#36.300 2/21/75

Memorandum 75-1

Subject: Study 36.300 - Eminent Domain (AB 11)

Attached to this Memorandum are letters from the California Land Title Association (Exhibit II--yellow) and from the Department of Transportation (Exhibit I--green) concerning AB 11 (Eminent Domain Law). Also attached are copies of the 10 bills containing conforming amendments and of AB 486 (Uniform Eminent Domain Act), with a table of comparable provisions. We have not yet received, but we anticipate receiving in time for consideration at the March 1975 meeting, comments from the State Bar Committee, as well as the Commission's final printed report. We will send copies of these materials when we receive them.

The letter from the California Land Title Association is generally complimentary, and raises only one problem which is discussed below. The letter from the Department of Transportation reiterates problems the department has raised in the past; however, the letter clarifies some of the department's objections and adds some new arguments in support of its positions. You should read the letter carefully; the staff in this Memorandum has limited its commentary on the letter to matters that may not previously have been brought to the Commission's notice.

§ 1250.150. Lis pendens

The California Land Title Association (Exhibit II--yellow) notes that existing law provides that "a lis pendens shall be recorded," whereas AB 11 provides that the plaintiff "may record a notice of the pendency of the proceeding." The CLTA believes recordation should be mandatory rather than permissive.

The reason the Commission drafted the provision with a "may" in place of the "shall" is that the existing "shall" is not mandatory--case law holds that a failure to record is not a jurisdictional defect. The Commission believed the existing use of the word "shall" is thus misleading, and that the statute should state what the law really is.

§ 1255.030. Increase or decrease in amount of deposit

Among the provisions of Section 1255.030 that cause the Department of Transportation concern (Exhibit I--green--pages 5-6) is subdivision (d)--"After any amount deposited pursuant to this article has been withdrawn by a defendant, the court may not determine or redetermine the probable amount of compensation to be less than the total amount already withdrawn." The staff notes, however, that this provision merely continues existing law. See Section 1243.5(d)(last sentence).

§ 1255.450. Service of order of possession

The Department of Transportation (Exhibit I--green--page 9) believes the court should have the discretion to allow possession of property on less than the 90 days' notice provided in Section 1255.450. The Commission has agreed with the department's position, and has incorporated in AB 11 a provision apparently overlooked by the department:

> 1255.410. . . . (c) Where the plaintiff has shown its urgent need for possession of unoccupied property, the court may, notwithstanding Section 1255.450, make an order for possession of such property on such notice as it deems appropriate under the circumstances of the case.

§ 1260.210. Order of proof and argument; burden of proof

The staff notes that, while the Department of Transportation is correct that the majority rule in the United States is that the property owner bears

the burden of proof of compensation (Exhibit I--green--pages 9-10), the current trend in recently enacted statutes is to remove the burden of proof. This is also the approach of the Uniform Eminent Domain Code, introduced in the 1975 Legislature as AB 486. See Section 1238.04--"No party has the burden of proof on the issue of the amount of compensation."

§ 1263.205. "Improvements pertaining to the realty" defined

The Department of Transportation (Exhibit I--green--page 10) objects to this provision as being vague and unduly expansive. The staff notes that this provision is comparable to the definition contained in the Uniform Eminent Domain Code, introduced in the 1975 Legislature as AB 486. See Section 1230.03(1):

> "Improvement" includes any building or structure, and any facility, machinery, or equipment that cannot be removed from the real property on which it is situated without substantial economic loss or substantial damage to the real property.

§ 1263.250. Harvesting and marketing of crops

The Department of Transportation (Exhibit I--green--pages 10-11) objects that the loss intended to be compensated by subdivision (b) is vague. The department did not have the benefit of the Commission's Comment, which indicates that it is the loss of use value of the property that is to be recompensed. The staff believes that this is clear in the language of the section as drafted; the staff does not believe that amendment of the language of the section to refer to "loss of use value of the property" would be desirable since, in some cases, the loss may not be complete, i.e., the property may still be usable for some purpose other than the growing of crops.

§ 1263.440. Computing damage and benefit to the remainder

One of the grounds on which the Department of Transportation (Exhibit I--green--page 13) opposes subdivision (a) of this section (requiring that the amount of damages and benefits be discounted for anticipated delay in

construction) is that it will inject the added and uncertain issue of timing into the trial. The staff notes, however, that under the provision as drafted this will not be an issue since the statute requires use of the plans proposed by the plaintiff.

§ 1263.510. Loss of goodwill

While the Department of Transportation (Exhibit I--green--pages 13-14) is correct in stating that California and United States Supreme Court decisions have held goodwill losses not constitutionally compensable, the staff notes that the issue is presently before the California Supreme Court once again. The staff also notes that the text of this section is nearly identical to the comparable provision of the Uniform Eminent Domain Code introduced in the 1975 Legislature as AB 486. See Section 1239.16.

§ 1265.310. Unexercised options

Two of the problems raised by the Department of Transportation (Exhibit I--green--pages 14-15), the staff believes are not real problems. The department states that, because the filing of the complaint terminates the option, a subsequent abandonment of the proceeding by the condemnor would have no resurrecting effect on the option even though the option would still be exercisable but for the filing of the complaint. The staff notes, however, that Section 1265.310 by its terms applies only to options to acquire an interest in property "taken by eminent domain." The section would not apply to property not ultimately taken by eminent domain.

The other problem that concerns the department is compensation for leases that expire after the filing of the complaint but prior to possession or judgment. The Commission does not attempt to deal with the leasehold situation

in this section, but leaves it to case law, as the department suggests should be done. The Comment to the section makes this clear, but perhaps language should be placed in the section expressly excepting leases from its operation.

§ 1268.620. Damages caused by possession

The offensive language in this section to the Department of Transportation (Exhibit I--green--pages 16-17) is found in subdivision (b)--"all damages proximately caused by the proceeding." Presumably the department would prefer the more specific language of existing Section 1255a(d)--"damages arising out of the plaintiff's taking and use of the property and damages for any loss or impairment of value suffered by the land and improvements after the time the plaintiff took possession of or the defendant moved from the property sought to be condemned in compliance with the order of possession, whichever is earlier." By way of comparison, the Uniform Eminent Domain Code, introduced in the 1975 Legislature as AB 486, provides--"any damage to, or impairment of, the value of the property not within the reasonable control of the defendant." See Section 1242.04.

