

Memorandum 95-5

Administrative Adjudication: Conforming Revisions

The proposed administrative adjudication bill of rights sets forth fundamental public policy and due process requirements for all agency adjudication — presiding officer free from bias, separation of functions, prohibition of ex parte communications, open hearings, language assistance, written decision based on the record, and designation and indexing of precedent decisions. Some agency statutes conflict or overlap with these. At the last meeting, the Commission considered to what extent these statutes should be preserved, and concluded that the staff should be aggressive in proposing amendments to make them subordinate to the administrative adjudication bill of rights.

The draft statute also has provisions to facilitate agency proceedings, such as settlement authority, subpoena authority, and emergency decision procedures. Some agency statutes conflict or overlap with these. Since fundamental public policy or due process is not involved in these, it is less important to conform them to the draft statute.

These statutes are discussed below. The following exhibits are attached to this Memorandum:

Exhibit 1: Revised conforming revisions. These replace the conforming revisions on pages 85-108 of the recommendation attached to Memorandum 95-4.

Exhibit 2: The text of ex parte communication statutes to be kept unchanged.

Exhibit 3: A list of other statutes to be kept unchanged.

EX PARTE COMMUNICATIONS**To Be Made Subject to Draft Statute**

The staff recommends making the following ex parte communications provisions subject to the draft statute as set out in Exhibit 1.

Council for Private Postsecondary and Vocational Education. The Council regulates private postsecondary institutions, provides claims procedures for students entitled to tuition refunds because of withdrawal from or closure of the institution, and provides administrative hearings. Educ. Code §§ 94300-94350

(operative until June 30, 1996). The Council's statute prohibits *ex parte* communications, and is similar to the *ex parte* communications provisions of the draft statute. Educ. Code § 94323(f)(2), added by 1994 Cal. Stat. ch. 809.

Workers' compensation. Certain issues in workers' compensation proceedings are subject to arbitration. Lab. Code § 5275. *Ex parte* communications with the arbitrator or a potential arbitrator are prohibited, except to schedule the arbitration hearing or to request a continuance. *Id.* § 5278. Similarly, the draft statute permits communications that concern "a matter of procedure or practice, including a request for a continuance, that is not in controversy." Proposed Section 11430.20.

California Integrated Waste Management Board. This board makes regulations for reducing and recycling solid waste (Pub. Res. Code § 40502), makes recommendations to the Legislature (*id.* § 40507), and by rollcall vote approves, denies, or amends integrated waste management plans, permits, exemptions, and time extensions (*id.* § 40510). Its *ex parte* communications provisions apply to those matters for which a rollcall vote is required — i.e., approval, denial, or amendment of integrated waste management plans, permits, exemptions, and time extensions. *Id.* § 40412 (Exhibit 1). These appear to be adjudicative in nature. The board's *ex parte* communications provisions are like those in the draft statute in that they apply to oral and written communications, and have an exception for communications on purely procedural matters. They are unlike the draft statute in that, although there is no provision for disqualification of the Board member who received the *ex parte* communication, there are severe penalties for violation (up to \$50,000 fine and by imprisonment for not more than one year in the county jail or state prison) — the draft statute has no penalties other than disqualification of the presiding officer who received the communication. On the other hand, under the board's statute, the transgression is fully cured by the board member disclosing the communication on the record, and the severe penalties do not apply. The amendments in Exhibit 1 apply the *ex parte* communications provisions of the draft statute to the California Integrated Waste Management Board, but preserve both the sanctions and curative provisions of that board's statute.

Ex Parte Communications Statutes To Be Preserved

In general, conforming revisions are not necessary to preserve agency statutes, because Section 11415.20 in the draft statute provides that a statute

“applicable to a particular agency or decision prevails over a conflicting or inconsistent provision” of proposed new Chapter 4.5. When a conforming revision appears desirable to preserve an agency statute, it is set out in Exhibit 1. The staff recommends preserving the following ex parte communications provisions.

