislative controls. If the term "freedom" is to retain any meaning in the future as new laws and regulations multiply, we must be increasingly concerned that such laws result in reasonable and necessary regulations, rather than in unreasonable or unnecessary restraint, regimentation, or bureaucracy.

It is hoped that an examination of the principal sources of legislation in California will stimulate reader interest in these sources and in their utilization for development of worthwhile legislation. Such an examination will be aided by a brief threshold analysis of the expanding volume of California legislation, of some of the underlying causes for such expansion, and of possible safeguards which serve to curb the quantity of new legislation while correspondingly improving its quality.¹

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¹ The judicial attitude toward the current quantity and quality of legislation has found expression in a series of articles written by the Honorable Roger J. Traynor, former Chief Justice of the California Supreme Court.
The Volume of California Legislation

In 1931, the library of the well-equipped California attorney contained one shelf of Deering’s California legislation consisting of three volumes of General Laws, the Civil Code, the Penal Code, two volumes of the Political Code, the Code of Civil Procedure and the Probate Code combined into one volume, and the California Constitution. In that year an additional volume was published entitled “Supplement to Political and School Code.” The most convincing proof of the extent to which public regulation of all of us has mushroomed within a short period of 45 years is found in the circumstance that today the library of the well-equipped California attorney contains a set of Deering’s California Codes (or a comparable set of West’s California Codes) consisting of 128 volumes of statutes and annotations. In addition, as a result of 1941 California legislation, there is also an Administrative Code in which all regulations issued by state agencies implementing and construing California legislation are codified. There are 25 titles of the Administrative Code containing regulations of state agencies filed with the Secretary of State pursuant to the California Administrative Procedure Act.

In 1945, 3540 bills were introduced before the California Legislature; 1526 of these bills were enacted into law. In 1955, the corresponding figures were 5841 bills introduced, and 1966 enacted. In 1965, of 5021 bills introduced, 2070 became law. By the end of the 1973-74 Regular Session, despite a recess in late 1974 because of the general election of that year, legislative activity for the session reflected the following impressive totals:

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Traynor, The Unguarded Affairs of the Semikempt Mistress, 113 U. PENN. L. REV. 485 (1965); Traynor, A Foreword to the Vanderbilt Law Review’s New Section on Legislation, 16 VAND. L. REV. 1261 (1963). In this area Chief Justice Traynor has observed:

A judge’s responsibility is the greater now that legislatures fabricate laws in such volume. The endless cases that proceed before him increasingly involve the meaning or applicability of a statute, or on occasion, its constitutionality. Such statutes, reflecting their sponsors or draftsmen or author-legislators, are of infinite variety in purpose, range, and quality. Except for constitutional limitations, legislators innovate them with a freedom unknown to judges, who must ordinarily stay within the confines of precedent and articulate the reasons for their rules. . . . The hydraheaded problem is how to synchronize the unguided missiles launched by legislatures with a going system of common law.


2. CAL. STATS. 1941, c. 628, at 2087.

3. CAL. GOV’T CODE §11370 et seq.


5. Id. at 137.


7. Assembly Final History, FINAL CALENDAR OF LEGISLATIVE BUSINESS, 1973-74
Senate Assembly Totals

| Bills Introduced | 2,485 | 4,537 | 7,022 |
| Bills Chaptered | 1,039 | 1,722 | 2,761 |
| Constitutional Amendments Introduced | 53 | 118 | 171 |
| Constitutional Amendments Filed with the Secretary of State and Chaptered | 5 | 17 | 22 |
| Concurrent Resolutions Introduced | 171 | 282 | 453 |
| Concurrent Resolutions Chaptered | 122 | 178 | 300 |
| Joint Resolutions Introduced | 76 | 126 | 202 |
| Joint Resolutions Chaptered | 36 | 78 | 114 |

THE CAUSES OF INCREASING LEGISLATION

The causes of increasing legislation may be as numerous as the bills which become law. No attempt is made in this article to identify all such causes but rather only those which the author considers primary.

A widely accepted explanation for the increase in new laws is that such legislative action mirrors both the increasing complexity of a developing society, and the impact which the social and economic problems of that society have upon lawmaking bodies. Other causes have been described in this manner:

A third certainty, along with death and taxes, is legislation. Granted that we must have some legislation, it is undeniable that we have too much of it . . . . Why then so much legislation? For one thing, state legislatures pass many unnecessary, and even frivolous, statutes. For another, after the need for many statutes has long since disappeared, if indeed it ever existed, the statutes linger on.

Writing over 20 years ago, in language as applicable now as then, a California attorney reasoned that the volume of legislation in California is not due to an excess of zeal on the part of legislators; it is due principally to the unrestrained urgings from their constituents. At each session of the Legislature the different bureaus of our state government recommend the passage of numerous measures . . . . Some of these measures are, of course, necessary and exceedingly helpful, but one cannot resist gaining the impression that the bureaus are ever anxious to extend and to intensify their powers . . . .

Regular Session, at 33-35; Senate Final History, Final Calendar of Legislative Business, 1973-74 Regular Session, at 3.
9. Morse, supra note 8, at 51.
Another group which is altogether numerous consists of enthusiasts for new laws which bring great pressure on legislators to pass them.\textsuperscript{10}

Today, more and more interested groups of citizens and business organizations, regardless of their respective fields of activity, are seen to band together for the purpose of aiding their economic and social objectives through legislation.\textsuperscript{11} Activities of self-styled "citizens action" groups have also accelerated legislative volume.\textsuperscript{12}

Finally, the increasing role of administrative agencies in the exercise of their delegated powers must also be considered as a cause for greater legislative volume. As one writer has stated, "It is clear that within the framework of separate but shared powers administrators make law and it is equally clear that there is today a growing awareness of the important role which administrative law makers and the administrative process play in the overall legal system."\textsuperscript{13}

Expansion of the authority of administrative agencies has not only created new laws, but also a new problem, namely, the need for adequate restraints upon the activities of such administrative agencies.\textsuperscript{14} The problem has been summarized in this comment:

The modern problems of administration are raised by the rapid and unremitting extension of administrative tasks; that is, the tasks of deciding questions and making rules ancillary to legislative activity, under powers delegated by the Legislature.

This extension has been so dramatic since the industrial revolution and has since 1900 followed so steadily the growth of legislative intervention in new areas of economic and social relations, that the traditional separation of powers has seemed threatened at its foundations.\textsuperscript{15}

\textsuperscript{10} Crotty, \textit{New Legislation—A Constructive Suggestion}, 28 CAL. S.B.J. 42, 44 (1953) [hereinafter cited as Crotty].

\textsuperscript{11} For a comprehensive list of legislative advocates and organizations registered with the Secretary of State's Office see M. Fong, 1975-76 LOBBYIST AND EMPLOYEE REGISTRATION DIRECTORY. Trade associations play an active role as legislative representatives of their respective industry membership groups. See text accompanying notes 177-180 infra.

\textsuperscript{12} Legislation of particular interest to the writer is that regulating marketing practices in the dairy industry. \textit{Cal. Food & Agric. Code} §§61301 et seq., 61801 et seq. Numerous hearings have been conducted over the past 18 months by various groups including the Department of Food and Agriculture, committees of the legislature, and of the Department of Justice to review the described regulatory statutes. Bills are now pending before the legislature to amend or repeal all or portions of such statutes. At the public hearings, and before the legislature, there has been participation from organizations such as the California Citizens Action Group, Fight Inflation Committee, and Consumer Cooperative of Berkeley.