§ 1268.720. Costs on appeal

The Department of Transporation (Exhibit I--green--page 17) would like to see court discretion over whether the defendant is allowed his costs on appeal. The staff notes that AB 11 accomplishes this by prefacing Section 1268.720 with the phrase "Unless the court otherwise orders."

Respectfully submitted,

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STATE OF CALIFORNIA—BUSINESS AND TRANSPORTATION AGENCY EDMUND G. BROWN JR., Governor

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February 6, 1975

California Law Revision Commission
School of Law
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Gentlemen:

In re: AB 11

The State Department of Transportation is greatly interested in and concerned with the above bill as introduced by Assemblyman McAlister. During the past five or more years while the Commission has been engaged in studies in this field, the Department has provided representatives from its legal division to provide advice and assistance to the Commission. Many of the following comments synthesize comments of those representatives made verbally at those past proceedings of the Commission. The Department has recently had the opportunity to review AB 11 and would now like to offer our analysis of this proposed legislation. We had previously commented on July 1, 1974, on the tentative recommendations relating to condemnation law and procedure and this letter is an update of our previous comments to reflect legislative changes. Our comments on AB 11 are as follows:

THE RIGHT TO TAKE

The Commission has recognized our previous suggestions regarding the Department of Aeronautics and AB 11 has incorporated our recommendations in this area.

Article 3. Future Use

The basic concept expressed in Article 3 is sound, however, we believe that certain safeguards should be included in this proposed article in order to protect against an irrational court decision that may jeopardize the timing of a project. We believe that the addition of a provision that proof that the project for which the property is being acquired has

been budgeted by the condemnor raises a conclusive presumption that the acquisition is not for a future use will create an adequate safeguard. The following proposed addition to Article 3 is submitted accordingly:

> "Notwithstanding any other provision of this Article, where the condemnor proves that funds have been budgeted by it for construction of the project for which the property is being acquired, such proof shall create a conclusive presumption that the acquisition is not for a future use."

Previously the Commission's recommendation had made it clear that the seven-year period set forth in proposed Section 1240.220 was based on the period provided in the Federal Aid Highway Act of 1968 within which actual construction must commence on right of way purchased with Federal funds. This period was extended to ten years by the Federal Aid Highway Act of 1973. A ten-year period is more realistic under current conditions and the Department suggests that the period of ten years be substituted for the seven-year period in proposed Section 1240.220.

Article 5. Excess Condemnation

Proposed Article 5 (Excess Condemnation) introduces a new concept in condemnation proceedings. Section 1240.410 allows the condemnee to defeat the condemnation of a "remnant" upon proving that the condemnor has a sound means to prevent the property from becoming a remnant.

Although this provision may appear to be relatively insignificant, it will undoubtedly lead to extensive litigation in those few cases where excess condemnation is proposed by the condemnor without the concurrence of the condemnee. The test provided by the proposed statute creates a labyrinth of speculative inquiry regarding feasibility of a particular plan of mitigation. In order to determine feasibility of any such plan, it will be necessary to first determine damages that would otherwise occur if the remnant were not acquired. Any such inquiry will undoubtedly add several days of trial time to an already overburdened judicial system. The Department believes that the extent of judicial inquiry should be limited to the question of whether the remnant is of "little market value." Furthermore, it is our recommendation that

the presumption created by proposed Section 1240.420 should be a presumption affecting the burden of proof. Such a provision should discourage spurious issues from being raised by the condemnee yet allow full adjudication where a truly meritorious case exists.

Section 1240.510	"Property Appropriated To Public Use May Be Taken For Compatible Public Use"
Section 1240.530	"Terms And Conditions Of Joint Use"
Section 1240.630	"Right Of Prior User To Joint Use"

These proposed sections by the California Law Revision Commission may have great effect not only on highway rights of way but also on other State lands and rights of way such as tidelands and other publicly owned lands under the jurisdiction of the State Land Commission, park lands, etc. The prior Code of Civil Procedure sections dealing with this subject were hardly models of clarity. As a result, a rather complex scheme of special statutory provisions and master agreements between various public users grew up to handle problems of joint use and related problems, such as removal when one use is expanded, equitable spreading of maintenance costs, etc. Specifically, State highways are covered by Sections 660-670 of the Streets and Highways Code which provide for permit provisions for encroachments by other users in State highways. These permits contained provisions for relocation of utilities, railroads, electric power, gas and water facilities so placed. In most cases the permit will not be issued where there is an inconsistency with either the present or future use of the highway or the safe use thereof by the public. The Commission's proposal has "clarified" the former law and specifically provides that matters of consistency and adjustment of terms and conditions of joint use are to be left to the courts. It seems to the Department that this cannot help but have an effect on prior statutory and contractual arrangements concerning these matters. Further, the criteria which the judiciary is to apply in determining these complex matters are not specified. It must be recognized that a right of way, where joint use issues may arise, may extend through several judicial jurisdictions. The criteria applied by one court may not be followed by another. Specifically in the area of future use, most large utilities and public entities, in the interest of judicious and economic future planning, acquire sufficient

right of way to provide for future needs, even though at the time of actual acquisition it could be argued that the time and place of the actual application of such right of way to the public use is at best uncertain and at worst speculative. For many years it has been the sound policy of the California Highway Commission to acquire sufficient rights of way on freeway projects (generally located in the area of a center divider strip) to provide for addition of an additional lane in each direction when and if the need arises. No criteria for handling such a situation is set forth in the Commission's proposed statutory provisions as to consistent public use either as to whether a use claiming consistency should be allowed to utilize such area of right of way or, if so, as to which entity must pay the considerable cost of relocation in the event the future need lying behind the original acquisition materializes.

Chapter 6. Deposit and Withdrawal of Probable Compensation - Possession Prior to Judgment

For many years the California Law Revision Commission's staff and the Commission itself has advocated a liberalization of the right of public agencies to take possession of property needed for various public purposes prior to entry of final judgment in a condemnation action. This policy was based on the general feeling that if procedures were established providing for exchange of money for property as soon as possible after the filing of an action in eminent domain, the property owner in particular would greatly benefit (tentative recommendation of the California Law Revision Commission relating to Condemnation Law and Procedures, January 1974, pp. 54-55).

This policy was greatly forwarded when the California voters at the November 1974 general election repealed Article 1, Section 14 of the California Constitution which had for many years restricted the right of immediate possession to those agencies taking for reservoirs or right of way purposes and enacted new Section 19 which provides as follows:

> "Section 19. Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the

condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation."