Workers’ compensation. A disabled employee is evaluated by a medical evaluator who makes a report to be used in proceedings before the workers’ compensation appeals board. Communications with the medical evaluator must be in writing and be served on the opposing party, and ex parte communication is prohibited. Lab. Code § 4062.2 (Exhibit 2). The staff recommends preserving these provisions. The ex parte communications provisions in the draft statute apply only to communications with the presiding officer, and would therefore presumably not apply to communications with an expert such as a medical examiner. For that reason, an express statutory exemption for ex parte communications with the medical examiner appears unnecessary, and might create an undesirable inference that without such an exemption the draft statute would apply to this type of communication.

Transportation agencies. Ex parte communications between a bidder and certain transportation agencies (San Francisco Bay Area Rapid Transit District, Southern California Rapid Transit District, Golden Gate Bridge, Highway and Transportation District, San Diego Metropolitan Transit Development Board, North San Diego County Transit Development Board, or county transportation commission) or a person responsible for awarding a transportation contract, are prohibited. Pub. Cont. Code § 20216 (Exhibit 2). The bidding procedure is not an adjudicative proceeding, and so would not be subject to the ex parte communications provisions of the draft statute. See proposed Section 11425.10. Moreover, some of the agencies to which Public Contract Code Section 20216 applies are local agencies, e.g., a county transportation commission, that would not be subject to the administrative adjudication bill of rights. See proposed Section 11410.30. For these reasons, an express statutory exemption from the draft statute for the contract bidding procedure is unnecessary, and might create an undesirable inference that without such an exemption the draft statute would apply to contract bidding.

Coastal Commission. Both the draft statute and Coastal Commission statute (Pub. Res. Code §§ 30320-30328 — Exhibit 2) prohibit ex parte communications, provide exceptions, and require such communications to be disclosed on the

record. However, the respective coverage of the two statutes is significantly different.

The Coastal Commission statute is more lenient than the draft statute by providing that all communications by staff are permissible. See Pub. Res. Code § 30322. The draft statute prohibits ex parte communications between an employee or representative of an agency that is a party and the presiding officer, except for a communication “for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding,” or concerning a settlement proposal or technical issue. Thus if the draft statute were applied to the Coastal Commission, many staff communications now permitted would become impermissible. The Coastal Commission wrote us that the Legislature intended it to make planning and land use decisions acting more like a city council or board of supervisors than a court, emphasizing its small staff and austere budget. Second Supp. to Memo 94-11. Our revised tentative recommendation of July 1994 had an exception permitting ex parte advice from staff in Coastal Commission proceedings. The Comment said this exception “recognizes the need for policy advice from planning staff in proceedings such as land use and environmental matters.” The staff thinks this exception was sound policy, and should be continued by preserving the substance of Public Resources Code Section 30322.

At the same time, the Coastal Commission statute is more restrictive than the draft statute by applying to legislative and quasi-legislative proceedings, including federal consistency review, master plans, long-range development plans, and other quasi-judicial matters. Pub. Res. Code § 30321. The draft statute prohibits ex parte communications only for “agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.” Draft Sections 11405.50, 11410.10. The staff sees no reason to narrow the Coastal Commission statute to conform to the draft statute by making it less protective, especially since a large part of Coastal Commission action appears to be legislative or quasi-legislative in nature.

There are also differences in sanctions in the two statutes. In the draft statute, a violation of the ex parte communication provisions may result in disqualifying the presiding officer or agency head who received the communication. Draft Sections 11430.60, 11430.70. The Coastal Commission statute does not disqualify the commission member who received the communication, but imposes a civil fine on a commission member who knowingly violates the statute, and

authorizes a judicial writ of mandate requiring the commission to revoke its action and rehear the matter. Pub. Res. Code §§ 30327, 30328. The Coastal Commission sanctions appear more protective than the draft statute, and thus should be preserved.

The statute requires the Coastal Commission to adopt standard disclosure forms for reporting ex parte communications. Pub. Res. Code § 30324. This seems like a useful provision that should be preserved.

Finally, the Coastal Commission statute was enacted recently (1992), which suggests it should be preserved. This would be accomplished by the proposed addition of Section 30329 to the Public Resources Code set out in Exhibit 1.