\textsuperscript{13} Hannon, \textit{supra} note 8, at 663.

\textsuperscript{14} See, e.g., Strumsky v. San Diego County Employees Retirement Ass'n, 11 Cal. 3d 28, 520 P.2d 29, 112 Cal. Rptr. 805 (1974); Bixby v. Pieno, 4 Cal. 3d 130, 481 P.2d 242, 93 Cal. Rptr. 234 (1971); K. Davis, \textit{Administrative Law TREATISE} §§2.08, 2.15, 2.16 (1958).

\textsuperscript{15} Stone, \textit{supra} note 8, at 513-14.
SAFEGUARDS AGAINST LEGISLATIVE VOLUME

Regardless of the ultimate causes for increasing legislation, there is no reason to suppose, based upon the experience of the author, that the volume of California legislative proposals will decrease within the immediate future. Given the premise that a considerable and perhaps constantly increasing volume of bills will be introduced at each session of the California Legislature, our attention must focus upon any available safeguards which will tend to produce well-considered and constructive action by the legislature in selective enactment of such bills into law.

The first safeguard, of course, is a well informed and conscientious electorate which will bring into office legislators and other state officials who, in enacting and implementing legislation, will do so with a sufficient public interest concept to achieve results equitable for both majorities and minorities.

A second safeguard against the consequences of legislative volume is the legislative process itself. Exploration in detail of the legislative process is beyond the scope of this article, as this subject has been reviewed elsewhere. However, it may be helpful, in thinking of the legislative process as a “brake” upon the undesirable results of an excessive quantity of bills, to comment, at least in capsule manner, upon the complexities of the process.

Preliminarily, it should be observed that until 1966, the California Legislature met only in the odd-numbered years in general sessions, 16. The growing volume of California legislation should not be viewed as necessarily affecting the quality of the end product. While the quantity of legislation has been developing, so have legislative quality control measures in California. As one commentator has so aptly stated: The California legislature leads the list in our overall rankings. It comes closest to having all the characteristics that a legislature should have. It has also, in recent years, proved itself capable of leading the nation in the development of legislation to deal with some of our most critical problems. . . . It could not have done so without the help of an able professional staff, a system of well-planned and publicized public hearings, an extensive program of interim activities—each of which, in our scheme of things, is an important aspect of legislative competence.

J. BURNS, THE SOMETIME GOVERNMENTS 8 (1971). With the recent adoption of the biennial session for California’s Legislature, it may be suggested that a new “quality control” measure exists since the legislature now has more time to study and draft important legislation than it had with one year sessions. The Two-Year Session: Success or Failure? 5 CAL. J. 11, 12 (Jan. 1974).

17. The effectiveness of this particular safeguard assumes that the legislative process is indeed followed. To the extent that it is not, its usefulness as an adequate safeguard against legislative volume will be correspondingly lessened. It has been observed that the process is not always followed, and that there would appear to be little in the way of outside force to compel compliance. Grant, Judicial Control of Legislative Procedure in California, 1 STAN. L. REV. 428 (1948).

which could not exceed 120 calendar days. During the even-numbered years, the legislature met for budget sessions to consider only the budget bill for the succeeding year and other revenue acts. In 1966, former section 2 of article IV of the state constitution was repealed, eliminating budget sessions, and providing for annual general sessions of the legislature. In 1972, the constitution was again amended, this time establishing the biennial legislative sessions. The constitution now provides that, “The Legislature shall convene in regular session at noon on the first Monday in December of each even-numbered year. . . . Each session of the Legislature shall adjourn . . . at midnight on November 30 of the following even-numbered year.” Provision is also made for extraordinary sessions. The overall result of these changes is that except for periodic brief adjournments, the California Legislature, like the Federal Congress, is now in substantially continuous session.

Critical stages in the life of a bill moving towards enactment are numerous. They include: (1) review of the bill by the office of the Legislative Counsel; (2) timely introduction of the bill by a legislator; (3) hearings before the standing committees of both the assembly and the senate; (4) hearings before the fiscal committees of both houses if the bill appropriates money, imposes new responsibilities on the state, liberalizes existing responsibilities, or results in loss of revenue to the state or reduction of state expenditures; (5) first, second, and third readings of

19. CAL. CONST. art. IV, §2 (1849) (now CAL. CONST. art. IV, §§3-4).
20. CAL. CONST. art. IV, §3. Some of the significant changes produced by the 1972 amendments to article IV include: (1) the legislature convenes in December instead of January, CAL. CONST. art. IV, §3(a); (2) bills remain alive for two years instead of one, but die unless they clear the house of their origin before January 31 of the second year, CAL. CONST. art. IV, §10(a); and (3) appropriation bills now can be approved by both houses—but not sent to the Governor—prior to the approval of the annual budget, CAL. CONST. art. IV, §12(c). A letter of consent from the Governor was previously required, CAL. CONST. art. IV, §12(c) (1966). See generally The Two-Year Session: Success or Failure?, 5 CAL. J. 11 (1974).
21. CAL. CONST. art. IV, §3(b) provides that the Governor may call the legislature into a special session by proclamation, and the legislature's consideration is limited to the subjects specified in the proclamation. See also Martin v. Riley, 20 Cal. 2d 28, 123 P.2d 488 (1942). However, the legislature may consider matters germane or relating to those having a natural connection with the subjects contained in the proclamation. Legislative Counsel Opinion No. 2105, JOURNAL OF THE CALIFORNIA ASSEMBLY (Second Extraordinary Session, Mar. 2, 1960) at 13-15.
22. There is a current question regarding the "quality control" aspects of the two-year session. Most of the criticisms, however, appear relevant only to the first year of a biennial session, or are addressed to problems which predate the biennial session. The criticisms are these: (1) the legislative pile-up of bills which exists prior to adjournment; (2) the lack of time for the Governor to study all the bills sent to him within 12 days after the recess of the first year of a biennial session (previously the Governor had 30 days after each legislative recess to decide whether to veto or sign bills); (3) misuse of the consent calendar (under which bills are passed without debate); (4) ghost voting (one legislative member registering an aye or no vote for another); and (5) substitute roll calls (passing a bill by use of a previous roll call). The Two-Year Session: Success or Failure?, 5 CAL. J. 11 (1974).
23. See authorities cited note 18 supra.
the bill on the floor of both the senate and assembly followed by floor debate on the occasion of the third reading;\(^{24}\) (6) possible amendments of the bill either in committee or on the floor of one house, necessitating concurrence in such amendments by the other house, including in some instances consideration of the bill by conference committees; (7) signature or veto of the bill by the Governor; and (8) in the event of a veto, possible return of the bill to the legislature for a vote on the question of overriding the Governor's veto.\(^{25}\)

It may be suggested that the courts constitute another safeguard against excessive legislation. Such a suggestion has merit. However, the exposure of courts to legislation is after the fact, so to speak, of the legislative enactment itself. The present article is concerned only with control and direction of legislative volume at the source, and into the legislative process, rather than with the interpretation and enforcement of new statutes by the courts. It is apparent that courts will be aided in their review of legislation to the extent that there are fewer, rather than more, new laws, and to the extent that new laws are developed and drafted with more, rather than less, care. In today's climate of crowded court calendars and delay, both at trial and appellate levels, the ability of reviewing courts to effectively dilute the influence of bad legislation, and correspondingly to implement beneficial legislation, is materially affected by the amount of legislation required to be reviewed and by the time afforded for such review.