While, of course, the Department accepts the wisdom of the electorate in providing for the expansion of the right of immediate possession to virtually all public agencies taking property for virtually any legitimate public purpose, it is concerned with the administrative and judicial load such expanded legal procedures will place on public agencies and the courts. Other authorities in response to other and different schemes propounded by the Law Revision Commission to liberalize the provision for attack on amounts deposited as probable just compensation as well as withdrawal procedures have expressed similar concerns. For example, Mr. Richard Barry, Court Commissioner for the Superior Courts in Los Angeles County by letter to the Commission dated November 24, 1970, urged the Commission as follows: "... do not recommend legislation that will burden the courts..."

The Department feels that certain sections proposed as a portion of Assembly Bill 11 do threaten to increase the administrative and judicial burden without any significant real benefit to owners whose property is subject to eminent domain proceedings.

Section 1255.030. Specifically, proposed Section 1255.030 would appear to induce the property owner to challenge the amount deposited by the agency since such an owner may move at any time, and successively apparently, for increases in deposits of the probable amounts of just compensation.

Section 1255.030 then goes further by way of making this invitation even more attractive by providing that if the amount of such an increased deposit is not actually deposited within thirty days it will be treated as an abandonment, entitling the defendant to litigation expenses and damages as provided further in Sections 1268.610 and 1268.620. The Department believes that the number and the time frame within which challenges to an agency's deposit of probable just compensation may be made should be more limited. Such a limitation would better serve the property owner as well as the agencies and the judicial branch of government.

The Department also questions the wisdom of proposed Section

1255.030 which encourages the owner who wishes to challenge the amount of just compensation to immediately withdraw any such increased amount deposited. Upon such withdrawal the Commission's proposal would preclude the court from redetermining the amount of probable just compensation to be less than the amount withdrawn but no such countervailing constraint is provided in the court as to a determination that said amount is greater than the amount previously withdrawn by the owner.

The Department thinks that the net results of these proposals cannot help but greatly encourage owners to attempt to obtain increases in the probable just compensation deposited by agencies. This in turn will greatly increase agency and judicial costs.

As a result of such pretrial activities on the part of owners, in many cases the resultant amounts will reflect determinations made by overburdened courts operating under severe evidentiary and time constraints. It may be expected that in a significant number of cases the property owners will have available to them for withdrawal amounts in excess to that which the court upon more considered determination determines he is entitled. Such a result would seem to call for a strengthening rather than a weakening of the previous statutory safeguards concerning protection of tax funds deposited to secure necessary orders of possession, but the recommendation appearing under Article 2 of Chapter 6 would appear to weaken rather than strengthen preexisting safeguards.

Sections 1255.040 - 1255.050. The Department next objects to proposed Sections 1255.040 and 1255.050 which allows a defendant in an eminent domain action to require a deposit of reasonable just compensation with the provision of sanctions if such a deposit is not made. The Law Revision Commission suggested a limited tryout of similar legislative experiments from other states and apparently justified this on some theory that classes of cases selected to be covered represent areas of legitimate hardship. The Department, however, feels that since the enactment of the Brathwaite Bill (Government Code Sections 7260 and 7274), relating to relocation assistance, the incidence of litigation on the acquisition of such properties as covered by the classification written into proposed Section 1255.040 has diminished to a point of practically nil. This is because these provisions

as to relocation assistance, as applied to such properties, have removed all the "hardship" aspects of such acquisitions. The lack of litigation as to acquisition of such properties demonstrates complete lack of justification for legislative action. Insofar as the small proprietor is concerned, a similar effect is evidenced in relation to the acquisition of property covered by the terms of proposed Section 1255.050. Insofar as such proposal covers more valuable proprietorships of rental property, these owners, with their large resources to support litigation, may be expected to seize on the terms of proposed Section 1255.050 as a method of seeking, by motions for increase of deposit before trial, to expose the agency unable to meet such high levels of deposits as an individual judge may determine to be appropriate (in the limited time and on the limited evidence available to him) to payment of the additional amounts provided in such proposal for failure to make such increased deposits. In summary, the Department respectfully suggests that there is simply no demonstrated need on any "hardship" basis for the provisions currently forwarded in proposed Sections 1255.040 or 1255.050, allowing owners of these classes of property to demand high prejudgment deposits of probable just compensation from condemnors which are subject to severe penalties if such demands cannot be met.

Sections 1255.230 - 1255.240. The Department urges a continuation of the current provisions of Code of Civil Procedure Section 1243.7(e) to the effect that if personal service of an application to withdraw a deposit cannot be made on a party having an interest in the property, the plaintiff may object to the withdrawal on that basis. The deletion of this provision under the current law deprives the agency of all of its power to protect the public funds entrusted to it. Without the unserved party before the court, the "ease" which the Law Commission's tentative recommendation purports to find in demonstrating his lack of interest in the property is, in reality, of small protection for such funds. Any protection by way of the court's discretionary power to provide a bond or to limit the amount of withdrawal likewise may provide no real protection to these funds in the event such party later appears with substantial claims on the amount of just compensation. There is a lack of any concrete evidence that the presence of currently provided statutory protections acted in any significant manner to obstruct or delay legitimate requests for withdrawal by owners. Indeed, the Department's

experience has been that the very presence of such statutory protections has tended to limit property owners' demands for withdrawal to a reasonable basis, which in the great majority of cases can be handled by stipulation rather than necessitating the utilization of court time and resources.

Section 1255.280. The changes in present law proposed in Section 1255.280 to delete the requirement that a withdrawee pay interest on the excess of probable just compensation withdrawn over the final determination on this amount after trial, as well as to provide up to a year's stay on such return to the condemnor, simply enhances the invitation extended to owners to both seek increased deposits of probable just compensation and to encourage withdrawal. The Department objects to such changes in present statutory provisions, which provisions tend to restrict the utilization by owners of such procedures to a reasonable and prudent basis and level.

Section 1255.420. The Department has strong objections to proposed Section 1255.420, which allows a trial court to stay an order of possession on the basis of substantial hardship to the owner unless the plaintiff "needs" possession of the property as scheduled in the order of possession. This provision, in addition to the expansion of the time which must elapse between the service of an order for possession and the date of actual possession from 20 to 90 days (proposed Section 1255.450) all act in concert to make extremely unpredictable whether or not the real property necessary for construction will actually be available on the date required under the construction contract. If it is not, damages may be claimed by the contractor, resulting in a wastage of public funds. More often than not, such claims by the contractor are not ascertainable by the condemnor until near the end of the construction activity. Thus, evidence of the agency's "need" for possession of the property within the time specified in the order for possession may well not be available, in a form sufficiently satisfactory to the particular trial court involved, at the time the owner moves for a stay under proposed Section 1255.420. The Department's experience under present law has been that it provides both predictability as to when the property necessary for the construction of the project can be reasonably expected to be available to the contractor, as well as sufficient flexibility to take care of the rare and unusual hardship situation sought to be cured by the Commission's recommendation.