State Mining and Geology Board. This board has both legislative and adjudicative functions. It determines mining policy for the Division of Mines and Geology in the Department of Conservation (legislative). Pub. Res. Code § 672. It inspects surface mining operations, and may order a mine not complying with law to cease operations (adjudicative). An operator who fails to comply may be fined, and may petition for administrative review. *Id.* §§ 2774.1-2774.2. The ex parte communications provisions of the board apply both to its legislative and adjudicative functions. See Pub. Res. Code § 663.1(b) (Exhibit 1). Since the ex parte communications provisions of the draft statute only apply to adjudication (Section 11425.10), the ex parte communications provisions of the board must be preserved for its legislative functions. We could provide that the draft statute, not the Public Contract Code, applies to adjudicative proceedings of the board. But that might cause confusion by having two different sets of rules, depending on whether the proceeding is legislative or adjudicative. The ex parte communications provisions of the board are similar to the draft statute in that both apply to oral and written communications, both require disclosure on the record of an ex parte communication, and both provide for disqualification of the agency official who received the communication. They are dissimilar in that the board's statute has standard disclosure forms and provides for a civil fine, much like the California Coastal Commission statute discussed immediately above. On balance, the staff would preserve these provisions by an express statutory exemption from the draft statute, set out in Exhibit 1.

PRECEDENT DECISIONS

Agency statutes that permit designation of decisions as precedential should be amended as set out in Exhibit 1 to make them expressly subject to the

precedent decision section of the draft statute. These agencies are the Fair Employment and Housing Commission, (Gov't Code § 12935), Unemployment Insurance Appeals Board (Unemp. Ins. Code § 409), and State Personnel Board (Gov't Code § 19582.5). Without such an express provision, there might be a question whether the agency statute is a conflicting or inconsistent statute that would control under Section 11415.20.

SETTLEMENT

A number of agency sections permit settlement “before, during, or after the hearing.” Veh. Code §§ 11111.5, 11218, 11302.5, 11408, 11509.1, 11613.5, 11707, 11808.5, 11903.5. This seems like useful language to include in the draft statute. Accordingly, Section 11415.60 should be revised as follows:

11415.60. (a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other statute, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(b) A settlement may be made before or after issuance of an agency pleading, except that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

(c) A settlement is subject to any necessary agency approval. An agency head may delegate the power to approve a settlement. The terms of a settlement may not be contrary to statute or regulation, except that the settlement may include sanctions the agency would otherwise lack power to impose.

Subdivision (c) of Section 11415.60 provides that a settlement is subject to any necessary agency approval. The last paragraph of the Comment to Section 11415.60 should be revised to cite existing agency sections that require approval of a settlement:

Section 11415.60 is subject to a specific statute to the contrary governing the matter. Section 11415.20 (conflicting or inconsistent statute controls). Subdivision (c) of Section 11415.60 recognizes that

some other statutes provide for agency approval of a settlement. See, e.g., Gov't Code § 18681 (authority of State Personnel Board to approve settlements), Lab. Code §§ 98.2(d) (approval in labor standards enforcement), 5001 (approval of workers' compensation settlement required), Pub. Res. Code § 6107 (approval by Governor of settlement by State Lands Commission), Rev. & Tax. Code §§ 7093.5, 9271, 19442, 30459.1, 32471, 40211, 41171, 43522, 45867, 50156.11, 55332 (approval of tax settlements).

Other statutes on settlement that do not need a conforming revision are listed in Exhibit 3.

SUBPOENAS

Sections 11450.10-11455.20 of the draft statute authorize subpoenas, permit a motion to quash, provide witness fees and mileage, and provide for court enforcement, including the contempt sanction. There are parallel provisions in many agency statutes for non-APA proceedings. See Exhibit 3. Unlike the draft statute, some provide criminal penalties for disobedience. See, e.g., Pub. Res. Code §§ 3359, 3771. There does not appear to be a compelling reason to conform all these to the draft statute.

INTERIM SUSPENSION ORDERS AND OTHER EMERGENCY ORDERS

A number of agency statutes provide for interim suspension orders and other emergency orders. See Exhibit 3. The emergency decision provisions in the draft statute are permissive — an agency may use them to issue an emergency decision if the agency has adopted a regulation making them applicable. Section 11460.20. We should make clear that these provisions supplement and do not replace agency statutes by adding the following to Section 11460.10:

11460.10. (a) Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the emergency decision procedure provided in this article.