A final potential safeguard against undesirable or unnecessary Cali-
California legislation is the central subject of this article, namely, the principal sources of such legislation.

**The Principle Sources of California Legislation**

In any treatment of the subject of principal sources of California legislation, a definition of the term "principal sources" will assist the reader. In the broadest sense, legislation derives from economic, political and social considerations; in the narrowest sense, the sources of legislation are the channels of enactment, that is, the legislature and the initiative process. This thought has found textual expression: "The officials who do the formulating may be called the formal source and customs, moral principles, and economic, political and social facts, the material source or source materials of the laws." The present article discusses the initiative process and the legislature as among principal sources of California legislation. However, the article reviews a number of additional sources of such legislation in the form of organizations, both of statutory origin and otherwise, which regularly include among their activities the development of legislative proposals. As the article will demonstrate, these latter sources have had a most substantial influence upon the legislature, and have achieved thereby notable contributions to California statutory law.

It is the belief of the author that to the extent that these principal sources of California legislation reflect thoughtful action, thorough consideration of subject matter, solicitation of well-informed opinions from all sides, and a desire to obtain workable and constructive solutions, the chances of ultimate enactment of beneficial legislation are correspondingly enhanced. It is also the view of the author that a useful purpose is served in better acquainting the business and social communities with a

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27. There may seem to be no obvious connection between legislative reform and legislative results—between better staffing or office space or salaries and the willingness of a legislature to deal with the large public problems before us. Nothing can, in fact, guarantee that a well-paid, well-staffed, well-housed legislature will make the right decisions. Neither can anything guarantee that a governor, or a president, or a policeman, or a judge, will make the right decisions. There is no way of guaranteeing anything that depends on human choice. Indeed, the argument for democracy as a form of government is not that under it we always reach the "right" decisions; rather, whatever the "rightness" of our decisions, a democracy enables us to make them more fairly and freely than any other form.

We can, however, ensure that whatever decisions a legislature makes are arrived at openly, after careful deliberation and study, and on the basis of the best information available. We can make the legislature—as an institution—a place where informed and intelligent decisions can be made, where public problems can be thoroughly aired and examined and alternative approaches fully considered and weighed. We can, in short, make it—in every sense of the phrase—a democratic decision-making body.

number of sources of California legislation in order that persons interested in new legislation may be placed in a position to evaluate for themselves the type of source most likely to effectuate a particular legislative objective.

A. The Initiative

The California Constitution provides: "The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum."28 The initiative is defined in the constitution as "the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them."29

The California initiative process has been the subject of other legal literature,30 and will no doubt continue to be a subject of study in the legal field. The purpose of the present article is to emphasize the importance of the initiative as a source of California legislation.

An initiative measure is proposed by presentation to the Secretary of State of a petition setting forth the text of the proposed statute or amendment to the constitution and certified as having been signed by a specified number of voters.31 Upon qualification of the initiative measure the Secretary of State is required to submit the measure at the next general election held at least 131 days after qualification of the measure, or at any special statewide election held prior to such general election.32

Prior to circulating any petition for signatures to a proposed initiative measure, the proponents of the measure are required to submit a draft of the measure to the California Attorney General with a request that he prepare a summary of the chief points of the proposed measure.33 The

28. CAL. CONST. art. IV, §1.
29. CAL. CONST. art. IV, §22(a). There are two types of initiative, direct and indirect. The direct initiative circumvents the traditional legislative process entirely, and requires a measure to be submitted directly to popular vote. See W. Crouch, D. McHenry, J. Bollens, & S. Scott, CALIFORNIA GOVERNMENT AND POLITICS 95 (1964). In California, only the direct initiative may be utilized by the electorate when proposing state legislation. See CAL. CONST. art. IV, §22. The indirect initiative, on the other hand, requires a petition with the requisite number of signatures to be submitted to a local governing body. See CAL. ELECTIONS CODE §§3708, 4011, 5151. The latter must then either adopt the proposal without change or submit it to the voters at the next general or regular municipal election. See CAL. ELECTIONS CODE §§3711, 4012, 5154.
31. The petition must be signed by electors equal to five percent in the case of a statute, and eight percent in the case of an amendment to the constitution, of the votes cast for all candidates for Governor at the most recent gubernatorial election. CAL. CONST. art. IV, §22(b).
32. CAL. CONST. art. IV, §22(c).
33. CAL. ELECTIONS CODE §3501.
Attorney General then prepares a title for the proposed measure and a summary of its chief purposes.\textsuperscript{34}

A record of all such titles and summaries has been preserved by the Secretary of State since 1962, when Elections Code Section 3501, relating to title summaries, first became effective. Since January 15, 1962, 114 initiative petition titles and summaries have been transmitted by the Attorney General to the Secretary of State. Of these 114 petitions, 89 failed to qualify, 22 qualified, and 3 are still in the qualification process.\textsuperscript{35} Prior to 1968 the Secretary of State did not keep a record of the eventual election success or failure of initiative petitions.\textsuperscript{36} The Secretary's records since 1968 reveal that of 15 initiative measures or constitutional amendments submitted to the electorate, 11 failed and four passed.\textsuperscript{37}

At first glance one might conclude that if only 22 initiatives of 111 qualified for the ballot over a 14-year period, and if only four of 15 initiatives since 1968 were adopted by the electorate, the impact of the initiative on California legislation is not too great. However, in this instance numbers do not reveal the full picture. The four initiative measures which were adopted are all of considerable substance.\textsuperscript{38} One of the four measures is among the most comprehensive legislative amendments in California history, the Political Reform Act of 1974.\textsuperscript{39} That act was sponsored by three citizens' groups, Peoples Lobby, Inc., Ralph Nader's California Citizens Action Group, and California Common Cause. According to the proponents of the initiative,\textsuperscript{40} 10,000 voters circulated this initiative petition in 53 counties, collecting over 500,000 signatures of California residents to place the measure on the ballot. The electorate then approved the measure by a substantial margin of 3,224,765 to 1,392,783.\textsuperscript{41} The Act adds title 9 to the Government Code, which deals extensively with campaign reports, campaign regulations, fair po-

\textsuperscript{34} CAL. ELECTIONS CODE §§3500.5, 3501.
\textsuperscript{35} Office of the Secretary of State, \textit{List of All Titles and Summaries Prepared by the Attorney General's Office on Initiative Petitions from 1962 to Present}.
\textsuperscript{36} For a complete summary of initiative ballot results since 1911, when article IV, section 1 of the California Constitution was first adopted, through 1964, see \textit{Assembly Interim Committee on Constitutional Amendments, The Initiative} (Dec. 13, 1965).
\textsuperscript{37} Office of the Secretary of State, \textit{List of All Titles and Summaries Prepared by the Attorney General's Office on Initiative Petitions From 1962 to Present}.
\textsuperscript{38} The California Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE §27000 et seq.; restoration of the death penalty, CAL. CONST. art. I, §27; prohibition of school attendance based on race, color or creed, CAL. EDUC. CODE §1009.6; and the Political Reform Act of 1974, CAL. GOV'T CODE §§81000 et seq.
\textsuperscript{39} See note 38 supra.
\textsuperscript{40} OFFICE OF THE SECRETARY OF STATE, CALIFORNIA VOTERS PAMPHLET 34 (June 4, 1974).
\textsuperscript{41} E. BROWN, \textit{STATEMENT OF VOTE, PRIMARY ELECTION 40} (June 4, 1974).
political practices, limitations on expenditures for or on behalf of statewide candidates and ballot measures, regulation of lobbyists, regulation of conflicts of interest of political office holders, and financial disclosure statements. At the moment political office holders, lobbyists, businessmen, and voters generally are awaiting interpretations of the Act to be issued in the form of regulations of the Fair Political Practices Commission.\textsuperscript{42}

Once adopted, an initiated measure may not be amended or repealed except "by another statute that becomes effective only when approved by the electors,"\textsuperscript{43} unless the measure itself provides otherwise. Government Code Section 81012, as enacted by the voters' approval of Proposition 9, provides for amendment of the Political Reform Act, but only upon a two-thirds majority vote of both the senate and the assembly, concurred in by the Governor, and after prior delivery of copies of the amendatory bill in final form to the Commission for distribution to the news media and to persons requesting such copies.