Under current law an order of immediate possession is not self-executing. To actually displace an owner from the property requires return to the court for a Writ of Assistance. It is the experience of the Department's counsel that at the hearing on application for this writ the trial court invariably explores any legitimate hardship being experienced by the reluctant owner and utilizes its judicial discretion in alleviating any such hardship to the maximum extent practicable under the situation presented to it. It seems unwise to the Department to attempt to alter the entire legal fabric relating to the power of courts to vacate orders of possession, with all of the advantages of predictability inherent therein, for the purpose of remedying the rare and unusual case of undue hardship to the property owner, especially where there is no evidence that the present law cannot accommodate to such unique and unusual situations.

Section 1255.450. The lack of balance in this area becomes evident when proposed Section 1255.450 would delete that portion of present law provided to remedy unnecessary wastage of public funds in those cases where the agency, on noticed motion, presents a cogent case for possession within as short a period as three days from service of the order for immediate possession (Code of Civil Procedure Section 1243.5 (c)). Certainly, in areas where complex land titles are involved and where immediate possession of unoccupied land, or even occupied land, will cause little if any hardship to the owner, the court should continue to have discretion to allow possession on less than 90 days' notice where the lack of ability to provide the contractor with the necessary property could expose taxpayers' funds to substantial wastage by way of contract claims.

Chapter 8 - Article 3.
Compensation Including Procedures For
Determining Compensation

Section 1260.210. "Order of Proof and Argument; Burden of Proof" Subsection (a) continues existing law while subsection (b) changes existing procedural law regarding the burden of proof on the issue of compensation. Existing California law on the burden of proof is contained in BAJI 11.98, which is consistent with the majority rule in the United States. In other parts of the bill the burden of proof is placed on the property owner where he contests the right to

take (Section 1240.620) where he asserts the loss of goodwill (Section 1263.510(a)). It would appear to be just as difficult to prove the loss of goodwill and to defeat the right to take as it is to prove the value of the property; nor is it any more difficult to prove compensation in an eminent domain case than it is to prove compensation in a personal injury case, yet in the latter case the burden of proof remains on the person seeking to be compensated. Therefore, it would appear to be practical and logical to continue the present procedural law which places the burden of persuasion on value and damages on the owner and special benefits on the condemnor. Such a rule is consistent with subdivision (a) of the section which gives the defendant the opportunity to proceed first and to commence and conclude the argument. The Department recommends, therefore, that the present rule be maintained, and that Section 1260.210 (b) be deleted.

Section 1263.205. This section replaces 1263.220 proposed by the Law Revision Commission, and defines improvements pertaining to the realty to include any "facility, machinery or equipment installed for use on property taken, etc." The Department had objections to 1263.220 as being vague and unduly expansive. This section has the same defects. For example, the term "facility" is quite broad and will doubtless require judicial clarification. Also the language "cannot be removed without a substantial economic loss" leaves uncertain what kind of loss is to be considered: loss to the property and equipment or economic loss to the owner-operator? The Department considers that the current definition of improvements as equipment designed for manufacturing or industrial purposes (CCP Section 1248(b)) should be retained as the starting point and that any modification thereof be left to a case by case application of the statutory and decisional law of fixtures.

Section 1263.250. Harvesting and Marketing of Crops. This is a modification of 1263.250 proposed by the Law Revision Commission, as to which the Department previously had no comments. The Department does, however, now object to the following language in subsection (b) for vagueness as to the type of "loss" intended to be compensated:

> "... in which case the compensation awarded for the property taken shall include an amount sufficient to compensate for loss caused by the limitation on the defendant's right to use the property."

Section 1263.330. Changes in Property Value Due to Imminence of the Project. The Department considers that the rationale of this section is basically sound and that uniform treatment of increases or decreases in value attributable to a pending public improvement would appear to be desirable, within the limits of the Woolstenhulme decision. However, the Department considers that use of the language "any increase or decrease in value" is objectionable in that it may sanction a purely mathematical analysis of alleged beneficial or detrimental effects on property values. Thus, an appraiser in considering sales in a so-called blighted area may simply adjust mathematically for the sales using an arbitrary percentage such as 20 or 25 percent and carry through to his valuation of the subject property accordingly. To avoid any such mathematical approach and to clarify the manner in which such sales are to be considered, the Department suggests that the language of the section be amended as follows:

> "In determining the fair market value of the property taken, there shall be disregarded any effect on the value of the property that is attributable to any of the following:" [Continue with the language as presently proposed; that is, subitems a, b and c]

Section 1263.410. New Trial; Section 1263.150. Mistrial

These sections change the existing law with respect to the date of valuation following granting of a new trial, reversal on appeal and proceedings subsequent to a mistrial. Under existing law enunciated by the Supreme Court in People v. Murata, 55 Cal. 2d 1, a premium is placed on the condemnor to bring the case to trial within a year under existing Section 1249 of the Code of Civil Procedure. However, once the date of valuation is fixed it cannot be changed by subsequent proceedings since to do so would cause the court or jury to retry another issue not before the original tribunal. The existing law has the advantage of predictability and does not penalize either party, especially the condemnor, from taking measures to set aside an unjust

verdict either by a motion for new trial or by appeal. The bill does provide that "in the interest of justice" the court ordering the new trial can order a different date of value; in other words, the date of value at the first trial. This appears to be vague and indefinite, with no clear standards for the court to follow, and does not have the advantage of predictability which the existing law has. The Department, therefore, recommends continuation of the existing rule which provides for the retrial of the same issue, and which has worked well in the past without any apparent injustice or hardship on the property owner.

Section 1263.420. Damage to Remainder. This proposed section in abrogating the Symons rule will, of course, expand the liability of the Department and other public agencies for severance damage. The Department feels that without some clarification or limitation on damages emanating from that portion of the project off the part taken, the section is unduly broad. It will allow an open-end consideration of so-called proximity damage, i.e., nuisance factors such as noise, dust, dirt, smoke and fumes, whether generated on or off the part taken. The impact of such factors on the remaining property could, under the section be much less or, at least, the same as that on the general public. In highway taking cases, the landowners could try to prove proximity damages for alleged detriment hundreds of feet, or even hundreds of yards, away from the part taken. This, the Department feels, will encourage testimony of damage based on little more than speculation and conjecture.