\textbf{B. The Judicial Council}

The Judicial Council was created in 1926 by an amendment to the California Constitution adopted by the voters at a general election.\textsuperscript{44}

The Council consists of the Chief Justice of the California Supreme Court as Chairman of the Council; one other justice of the supreme court; three justices of the courts of appeal; five superior court judges; three municipal court judges; two justice court judges; four members of the state bar; one state senator; and one assemblyman.\textsuperscript{45} The constitutional duties of the Council are to improve the administration of justice through surveys of judicial business, recommendations to the courts, annual recommendations to the Governor and to the legislature, adoption of rules, not inconsistent with statute, for court administration, practice, and procedure, and performance of other functions prescribed by statute.\textsuperscript{46} The need for the Council at the time of its creation was reflected in a commentary of the period stating, among other reasons for the Council, "that its draftsmanship would be matured, unhurried, and the best obtainable."\textsuperscript{47}

The Council also appoints the Administrative Director of the

\textsuperscript{42} CAL. GOV'T CODE §83112.
\textsuperscript{43} CAL. CONST. art. IV, §24(c).
\textsuperscript{44} CAL. CONST. art. VI, §6; 1 B. \textsc{Witkin}, \textit{California Procedure, Courts} §257, at 507 (2d ed. 1970).
\textsuperscript{45} CAL. CONST. art. VI, §6.
\textsuperscript{46} Id.
\textsuperscript{47} \textsc{Brown}, \textit{Judicial Councils at Work}, 1 CAL. S.B.J. 52, 53 (1926).
The Director in turn has established the Administrative Office of the Courts to execute Council policies, one of which is the maintenance of a legislative program which includes sponsorship of legislation developed by the Council and its committees, and analysis of other legislation or legislative proposals affecting the judicial system of the state.

By code authorization the Chairman of the Judicial Council may appoint committees composed of judges, retired judges, attorneys, and experts in specialized fields to confer with the Council in its study of the condition of business in the courts and of the means for simplifying and improving the administration of justice, and in its performance of any other duties authorized or imposed by law. The legislative staff of the Administrative Office receives advice from these committees and overall policy direction from the Council or its Executive Committee. From such direction, authorization for positions on specific bills pending before the legislature is then given to the Council’s legislative representatives.

The Council and the Administrative Office of the Courts engage in a wide variety of activities in connection with the affairs of the state’s judiciary and judicial system: one of these activities is the development and sponsorship of legislation. Among important accomplishments of the Council in the legislative field are these:

(1) In 1943, the legislature directed the Council to survey both the procedures of administrative agencies in the state and judicial review of the decisions of such agencies. In its Tenth Biennial Report, the Council recommended proposed legislation for an Administrative Procedure Act, and for procedure to be followed when a writ of mandamus is used to review administrative agency decisions. These recommendations were enacted into law in 1945.

(2) In 1943, following legislative authorization, the Council developed rules for a modern appellate procedure for California, and since that

50. CAL. GOV'T CODE § 68501.
51. JUDICIAL IMPACT REPORT, supra note 49, at 48.
52. CAL. STATS. 1943, c. 991, §2, at 2904.
53. JUDICIAL COUNCIL OF CALIFORNIA, TENTH BIENNIAL REPORT 8 (1944). See also Traynor, Rising Standards of Courts and Judges, 40 CAL. S.B.J. 677, 681 (1965) [hereinafter cited as Traynor].
54. JUDICIAL COUNCIL OF CALIFORNIA, ELEVENTH BIENNIAL REPORT 11 (1946).
55. CAL. GOV'T CODE §§11500 et seq.; CAL. CODE CIV. PROC. §1094.5; CAL. BUS. & PROF. CODE §§110.5, 110.6, repealed by CAL. STATS. 1961, c. 2048, §§11-13, at 4269. See also CAL. GOV'T CODE §11370.
time has carried out other major rulemaking projects under legislative
degradations of authority.  
(3) In 1949, the Council recommended to the legislature a plan for the
uniform reorganization of all California courts exercising jurisdiction
inferior to that of superior courts. In 1950, these recommendations, with
some amendments, became law, partly by legislative enactment and
partly by constitutional amendment adopted by voters at the November
1950 general election.

(4) In 1966, a special Council Committee on Constitutional Revision
submitted to the legislature a proposed revision of article VI of the Cali-
ifornia Constitution (the judicial provisions). The Council's proposal
was then submitted by the legislature to the electorate and adopted as
Proposition 1-A at the November 1966 general election.

(5) In 1969, the legislature enacted into law Council recommendations
concerning jurisdiction of California courts and service of process.

(6) In the ten year period from 1961 through 1971, 69 legislative mea-
sures sponsored by the Council were enacted into law; only 20 such mea-
sures failed of enactment. Two important legislative recommendations in recent years received legislative approval but were ultimately
vetoed by the Governor. It would appear from the Council reports that
over the past several years only one Council legislative recommendation of major consequence failed to receive favorable legislative action.

A complete record of Judicial Council activities is contained in its
reports. Through 1965 the Council published biennial reports, conclud-
ing with its Twentieth Biennial Report to the Governor and the legisla-
ture. Commencing with its 1967 report covering the 1965 and 1966

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56. Traynor, supra note 53, at 679-80; Witkin, New California Rules on Appeal,
17 S. Cal. L. Rev. 79-231 (1944); Judicial Council of California, Tenth Biennial
Report 6 (1944).
60. Judicial Council of California, Nineteenth Biennial Report 116 (1963);
Judicial Council of California, Twentieth Biennial Report 88 (1965); Judicial
Council of California, Annual Report 163 (1967); Judicial Council of Cali-
ifornia, Annual Report 53 (1968); Judicial Council of California, Annual Report
68 (1969); Judicial Council of California, Annual Report 62-64 (1970); Judicial
61. Judicial Council of California, Annual Report 78 (1974); Senate Final
History, Final Calendar of Legislative Business, 1973-74 Regular Session, at 535
(proposal to establish a system for arbitration of small civil actions filed in superior
creating the Office of State Public Defender). A bill creating the Office of State Public
Defender has again been introduced in the 1975-76 Regular Session. A.B. 1189, 1975-
76 Regular Session, as introduced, Mar. 17, 1975.
62. The Council's proposal for a major reorganization of municipal and justice
courts did not receive favorable action by the legislature in 1972. Judicial Council
legislative sessions, the Council has submitted annual reports to the Governor and the legislature. Accompanying such reports are annual reports of the Administrative Office of the Courts.

C. The California Law Revision Commission

One of the most consequential sources of California legislation is the California Law Revision Commission. In 1929, the California Legislature established the California Code Commission for the purpose of codifying the laws of the state, and furnishing the legislature necessary information for express repeal of all statutes which had been repealed by implication, or which had been held unconstitutional, or which had become obsolete. In 1953, the Code Commission, having accomplished its principal objective of codification of state laws, was abolished and the California Law Revision Commission was created.