The Department also opposes an allowance of damages based on the use by the public of the improvement. Existing Section 1248, subsection 2, of course provides for damages accruing by reason of the severance and the construction of the public improvement in the manner proposed. Injurious effect caused by the public's use of an improvement, i.e., such as a highway, is shared by property owners in general whether or not a part of their property is taken and is not really special to an owner. It is recognized that the Court of Appeals in the Volunteers of America case (21 Cal. App. 3d, 111) expressed strong policy reasons for allowing recovery of proximity damages "if established by proper proof." The Court did not elaborate on what would constitute proper proof. Proximity damage from sources

off the part taken and considering the use of the facility will [illegible] to imaginative appraisers and property owners to claim high or large severence damages without a basis in fact or experience. The Department considers that if proximity damages are to be broadened, there should be some physical or geographic limitation to prevent open-ended speculation circumscribed only by the length and breadth of a project.

Section 1263.440. Computing Damage and Benefit to Remainder. The Department opposes adoption of this section. To many judges and triers of fact assessment of just compensation using the present three or four step process is involved enough. This provision is certain to introduce additional complexities, if not confusion, into the assessment of damages and benefits. If the time lapse in construction is to be considered, the appraiser must estimate the period of delay, which may be little more than guesswork, and then discount the future damages to present worth. A similar procedure would apply to the assessment of special benefits. It is more than likely that this phase of the valuation testimony will be difficult for the trier of fact to follow.

The Department opposes the section for the additional reason that the issue of when the public improvement will in fact be constructed would be injected into the case. The timing of construction of any public improvement depends on such variables as availability of funds, priority of the project in relation to other public improvements and similar matters as to which an engineer, right of way agent or appraiser could give no more than a guess. Additionally, such testimony would not be binding on the condemning body, so that if the public improvement is not in fact built at the estimated time, the public agency could be subject to further claims of damages. The present concept of assuming the public improvement will be built, as proposed, on the applicable date of value is easily understood by the trier of fact, avoids speculation and has been judicially approved in numerous cases as working a substantial justice to both condemnor and condemnee. The Department considers that the present rule should be retained.

Section 1263.510. Compensation for Loss of Goodwill. As indicated previously to the Law Revision Commission, the Department is opposed in principle to the allowance of loss

of goodwill damages in eminent domain actions. Decisions of both the California and United States Supreme Courts have held that detriment to this form of property is not required to be compensated for under the "just compensation" clauses of the Constitution (United States v. Powelson, 319 U.S. 266; Oakland v. Pacific Coast Lumber Co., 171 Cal. 392, 398). In contrast to tangible property interests, goodwill is not directly appropriated in condemnation nor does the public entity obtain for its use either the fruits of the goodwill built up by the operator of a business, or the operator's covenant not to compete. Where goodwill damages are claimed, the property owner's attempt to prove such losses and the agency's attempt to rebut or prove mitigation thereof will probably increase trial-time estimates to double that of the present.

In addition, proof of such losses will doubtless require introduction of another level of expert testimoney, i.e., an accountant, C.P.A. or business broker. These experts will serve either as a foundation to the appraiser's opinion of goodwill damages, or as independent evidence of such damages. This, of course, will increase trial costs for both sides.

Compensation under this section will have to be based on loss of future patronage and hence profits. Considering the wide variety of factors upon which continuation of patronage depends, this may well qualify as the most speculative of evaluation assignments. Further, the estimated loss may realistically be based on the cost of taking steps which the prudent property owner would adopt in preserving the goodwill, thus predicating loss of an item expressly made noncompensable under subsection (2).

In sum, compensation for loss of goodwill is unsound in principle and highly uncertain in measure of proof.

Chapter 10. Divided Interests

Article 4. Options

Section 1265.310. Unexercised Options. Under present law an option holder has the right to protect himself after an eminent domain proceeding is filed by exercising the option if he determines that he can get more for the property than the

option price. Present law, however, does not allow him to sit back and gamble on the outcome of the lawsuit. Unless he converts the option to an interest in the property he is not entitled to compensation. The bill in its present form artificially terminates the option with the filing of the complaint. The Department sees no reason to provide an artificial, contrived destruction of the option right for the purpose of creating a compensable interest in property. Existing law seems to have worked no hardship on either the owner or the option holder and should be continued in the future.

The section also raises problems where the option holder does not exercise his option but the options expire prior to any taking by the condemnor. In a situation where a lease expires prior to a taking by the condemnor the lessee is not entitled to any compensation even though his lease was in existence as of the time of the filing of the complaint. Also, problems may be raised where the condemnor abandons the proceeding after the filing of the complaint since the filing of the complaint terminates the option. The option holder would not be entitled to exercise his option after the filing of the complaint even though the term of the option would allow him to do so but for the condemnation action. It would seem that this problem could be well left to the development of the common law by the courts of this State.

Article 5. Future Interests

Section 1265.410. Contingent Future Interests. This section appears to define what property interests should be entitled to compensation when there is a restriction as to the vesting of the interest. There appears to be no need for this section since the courts have developed a consistent policy regarding such future interest. The section also raises some confusion as to the definition of property which is contained in Section 1235.170. The courts have always held that certain contingent future interests are property rights but have held that in certain situations they have only a nominal value because of the remoteness in the vesting of possession. It appears that the case law is very clear on this point and does not need modification at this time from the legislature.

Chapter 11. Post Judgment Procedure

Section 1268.010. While not greatly affected thereby the Department questions the wisdom of the deletion by proposed Code of Civil Procedure Section 1268.010 of the current provision in Code of Civil Procedure Section 1251 which allows the State or public corporation condemnor a year to market bonds to enable it to pay judgment. Such deletion may threaten many needed public projects proposed to be funded by responsible local and State agencies which do not have immediately available to them unlimited funding. It is unlikely that local governments could reasonably prevail on their electorates to authorize bond issues high enough to cover the worst result that could possibly ensue from condemnation litigation which might be necessary to acquire the land for an otherwise worthy and needed local project. However, under the proposed deletion of the current statutory provision for bonding to cover an increase in estimated land costs after trial, this would seem to be the only protection such a condemnor would have against exposure to implied abandonment and the considerable penalties involved therein (see proposed Section 1268.610 and Section 1268.620) following such a result. Since a judgment in condemnation draws interest at 7 percent from date of entry, the plight of the owner having to wait as long as a year to actually receive the judgment amount plus 7 percent interest appears not quite as onerous as represented in that portion of the California Law Revision Commission's recommendation which recommends deletion of the one-year period to sell bonds to cover the cost of an unanticipated high award.