The Commission consists of one member of the Senate appointed by the Senate Committee on Rules, one member of the assembly appointed by the Speaker of the Assembly, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel is an ex officio nonvoting member of the Commission. The Commission appoints an executive secretary. At the present time the Commission staff consists of the executive secretary, three other attorneys, an administrative assistant and two secretaries.

The duties of the Commission include all the following: recommendations of needed reforms in the law, consideration of suggestions for changes in the law submitted by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, "any bar association or other learned body," judges, justices, public officials, lawyers and the public generally, and finally, recommendations for such changes in the law as the Commission "deems necessary to modify or eliminate antiquated and inequitable rules of law and to bring this law into harmony with modern conditions." The Commission, like its earlier counterpart, is also charged with the duty of recommending the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of California or the Supreme Court of the United States. Study of any topic by the Commission requires prior

64. Cal. Stats. 1953, c. 1445, at 3036; Cal. Gov't Code §10300 et seq.
66. Id.
approval by concurrent resolution adopted by the legislature.\textsuperscript{71}

The Commission submits to the Governor, the legislature, and the heads of all state departments a report for each regular session of the legislature.\textsuperscript{72} The Commission is charged with the duty of cooperating with any legislative committee on revision of the law,\textsuperscript{73} and may cooperate with any bar association "or other learned professional or scientific association, institution or foundation in any manner suitable for fulfillment of the purposes of this chapter."\textsuperscript{74} All state agencies and the Board of Governors of the State Bar are required to assist the Commission in its work.\textsuperscript{75} The sources of requests directed to the Commission in connection with legislation cannot be better stated than they have been by the executive secretary of the Commission as follows:

The Commission cannot work on any topic without prior legislative approval in the form of a concurrent resolution passed by both houses of the Legislature. Most of the major topics on the Commission's agenda—governmental tort liability, evidence, eminent domain—were added by the Legislature on its own initiative. However, a number were added at the request of the Commission. The Commission receives suggestions from the State Bar, judges, lawyers, and others for topics for study. Often the same suggestion is received from a number of sources. The Commission reviews the suggested topics and from time to time selects a few for study. In addition, the Commission sometimes finds that the original scope of a topic is too narrow and may request that the scope of the topic be expanded to cover related matters. For example, the creditors' remedies topic has been expanded to cover all aspects of this subject.\textsuperscript{76}

Thirteen recommendations are presently proposed by the Commission for consideration at the 1975-76 legislative regular session, covering a wide range of subjects.\textsuperscript{77} At the direction of the legislature the Commission has major studies in progress relating to creditors' remedies, condemnation law and procedure, nonprofit corporations, liquidated damages, partition procedures, modification of contracts, escheat, and child custody and related matters.\textsuperscript{78}

The Commission also avails itself of the services of expert consultants, but as the Executive Secretary has pointed out:

\begin{itemize}
\item \textsuperscript{71} CAL. GOV'T CODE §10335.
\item \textsuperscript{72} CAL. GOV'T CODE §10333.
\item \textsuperscript{73} CAL. GOV'T CODE §10337.
\item \textsuperscript{74} CAL. GOV'T CODE §10338.
\item \textsuperscript{75} CAL. GOV'T CODE §§10306, 10307.
\item \textsuperscript{76} Letter from John H. DeMoully, Executive Secretary of the California Law Revision Commission, to the author, Nov. 25, 1974, on file at the Pacific Law Journal.
\item \textsuperscript{77} CAL. LAW REVISION COMM'N, ANNUAL REPORT 512-13 (1974).
\item \textsuperscript{78} CAL. LAW REVISION COMM'N, ANNUAL REPORT 514-19 (1974).
\end{itemize}
Our experience has been that the consultant or staff study is a starting point for discussion. But the final recommendation usually is quite different. This is because there is considerable input from interested persons and organizations before the final recommendation is submitted to the Legislature.\textsuperscript{79}

The Commission has an exceptional record before the legislature. Of 86 recommendations for legislation made by the Commission to the legislature, from 1955 through 1974, 76 have been enacted as submitted, or as portions of later legislation.\textsuperscript{80} Four of the recommendations not enacted are being resubmitted to the 1975-76 legislature for consideration.\textsuperscript{81} Commission recommendations have resulted in the addition to California statutes of 1,340 sections, in the amendment of an additional 627 sections, and in the repeal of 1,350 sections.\textsuperscript{82}

Perhaps the most far reaching of the Commission's accomplishments has been its activity in connection with the Evidence Code. The legislature in 1956 directed the Commission to make a study to determine whether the laws of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws.\textsuperscript{83} Nine years of subsequent effort by the Commission, augmented by contributions from many sources, were climaxed by the enactment of the Evidence Code in 1965.\textsuperscript{84} A brief but informative history of the Evidence Code project is contained in the introductory material accompanying the Code.\textsuperscript{85}

D. The Commission on Uniform State Laws

In 1892, the National Conference of Commissioners on Uniform State Laws was organized in New York.\textsuperscript{86} The Conference is supported by contributions from the states.\textsuperscript{87} Commissioners from each of the states, the District of Columbia, and Puerto Rico comprise the membership of the Conference.\textsuperscript{88}

During the first years of its existence, the Conference placed primary
emphasis upon securing uniformity in the field of commercial law, where the potential for burden due to lack of uniformity appeared to be the greatest. By 1963, the Conference had drafted and approved some 170 proposed uniform acts. With each proposed act the Conference publishes extensive notes and comments. These acts and comments are then available to each state for study and possible adoption.

The California adjunct of the National Conference is the California Commission on Uniform State Laws. The Commission was created by statute in 1927. The Commission consists of one member of the Senate appointed by the Senate Committee on Rules, one member of the Assembly appointed by the Speaker of the Assembly, four additional members appointed by the Governor, and the Legislative Counsel as an ex officio nonvoting member. The Commissioners are required to arrange for the attendance of at least one member of the Commission at meetings of the National Conference of Commissioners on Uniform State Laws. The Commission is charged by statute with doing all in its power to promote uniformity in state laws "upon all subjects where uniformity is deemed desirable and practicable," and with bringing about as far as practicable "the passage of various uniform acts recommended by the National Conference . . . ." The Commission is also required to "devise and recommend such additional legislation or other or further course of action as is deemed necessary to accomplish the purposes of this chapter."

California has adopted a considerable percentage of the uniform acts, including the important commercial acts. The Commission publishes the Commission on Uniform State Laws Reports, summarizing uniform acts approved by the National Conference, uniform acts proposed for enactment, and uniform acts enacted. The California Commission's report for 1972 lists 44 uniform laws which have been enacted into law in California. To this list may now be added the Uniform Anatomical

89. Henley, supra note 86, at 68.
90. Malcom, supra note 86, at 228.
91. Henley, supra note 86, at 69.
92. CAL. STAT. 1927, c. 498, at 838; CAL. GOV'T CODE §10400.
93. CAL. GOV'T CODE §10401.
94. CAL. GOV'T CODE §§10407, 10430.
95. CAL. GOV'T CODE §10431.
96. CAL. GOV'T CODE §10432.
97. Id.
98. REPORT OF THE CALIFORNIA COMMISSION ON UNIFORM STATE LAWS, Appendix A (Jan. 1, 1972). The uniform acts listed in this report are:
- Uniform Act for Simplification of Fiduciary Security Transfers (1959);
- Uniform Act on Blood Tests to Determine Paternity (1953);
- Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings (1937);
- Uniform Bills of Lading Act (1915);
- Uniform Business Records as Evidence Act (1941);
- Uniform Civil Liability for Support Act (1925);
- Uniform Commercial Code (1963);
- Uniform Common Trust Fund Act (1947);
- Uniform Criminal Extradition Act (1937);
- Uniform Deseret
Gift Act,99 the Uniform Controlled Substances Act,100 the Uniform Child Custody Jurisdiction Act,101 and the Uniform Management of Institutional Funds Act.102

Of most widespread effect are the major uniform commercial enactment, the Uniform Sales Act,103 the Uniform Negotiable Instruments Act,104 the Uniform Bills of Lading Act,105 the Uniform Commercial Code,106 and the Uniform Warehouse Receipts Act.107 Among these, the Uniform Commercial Code has probably generated the greatest development application. An official edition of this code was first published by the National Conference in 1952 after years of study and drafting.108 The Code was enacted into law in California effective January 1, 1965.109 The history of the California statute is contained in the introductory material published with the Code.110

E. The State Bar of California

The State Bar of California is a public corporation,111 and is governed...
by the Board of Governors of the State Bar. Through the Board of Governors and committees the State Bar performs an essential and expanding role in the development of California legislation. The Board of Governors “may aid in all matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice . . . .” The Board is required by statute to assist the California Law Revision Commission “in any manner the Commission may request within the scope of its powers or duties.”

The complete legislative agenda of the State Bar is the ultimate responsibility of the Board of Governors. However, much of the work performed by the State Bar in the field of legislation is that of committees, especially the Committee on Administration of Justice. Under the direction of the Board of Governors, the State Bar maintains both a legislative review staff to pursue the bar’s legislative program, and a public service legislative program for the review of, and development of positions on, those bills affecting the practice of law.

In 1973 the State Bar proposed 47 bills to the state legislature. Of these bills 28 originated in resolutions of the State Bar Conference of Delegates; 15 bills originated from recommendations of standing committees of the State Bar; and four bills originated from members’ suggestions. In addition, the State Bar Committee on Administration of Justice reviewed and analyzed 202 bills introduced by others.

In the 1974 portion of the 1973-74 biennial session of the legislature the State Bar sponsored 49 bills of which 28 originated with the Conference of Delegates. During 1974 the Board of Governors adopted positions on over 400 bills and constitutional amendments introduced by others.

In 1957, then Chief Justice Phil S. Gibson, writing as Chairman of the Judicial Council, said of the State Bar:

[Every major reform in which the Council has participated since I have been chairman has been the joint effort of the State Bar and the

112. CAL. BUS. & PROF. CODE §6010.
113. CAL. BUS. & PROF. CODE §6031.
114. CAL. GOV'T CODE §10307.
116. JUDICIAL IMPACT REPORT, supra note 49, at 78.
118. Id.
119. Id. at 584.
121. Id. at 620.
Judicial Council, and that includes the formulation and enactment of the plan for the reorganization of our trial courts of limited jurisdiction.\textsuperscript{122}

This acknowledgment of the role of the State Bar in the development of California legislation finds ample expression elsewhere.\textsuperscript{123}

As of mid-1974, there were more than 20 established legislative interest committees of the State Bar, with committee membership of attorneys.\textsuperscript{124} By training and profession, attorneys are well qualified to analyze the need, or lack of need, for specific legislation, and to draft responsive legislative proposals. Great value must therefore attach, on a continuing basis, to the work of the legislative interest committees of the State Bar.

\textbf{F. The Legislative Counsel Bureau}

Consideration of all the functions of the office of the Legislative Counsel is perhaps most appropriately reserved for a discussion of the actual passage of legislative proposals, once introduced. However, the functions of the office extend considerably into the area of the origin of legislation. Most states maintain some type of legal staff to assist the members of the legislature in legislative activities. In California this legal office was created in 1913, and is designated by statute as the Legislative Counsel Bureau.\textsuperscript{125} It is the opinion of the author, based upon a number of years of observation of, and contact with, the office of the Legislative Counsel, that California is fortunate to have the office, without which duplication between statutes and poorly drawn and ambiguous legislative proposals might well be commonplace. The industry of the office has been frequently recognized.\textsuperscript{126}

The Legislative Counsel is the chief of the Legislative Counsel Bureau.\textsuperscript{127} He is chosen without reference to party affiliation, solely on the basis of fitness to perform the duties of his office,\textsuperscript{128} and is empowered to employ as many professional assistants and other employees as he deems necessary for the effective conduct of his work.\textsuperscript{129} At the present time 58 attorneys are employed in the office of the Legislative Counsel; all ex-

\begin{itemize}
\item \textsuperscript{122} Gibson, \textit{For Modern Courts}, 32 CAL. S.B.J. 727, 728 (1957).
\item \textsuperscript{123} E.g., Crotty, \textit{supra} note 10, at 49-51; Traynor, \textit{supra} note 53, at 680; CAL. LAW REVISION COMM’N, ANNUAL REPORT 514 (1974); JUDICIAL COUNCIL OF CALIFORNIA, FOURTEENTH BIENNIAL REPORT 13 (1953); JUDICIAL IMPACT REPORT, \textit{supra} note 49, at 78-79.
\item \textsuperscript{124} JUDICIAL IMPACT REPORT, \textit{supra} note 49, at 78.
\item \textsuperscript{125} CAL. STATS. 1913, c. 322, at 626; CAL. GOV’T CODE §10200.
\item \textsuperscript{126} E.g., Crotty, \textit{supra} note 10, at 47; Dutton, \textit{The Quantity of Legislation in California}, 29 CAL. S.B.J. 67, 69 (1954) [hereinafter cited as Dutton].
\item \textsuperscript{127} CAL. GOV’T CODE §10200.
\item \textsuperscript{128} CAL. GOV’T CODE §10203.
\item \textsuperscript{129} CAL. GOV’T CODE §10205.
\end{itemize}
cept two deputies are appointed pursuant to civil service laws. The Legislative Counsel maintains an attorney-client relationship with members of the legislature, and thus legal opinions of the Legislative Counsel or his staff are available only to members of the legislature; however, members of the legislature may release such opinions without restriction.

No bill may be introduced into the legislature unless it is contained in a cover and is accompanied by a digest prepared and attached to the bill by the Legislative Counsel showing the changes in the existing law which are proposed by the bill. While the Legislative Counsel and employees of the Legislative Counsel Bureau are prohibited from opposing or urging legislation, the Legislative Counsel is required to assist in the preparation, amendment, and consideration of legislative matters when requested or upon suggestion as provided by statute, and to assist any member of the legislature regarding bills, resolutions and measures, and drafting them into proper form. The Legislative Counsel is required to prepare or assist in the preparation or amendment of legislative measures "at the written suggestion of any judge of the Supreme Court, the courts of appeal or of the superior courts of the state." The Legislative Counsel must advise the legislature from time to time as to legislation necessary to maintain the codes and as to legislation necessary to codify such statutes as are enacted from time to time. The Legislative Counsel is also required to cooperate with proponents of initiative measures in the preparation of such measures when requested in writing so to do by 25 or more electors proposing the measure, and when in the judgment of the Legislative Counsel there is reasonable probability that the measure will be submitted to the voters.