Section 1268.620. The Department objects to proposed Section 1268.620 as a total, unlimited, open-ended indemnity provision for owner recovery of damages caused by possession of the condemnor in the event a proceeding is either voluntarily or involuntarily dismissed for any reason or there is a final judgment that the plaintiff cannot acquire the property.

It would not appear to be in the public interest to provide such a measure of compensation which could well exceed the amount of just compensation which would have been awarded the owner had the action proceeded under the complaint in eminent domain filed. The items for which the owner be recompensed under the situation sought to be covered by

proposed Section 1268.620 should be carefully defined and limited. Such would be a responsible approach to the problem and carry with it the advantage of predictability, allowing public agencies to make reasonable judgments as to the costs of various alternatives available to them, such as the voluntary abandonment of a proposed acquisition under the provisions of proposed Section 1268.010 or under present law as embodied in Code of Civil Procedure Section 1253.

Section 1268.710. The Department objects to that portion of Section 1268.710 which deletes the provision of present Section 1254(k), providing that where a defendant obtains a new trial and does not obtain a result greater than that originally awarded, the costs of the new trial may be taxed against him. The basis of this objection is that it removes all constraint encouraging the exercise of prudence on behalf of the property owner and his attorney in seeking judicial remedy.

Section 1268.720. The Department objects to the complete removal of discretion from the appellate court in awarding costs on appeal as proposed in Section 1268.720. While the Department agrees that in recent years the trend has been to award the property owner his costs on appeal, whether appellant or respondent, and whether he prevails or does not prevail in the appellate court, it feels that the legislative branch of government should not invade the province of the judicial branch by attempting to destroy the use of judicial discretion in individual cases to apportion appellate costs as justice in that particular case may warrant.

This concludes the comments of the Department of Transportation on AB 11 as introduced by Assemblyman McAlister on Decembember 2, 1974. The Department continues to stand ready to render any assistance requested by the Commission or the Legislature in its efforts to advise on condemnation law and procedure to protect the rights of all parties to such proceedings.

Very truly yours,

Harry S. Fenton

HARRY S. FENTON
Chief of Division

Memorandum 75-1

EXHIBIT II

CALIFORNIA LAND TITLE ASSOCIATION

P.O. BOX 13369 • SACRAMENTO, CALIFORNIA 95813 • (916) 444-2047

February 18, 1975

The Honorable Alister McAlister
State Assemblyman
3112 State Capitol
Sacramento, California 95814

Dear Assemblyman McAlister:

This morning I spoke with John DeMoully regarding Assembly Bill 11 which you are carrying on behalf of the Law Revision Commission. He suggested that I write to you.

Your bill was the subject of an extensive study by the members of this Association's Legislative Committee which concluded that the bill represents a masterful job of draftsmanship, and we offer our congratulations to all responsible parties. An indication of how well this bill is put together is the fact that we could conjure up only one question concerning its provisions.

Specifically, we wish to raise the question of why, following commencement of an action in eminent domain, recordation of a lis pendens is made mandatory where service by publication is ordered and such recordation is permissive when personal service or service by mail are resorted to.

In the comments accompanying the tentative recommendation of the Commission, it is noted on page 155 with respect to Section 1250.150 of the bill, that permissive filing of a lis pendens following service of summons is a departure from existing law. Specifically, Section 1243 presently mandates recordation of lis pendens following service of summons. It is further noted that recordation of lis pendens is required under Section 1250.130 of the bill, where service is by publication.

Absent the benefit of the reasoning behind this departure from existing law, this Association urges that recordation of a lis pendens be made uniformly mandatory in all eminent domain actions without reference to the method of service employed by the litigants. We are of the opinion that such mandatory recordation

would provide a means whereby all members of the public, rather than only the parties to the action, could reasonably be apprised of the impending legal proceedings.

Thank you for your kind attention to this matter. If you desire further amplification on the question raised, please let me know.

Sincerely yours,

Sean E. McCarthy
Vice President -
Legislative Counsel

SEM/kh

cc: John DeMoully
California Law Revision Commission

STATE OF CALIFORNIA

Edmund G. Brown, Jr. [redacted], Governor

CALIFORNIA LAW REVISION COMMISSION
SCHOOL OF LAW
STANFORD, CALIFORNIA 94305
(415) 497-1731

February 1975

Comparable Provisions of AB 11 and AB 486

The following charts comparing AB 11 (Eminent Domain Law) and AB 486 (Uniform Eminent Domain Act) as introduced in the 1975 California Legislature are intended only to show for each bill whether the other bill has comparable provisions and, if so, where they are to be found. As a consequence, the comparison charts are general in nature and do not purport to provide detailed analyses or to attain absolute accuracy.

AB 11	AB 486	COMMENTS
1230.010	1230.01	---
1230.020	1230.02	---
1230.030	---	No comparable provision.
1230.040	1233.01	---
1230.050	---	No comparable provision.
1230.060	---	No comparable provision.
1230.065	1244.01	---
1230.070	---	No comparable provision.
1235.010	---	No comparable provision.
1235.020	---	No comparable provision.
1235.030	---	No comparable provision.
1235.040	---	No comparable provision.
1235.050	---	No comparable provision.
1235.060	---	No comparable provision.
1235.070	1244.03	---
1235.110	---	No comparable provision.
1235.120	---	No comparable provision.
1235.125	---	No comparable provision.
1235.130	---	No comparable provision.
1235.140	1230.03(n)	---
1235.150	1230.03(o)	---
1235.160	1230.03(p)	---
1235.165	1230.03(a)	---
1235.170	1230.03(r)	---
1235.180	---	AB 486 would rely on case law interpretation.