While judges have occasionally availed themselves of the provisions of Government Code Section 10237, requests by judges to introduce legislation have usually been transmitted to the Legislative Counsel

130. Letter from Gerald Ross Adams, Deputy Legislative Counsel, to the author, Dec. 13, 1974, on file at the Pacific Law Journal; see CAL. CONST. art. XXIV, 64.
132. CALIFORNIA LEGISLATURE, 1974 HANDBOOK, Temporary Joint Rules of the Senate and Assembly, rule 8.5, at 337 [hereinafter cited as 1974 HANDBOOK]. The Legislative Handbook containing the Standing Rules of the Senate and Assembly, and the Temporary Joint Rules of the two legislative bodies, is an official publication, the preparation of which is required by law. CAL. GOV'T CODE §9740; see DRISCOLL, supra note 18, at 123.
133. CAL. GOV'T CODE §10210.
134. CAL. GOV'T CODE §10231.
135. CAL. GOV'T CODE §10233.
136. CAL. GOV'T CODE §10237.
137. CAL. GOV'T CODE §10237.
138. CAL. GOV'T CODE §10243.
through requests by members of the legislature since only a legislator may introduce a bill.\textsuperscript{139} With respect to legislative proposals by state agencies the statute requires the Legislative Counsel, upon request, to advise any state agency as to preparation of measures to be submitted to the legislature.\textsuperscript{140}

The Legislative Counsel is obligated to “give such consideration to and service concerning any measure before the Legislature as circumstances will permit, and which is in any way requested by the Governor, the Senate or Assembly, or any committee of the Legislature having the measure before it for consideration.”\textsuperscript{141} Finally, the duties of the Legislative Counsel may extend to contract services with any county or city for the codification, compilation, or indexing of ordinances or resolutions, and to cooperation with educational institutions of the state.\textsuperscript{142}

G. Legislators and Legislative Committees

“The Legislature may make no law except by statute and may enact no statute except by bill.”\textsuperscript{143} Bills may be introduced by members of the senate,\textsuperscript{144} by members of the assembly,\textsuperscript{145} or by committees of the two houses.\textsuperscript{146}

The California Constitution authorizes both houses to provide for committees “including committees to ascertain facts and make recommendations to the Legislature on a subject within the legislative control.”\textsuperscript{147} Pursuant to this authorization, both the senate and the assembly provide in their rules for a General Research Committee\textsuperscript{148} and for investigating committees.\textsuperscript{149} Considerable use is made of these investigating committees as a source of potential legislation.\textsuperscript{150} While in the expe-

\textsuperscript{139} Letter from Gerald Ross Adams, Deputy Legislative Counsel, to the author, Dec. 13, 1974, on file at the Pacific Law Journal.

\textsuperscript{140} CAL. GOV'T CODE §10232.

\textsuperscript{141} CAL. GOV'T CODE §10234.

\textsuperscript{142} CAL. GOV'T CODE §§10244, 10245.

\textsuperscript{143} CAL. CONST. art. IV, §8(b).

\textsuperscript{144} Standing Rules of the Senate, rule 22, 1974 HANDBOOK, supra note 132, at 116.

\textsuperscript{145} Standing Rules of the Assembly, rule 47, 1974 HANDBOOK, supra note 132, at 280.

\textsuperscript{146} Standing Rules of the Senate, rule 23, 1974 HANDBOOK, supra note 132, at 118; Standing Rules of the Assembly, rule 47, 1974 HANDBOOK, supra note 132, at 281.

\textsuperscript{147} CAL. CONST. art. IV, §11.

\textsuperscript{148} Standing Rules of the Senate, rule 12.5, 1974 HANDBOOK, supra note 132, at 100; Standing Rules of the Assembly, rule 22, 1974 HANDBOOK, supra note 132, at 266.


\textsuperscript{150} In reference to the practices of the interim and investigating committees, it has been stated:

In order to expedite the work of the Legislature, either house may, by vote or resolution, provide for the appointment of committees to ascertain facts and
xperience of the author the great majority of legislative bills have not only one or more legislators as authors but also interested persons as sponsors, it is by no means uncommon for a legislator, or a legislative committee, based upon his or its investigation and study, to become convinced of a public need for particular legislation, and to propose such legislation whether or not there is any immediate sponsorship of the bill from public sources outside the legislature. It is perhaps significant to observe that the Temporary Joint Rules of the Senate and Assembly provide,

No bill shall indicate in its heading or elsewhere that it was introduced at the request of a state agency or officer or any other person. No bill shall contain the words “By request” or words of similar import.161

H. The Department of Justice

The Office of the Attorney General and the Division of Law Enforcement comprise the Department of Justice.152 The Department is under the direction and control of the Attorney General who is the constitutionally designated chief law enforcement officer of the state.153 The general duties and powers of the Attorney General are defined in the state constitution;154 his specific duties and powers are provided for in the Government Code.155

The Department of Justice and the Attorney General have been closely involved in the legislative process. For example, prior to circulation of any initiative or referendum petition for signatures, the Attorney General must prepare a title and summary of the chief purpose and points of the proposed measure.156 Similarly, the Attorney General must, when so requested, give his opinion in writing to the legislature or either house thereof on questions of law having relevance to the performance by the legislature of its offices.157

The Department of Justice maintains a comprehensive legislative review program in three categories, namely, proposed legislation involving civil law matters of concern to the Attorney General, criminal law

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156. Cal. Const. art. IV, §24(d); Cal. Elections Code §3500.5.
bills, and bills affecting the Department's Division of Law Enforcement. Whether the Department will take a position on any of these bills, and if so, what position, is determined by the Attorney General with assistance from the Legislative Review Committee consisting of the Legislative Review Coordinator, the Chief Deputy Attorney General, and the five division chiefs in the Department.

The Department has gone before the legislature to represent the consuming public in matters of common interest and has proposed legislation designed to improve consumer protection in California. A Department spokesman has stated, "Practically, our Consumer Protection unit is the only agency on the state or local level with the factual background for presenting the consumer's case effectively in Sacramento."

The increasingly active role of the Department in legislation is evidenced in a series of 1975 press releases. In his press release of January 31, 1975, the Attorney General revealed that his office would present four general proposals to the current session of the legislature for enactment. They are:

1. A bill to prohibit the granting of probation to persons convicted of using firearms during the commission of dangerous crimes;
2. A bill to prohibit the granting of probation to persons found guilty of selling heroin or cocaine;
3. A bill to prohibit the granting of probation to professional burglars;
4. A bill to achieve extensive revisions of the juvenile justice system.

On March 18, 1975, the Attorney General announced further legislative proposals, based upon a series of recommendations made to him by the Attorney General's Women's Task Force, which was created in January 1974. The first of these proposals would amend the Rumford Fair Housing Act to prohibit discrimination in the sale, rental, or leasing

158. JUDICIAL IMPACT REPORT, supra note 49, at 60.
159. Id.
165. CAL. HEALTH & SAFETY CODE §35700 et seq. The Women's Task Force included 35 women representing a wide variety of organizations and institutions.
of housing accommodations on the basis of sex or marital status. The second is intended to resolve flaws considered by the Attorney General to exist in the current credit discrimination law.\textsuperscript{166} The Attorney General stated in his press release, "Last year . . . there were 16 women's rights bills—either drafted or supported by the Attorney General's Office—on the Governor's desk."

In his press release of March 26, 1973, the Attorney General recommended legislation repealing the California Fair Trade Act,\textsuperscript{167} the present prohibition against advertising the price of prescription drugs, and the present authority of the Director of Food and Agriculture to establish minimum wholesale and minimum retail prices for fluid milk.\textsuperscript{168} He also recommended legislation strengthening public regulation of the sale of hearing aids.