AB 11	AB 486	COMMENTS
1235.190	---	No comparable provision.
1235.195	---	No comparable provision.
1235.200	---	No comparable provision.
1235.210	---	No comparable provision.
1240.010	---	AB 486 retains existing Code Civ. Proc. §§ 1238-1238.7 as Sections 1230.10-1230.11.
1240.020	---	AB 486 retains existing Code Civ. Proc. §§ 1238-1238.7 as Sections 1230.10-1230.11.
1240.030	---	AB 486 retains existing Code Civ. Proc. § 1241 as Section 1230.19.
1240.040	1232.09	AB 486 also retains existing Code Civ. Proc. § 1241 as Section 1230.19.
1240.050	---	AB 486 would rely on case law and special codified and uncodified statutes.
1240.110	---	AB 486 retains existing Code Civ. Proc. § 1239 as Section 1230.14.
1240.120	---	AB 486 would rely on case law and special codified and uncodified statutes.
1240.130	---	No comparable provision.
1240.140	---	No comparable provision.
1240.150	1231.08	---
1240.160	---	No comparable provision.
1240.210	---	No comparable provision.
1240.220	---	AB 486 would rely on case law and special codified and uncodified statutes.
1240.230	---	No comparable provision.
1240.240	---	No comparable provision.
1240.310	---	No comparable provision.

AB 11	AB 486	COMMENTS
1240.320	---	AB 486 would rely on special codified and uncodified statutes.
1240.330	---	AB 486 would rely on special uncodified statutes.
1240.340	---	AB 486 would rely on case law and special codified and uncodified statutes.
1240.350	---	No comparable provision.
1240.410	---	AB 486 would rely on case law and special codified and uncodified statutes.
1240.420	---	No comparable provision.
1240.430	---	No comparable provision.
1240.510	---	AB 486 retains existing Code Civ. Proc. § 1240 as Section 1230.18.
1240.520	---	No comparable provision.
1240.530	---	No comparable provision.
1240.610	---	AB 486 retains existing Code Civ. Proc. §§ 1240 and 1241 as Sections 1230.18 and 1230.19.
1240.620	---	No comparable provision.
1240.630	---	No comparable provision.
1240.640	---	AB 486 would rely on special codified statutes.
1240.650	---	AB 486 retains existing Code Civ. Proc. § 1240 as Section 1230.18.
1240.670	1230.21	---
1240.680	1230.20	---
1240.690	1230.20, 1230.21	---
1240.700	---	AB 486 retains existing Pub. Res. Code § 5542.5.
1245.010-1245.060	1232.01-1232.05	---
1245.210	---	AB 486 would rely on special codified statutes.

AB 11	AB 486	COMMENTS
1245.220	1232.09	---
1245.230	1232.10	---
1245.240	---	AB 486 would rely on special codified and uncodified statutes.
1245.250	1232.11	---
1245.260	1233.035	---
1250.010-1250.040	1233.02	---
1250.110	1233.02	---
1250.120	1233.06	---
1250.125	---	No comparable provision.
1250.130	---	No comparable provision.
1250.140	---	No comparable provision.
1250.150	1233.07	---
1250.210	1233.04	---
1250.220	1233.04	---
1250.230	---	AB 486 would rely on general rules relating to intervention.
1250.240	1233.05	---
1250.310	1233.04	---
1250.320	1234.02(a)	---
1250.325	1234.03	---
1250.330	---	AB 486 would rely on general rules relating to verification.
1250.340	---	AB 486 would rely on general rules relating to amendment.
1250.345	1234.02(c)	---
1250.350	1234.02(b)	---
1250.360-1250.370	---	No comparable provisions.
1250.410(a)	1236.04	---
1250.410(b)	1241.05(b)	---

AB 11	AB 486	COMMENTS
1255.010-1255.480	1235.01-1235.05	---
1258.010-1258.030	1236.01-1236.03, 1236.05-1236.07	---
1258.210-1258.300	1236.10-1236.16	---
1260.010	1238.01(a)	---
1260.020	---	No comparable provision.
1260.030	---	No comparable provision, but see Section 1238.01(b).
1260.110	1234.06	---
1260.120	1234.08	---
1260.210(a)	1238.03	---
1260.210(b)	1238.04	---
1260.220	1238.05, 1238.07	---
1260.230	1238.06	---
1260.240	---	No comparable provision.
1263.010	1239.01(a), (c)	---
1263.020	1239.01(b)	---
1263.110-1263.150	1239.03	---
1263.205	1230.03(l)	---
1263.210	1231.09	---
1263.230-1263.250	1239.09-1239.10	---
1263.260	---	No comparable provision.
1263.270	1239.11	---
1263.310	1239.02(a)	---
1263.320	1239.04	---
1263.330	1239.05	---
1263.410	1239.02(b)	---
1263.420	---	No comparable provision.

AB 11	AB 486	COMMENTS
1263.430	---	No comparable provision.
1263.440	1239.06	---
1263.450	1240.05	---
1263.510	1239.16	---
1263.610	---	No comparable provision.
1263.620	1239.10(d)	---
1265.010	---	No comparable provision.
1265.110-1265.160	1239.13	---
1265.210	1230.03(m)	---
1265.220	---	No comparable provision.
1265.225	1239.14	---
1265.230	---	No comparable provision.
1265.240	1239.14	---
1265.310	---	No comparable provision.
1265.410	---	No comparable provision.
1265.420	1239.15	---
1268.010	1241.08(a)-(b)	---
1268.020	1241.10	---
1268.030	1241.09	---
1268.110	1241.08(a)-(b)	---
1268.120	1241.08(c)	---
1268.130	---	No comparable provision.
1268.140	1241.11	---
1268.150	---	No comparable provision.
1268.160	1241.11	---
1268.170	---	No comparable provision.
1268.210-1268.240	1241.12	---
1268.310-1268.320	1241.02-1241.03	---

AB 11	AB 486	COMMENTS
1268.330	---	No comparable provision.
1268.340	---	No comparable provision.
1268.410-1268.430	1241.04	---
1268.510	1242.02	---
1268.610	1242.03	---
1268.620	1242.04	---
1268.710	1241.05(a)	---
1268.720	---	AB 486 would rely on case law.
1273.010-1273.050	1243.01-1243.09	---

AB 486	AB 11	COMMENTS
1230.01	1230.010	---
1230.02	1230.020	---
1230.03(a)	1235.165	---
(b)	---	Term not used in AB 11.
(c)	---	See Govt. Code § 7260(d) (relocation assistance).
(d)	---	AB 11 uses "take" or "acquire by eminent domain."
(e)	---	No comparable provision.
(f)	---	AB 11 uses "defendant."
(g)	---	AB 11 uses "plaintiff."
(h)	---	No comparable provision.
(i)	---	No comparable provision.
(j)	---	No comparable provision.
(k)	---	See Govt. Code § 7260(e) (relocation assistance).
(l)	1263.205	---
(m)	1265.210	---
(n)	1235.140	---
(o)	1235.150	---
(p)	1235.160	---
(q)	---	No comparable provision.
(r)	1235.170	---
(s)	---	No comparable provision.
(t)	---	No comparable provision.
1230.04	---	No comparable provision.
1230.05	---	See Govt. Code § 7272.3 (relocation assistance).

AB 486	AB 11	COMMENTS
1230.10	1240.010	AB 486 continues existing Code Civ. Proc. § 1238, which AB 11 repeals as unnecessary.
1230.11	1240.010	AB 486 continues existing Code Civ. Proc. §§ 1238.1-1238.7, which AB 11 repeals as unnecessary except for nonprofit hospitals--see Health & Saf. Code § 1285.
1230.14	1240.110	AB 486 continues existing Code Civ. Proc. § 1239, which AB 11 repeals as unduly restrictive.
1230.15	---	Continued in Pub. Util. Code § 21652.
1230.16	---	Continued in Pub. Util. Code § 21652.
1230.17	---	Continued in Pub. Util. Code § 21652.
1230.18	---	AB 486 continues existing Code Civ. Proc. § 1240, which AB 11 replaces with various other sections.
1230.19	---	AB 486 continues existing Code Civ. Proc. § 1241, which AB 11 replaces with various other sections.
1230.20	1240.680, 1240.690	AB 486 continues existing Code Civ. Proc. § 1241.7.
1230.21	1240.670, 1240.690	AB 486 continues existing Code Civ. Proc. § 1241.9.
1231.01	---	See Govt. Code § 7267 (relocation assistance).
1231.02	---	See Govt. Code § 7267.1 (relocation assistance).
1231.03	---	See Govt. Code § 7267.2 (relocation assistance).
1231.04	---	Cf. Sections 1255.410, 1268.210 of AB 11.
1231.05	---	Cf. Section 1255.450 of AB 11; see also Govt. Code § 7267.3 (relocation assistance).
1231.06	---	See Govt. Code § 7267.4 (relocation assistance).

AB 486	AB 11	COMMENTS
1231.07	---	See Govt. Code § 7267.5 (relocation assistance).
1231.08	1240.150	See also Govt. Code § 7267.7 (relocation assistance).
1231.09	1263.210	---
1231.10	---	AB 486 duplicates California case law.
1231.11	---	See Govt. Code §§ 7263, 7265.4 (relocation assistance).
1231.12	---	No comparable provision.
1231.13(a)	---	See Govt. Code § 7267.7 (relocation assistance).
1231.13(b)	---	See existing Code Civ. Proc. § 1246.3, which AB 11 continues as Code Civ. Proc. § 1036.
1231.14	---	See Govt. Code § 7274 (relocation assistance).
1232.01-1232.05	1245.010-1245.060	---
1232.06-1232.08	---	No comparable provision.
1232.09	1240.040, 1245.220	---
1232.10	1245.230	---
1232.11	1245.250	---
1233.01	1230.040	---
1233.02	1250.010-1250.040, 1250.110	---
1233.03	---	No comparable provision.
1233.035	1245.260	---
1233.04	1250.210, 1250.220, 1250.310	---
1233.05	1250.240	---
1233.06	1250.120	---
1233.07	1250.150	---
1234.01	---	AB 11 incorporates general rules of practice.

AB 486	AB 11	COMMENTS
1234.02(a)	1250.320	---
1234.02(b)	1250.350	---
1234.02(c)	1250.345	---
1234.03	1250.325	---
1234.04	---	No comparable provision.
1234.05	---	AB 11 incorporates general rules of practice; it also deals specifically with cross-complaints in Code Civ. Proc. §§ 426.70, 428.10.
1234.06	1260.110	---
1234.07	---	AB 11 varies the burden with the particular issue involved.
1234.08	1260.120	---
1235.01-1235.05	1255.010-1255.480	---
1236.01-1236.03, 1236.05-1236.07	1258.010-1258.030	---
1236.04	1250.410(a)	---
1236.08	---	No comparable provision.
1236.10-1236.16	1258.210-1258.300	---
1237.01-1237.04	---	No comparable provisions.
1238.01(a)	1260.010	---
1238.01(b)	---	AB 11 incorporates general rules relating to severance.
1238.02	---	See Cal. Const. Art. I § 19.
1238.03	1260.210(a)	---
1238.04	1260.210(b)	---
1238.05	1260.220	---
1238.06	1260.230	---
1238.07	1260.220(b)	---

AB 486	AB 11	COMMENTS
1239.01(a), (c)	1263.010	---
1239.01(b)	1263.020	---
1239.02(a)	1263.310	---
1239.02(b)	1263.410	---
1239.03	1263.110-1263.150	---
1239.04	1263.320	---
1239.05	1263.330	---
1239.06	1263.440	---
1239.07	---	No comparable provision.
1239.08	---	No comparable provision.
1239.09-1239.10	1263.230-1263.250	---
1239.10(d)	1263.620	---
1239.11	1263.270	---
1239.12	---	AB 486 in effect codifies California case law.
1239.13	1265.110-1265.160	---
1239.14	1265.225, 1265.240	---
1239.15	1265.420	---
1239.16	1263.510	---
1240.01-1240.13	---	AB 486 is comparable to existing California Evid. Code §§ 810-822.
1240.05	1263.450	---
1241.01	---	No comparable provision.
1241.02-1241.03	1268.310-1268.320	---
1241.04	1268.410-1268.430	---
1241.05(a)	1268.710	---
1241.05(b)	1250.410(b)	---
1241.05(c)	---	No comparable provision.
1241.05(d)	---	AB 486 duplicates existing Code Civ. Proc. § 1246.3, which AB 11 continues as Code Civ. Proc. § 1036.

AB 486	AB 11	COMMENTS
1241.06	1268.010	---
1241.07	---	No comparable provision.
1241.08(a)-(b)	1268.010, 1268.110	---
1241.08(c)	1268.120	---
1241.09	1268.030	---
1241.10	1268.020	---
1241.11	1268.140, 1268.160	---
1241.12	1268.210-1268.240	---
1242.01	---	AB 11 does not collect various dismissal provisions in one section.
1242.02	1268.510	---
1242.03	1268.610	---
1242.04	1268.620	---
1243.01-1243.09	1273.010-1273.050	---
1244.01	1230.065	---
1244.02	---	No comparable provision.
1244.03	1235.070	---