\section{I. Legislative Proposals of Other Departments}

Legislative proposals frequently emanate from recommendations of the various state departments other than the Department of Justice. Such recommendations may take the form of affirmative legislative proposals or assistance to persons in industry who have legislative proposals affecting the work of a particular state department.\textsuperscript{169} As an example, the Department of Food and Agriculture maintains full-time legislative liaison through the offices of one of the assistant directors of the Department. A request for a bill may originate in the Department. Such recommendation is then submitted to the Director of the Department for his approval and ultimately to the Office of the Governor. After final approval the task of processing the bill through the legislature is that of the assistant director maintaining legislative liaison. The departmental representative obtains a legislator who agrees to act as author of the bill. The bill is then drafted by the office of the Legislative Counsel in consultation with the departmental representative and thereafter the departmental representative processes the bill through the legislature with appropriate appearances before legislative committees.\textsuperscript{170} On occasion the Department will respond to an industry request to prepare and initiate legislation if the matter is of sufficient public interest. In addition to drafting and presentation of legislation, state departments also fre-

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{166} \textsc{Cal. Civ. Code} §1812.30.
\item \textsuperscript{167} \textsc{Cal. Bus. & Prof. Code} §16900 \textit{et seq.}
\item \textsuperscript{168} \textsc{Cal. Food & Agric. Code} §61801 \textit{et seq.}
\item \textsuperscript{169} \textsc{Letter from D.A. Weinland, Assistant Director of the Department of Food and Agriculture, to the author, Nov. 20, 1974, on file at the Pacific Law Journal.}
\item \textsuperscript{170} \textsc{Id.}
\end{enumerate}
\end{footnotesize}
quently appear before the legislature in support of or in opposition to proposed legislation.\textsuperscript{171}

The practice of legislative recommendations by state agencies does not appear to require express statutory authority in this respect. To illustrate, the Auditor General functions under the direction of the Joint Legislative Audit Committee.\textsuperscript{172} His primary duties are "to examine and report annually upon the financial statements prepared by the executive branch of the state."\textsuperscript{173} He may also perform "other related assignments," including performance audits, as requested by the legislature,\textsuperscript{174} but the authority of his office "is confined to examining and reporting."\textsuperscript{175} This limitation was apparently considered flexible enough to permit the Auditor General, in January 1975, to issue his "Report on the California Milk Marketing Program as Administered by the Department of Food and Agriculture," containing a number of legislative recommendations.\textsuperscript{176}

J. Trade Associations and Other Organizations With Statewide Interests

Many businessmen have found it necessary in their respective industries to organize trade associations for the purpose of introducing and defending against legislative proposals. The author has been for many years counsel for one such trade association functioning in an industry heavily regulated by state legislation. This association has sponsored a number of legislative bills. It has taken positions of support or opposition in respect to numerous other legislative proposals. Many trade associations regularly employ legislative representatives to present to the legislature the position of association members relating to particular items of pending legislation.

Because of the fact that numerous variations and complications may arise in the process of securing passage of a bill by the legislature, any person or organization desiring to achieve such a legislative objective may, as a practical matter, find it necessary not only to secure professional assistance at the source of the bill for both draftsmanship and sponsorship, but in addition professional assistance in guiding the bill through the legislature. The latter function is accomplished by legislative advocates. The records of the Lobbyist Division of the Office of the Califor-

\textsuperscript{171} \textit{Id.}
\textsuperscript{172} \textit{Cal. Gov't Code} §10500.
\textsuperscript{173} \textit{Id.}
\textsuperscript{174} \textit{Id.}
\textsuperscript{175} \textit{Id.}
nia Secretary of State reveal that as of March 28, 1975, 655 lobbyists were registered with the Secretary's office. This number changes often, but the described number will certainly afford an indication of the important role which the legislative advocate plays in the legislative process. Some years ago it was observed:

[T]he real father of most of the measures is not a legislator but some lobbyist ("legislative advocate" in the statutory language) . . .

The Legislature's dependence on legislative advocates is even greater once the proposals have been introduced. Even a sincere and industrious legislator could hardly hope to review within the short and hurried period of a legislative session 5,522 proposals, know how the mass of existing law would be changed, and what will likely be the ultimate effect on the state.\footnote{178}

The propriety of such legislative activity is recognized by the Internal Revenue Service. Association dues paid to an association engaged in legislative lobbying activities are deductible to the extent that the lobbying expenses of the association concern legislative matters and are directly connected with either (1) appearances before and communications with legislative bodies, individual legislators or committees or (2) communication of information between the association and its members, provided that in either case the legislation is of direct interest to a trade or business of a significant number of the association members.\footnote{179}

The authors of Trade Association Law and Practice have observed, "The trade association cannot plead the individual company's case before government, but it is an indispensable link with government when the industry's case is to be pleaded or when information is sought from the industry as a whole."\footnote{180}

The trade association performs, in connection with legislation, the constructive functions of (1) affording the legislature a composite position, drawn from a representative cross section of the industry affected, and (2) furnishing each of its members legislative representation, including development and sponsorship of, and opposition to, proposed legislation in a situation where many of the members do not have the

\footnotesize{\textsuperscript{177.} See note 11 supra.}
\footnotesize{\textsuperscript{178.} Dutton, supra note 126, at 68-69. In a similar vein is this statement:
Most legislatures have extremely small professional staffs which must perform a wide variety of tasks and whose services are, for the most part, available only to the leadership of each house and to leaders and majority members of the two or three most important committees. The main result is that legislators and committees must rely almost exclusively on information supplied by the very executive agencies and lobbyists affected by their decisions.
\textsuperscript{179.} G. Lamb & C. Shields, Trade Association Law and Practice §17.27, at 259-60 (rev. ed. 1971).
\textsuperscript{180.} Id. §§11.1-11.2, 11.5, at 167, 170, 173.}
necessary personnel, legislative experience, or perhaps funds, to undertake such representation on their own.

In this concluding general category of sources of legislation it is appropriate to note that there are many organizations, in addition to those previously commented upon in this article, with sufficient statewide interests to require their involvement from time to time in the area of legislation. No attempt to detail all such organizations is made here; however, a helpful example in this respect is the enumeration in the Judicial Impact Report of "other organizations with statewide interests" which analyze court-related legislation.\(^{181}\)

**CONCLUSION**

As indicated earlier, this article has attempted to afford some description of the origins of legislation in California. Actually, such sources are unlimited in view of the potential ability of any sponsor to secure introduction of a legislative bill providing he can find a member of the legislature who is agreeable to acting as the author of the bill. Neither the state constitution nor any state statute places any restriction upon sponsorship of legislation. There is no segment of the population of the state which for economic or other reasons is precluded from access to the legislature. Sources available for introduction of legislation should therefore be of continuing interest to all citizens of the state.

The public faces the possibility that an excessive volume of new laws will impinge unduly or unfairly upon individual conduct and property rights and upon the orderly transaction and development of business, and will place upon the courts a task of interpretation and enforcement of such laws too burdensome to be discharged effectively. Here there must be avoided the classical alternative perils of Scylla and Charybdis if we are not to be overwhelmed by laws so numerous and detailed in character as on the one hand to impede social or business progress or on the other hand to be meaningless and unenforceable.

It would seem to be in his best interests for any California citizen concerned with government to identify himself with some source of leg-

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islation in an effort to cause proposed legislation beneficial to the general 
public to be enacted and proposed legislation inimical to the public wel-
fare to be defeated.