(b) This article supplements and does not replace other statutes that provide for interim suspension orders or other emergency orders.

Comment. . .

For other sections on interim suspension orders and other emergency orders, see Bus. & Prof. Code §§ 494 (order for interim suspension of licensee), 10086(a) (real estate licensee); Educ. Code §§ 66017 (immediate suspension of student), 94319.12 (emergency

suspension of approval of private postsecondary institution to operate); Fin. Code § 8201 (immediate removal of officer or employee of savings association); Food & Ag. Code § 56537 (Director of Food and Agriculture); Health & Safety Code §§ 1550.5 (health facilities and day care centers), 1569.50 (same), 1596.886 (same); Pub. Util. Code § 1070.5 (trucking license); Veh. Code § 11706 (motor vehicle license suspension).

OTHER PROVISIONS

A list of statutes on open hearings, bias, written decision, and language assistance is set out in Exhibit 3. None of these appear to require a conforming revision.

Respectfully submitted,

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Exhibit 1

**ADMINISTRATIVE ADJUDICATION: CONFORMING REVISIONS
(REVISED)**

Department of Consumer Affairs

Bus. & Prof. Code § 124 (amended). Notice

124. (a) Notwithstanding subdivision (c) of Section 11505 of the Government Code, and subject to subdivision (b), whenever written notice, including a notice, order, or document served pursuant to the Administrative Procedure Act (Ch. Chapter 3.5 (commencing with Section 11340), Ch. Chapter 4 (commencing with Section 11370), and Ch. Chapter 5 (commencing with Section 11500), Gov. C.) of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licensee or by personal service, at the option of the board.

(b) A notice, order, or document served or given pursuant to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code shall be served or given as provided in Section 11440.20 of the Government Code.

Comment. Section 124 is amended to add subdivision (b). In addition to notice by personal delivery or regular mail to the person's last known address, Government Code Section 11440.20 permits service or notice by mail delivery service, facsimile transmission, or other by such other electronic means as is provided by agency regulation. The procedures to which Government Code Section 11440.20 applies include alternative dispute resolution, informal hearing, emergency decision, declaratory decision, and conversion of the proceeding to another type of proceeding. See Gov't Code § 11440.20(a).

California State Board of Pharmacy

Bus. & Prof. Code § 4160 (technical amendment). Application of California Hazardous Substances Act; enforcement

4160. (a) The California Hazardous Substances Act, Chapter 13 (commencing with Section 28740) of Division 21 of the Health and Safety Code, applies to pharmacies and pharmacists and any other person or place subject to the jurisdiction of the board.

(b) The board may enforce that act when necessary for the protection of the health and safety of the public if prior regulatory notice is given in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) , Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code , as amended). Board enforcement shall focus on those hazardous substances which relate significantly to or overlap the practice of pharmacy.

(c) "Poison," as used elsewhere in this chapter, shall reference a category of hazardous substances defined in Section 28743 of the Health and Safety Code which the board may by regulation make more specific.

Comment. Section 4160 is amended to delete the former reference to Chapter 4 (commencing with Section 11370) and Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The provisions for regulatory notice are contained in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

The former reference to the statutory provisions "as amended" is omitted as surplus. See Gov't Code § 9.

Real Estate Commissioner

Bus. & Prof. Code § 10175.2 (technical amendment). Monetary penalties

10175.2. (a) If the Real Estate Commissioner determines that the public interest and public welfare will be adequately served by permitting a real estate licensee to pay a monetary penalty to the department in lieu of an actual license suspension, the commissioner may, on the petition of the licensee, stay the execution of all or some part of the suspension on the condition that the licensee pay a monetary penalty and the further condition that the licensee incur no other cause for disciplinary action within a period of time specified by the commissioner.

(b) The commissioner may exercise the discretion granted to him under subdivision (a) either with respect to a suspension ordered by a decision after a contested hearing on an accusation against the licensee or by stipulation with the licensee after the filing of an accusation, but prior to the rendering of a decision based upon the accusation. In either case, the terms and conditions of the disciplinary action against the licensee shall be made part of a formal decision of the commissioner ~~which satisfies the requirements of Section 11518 of the Government Code.~~

(c) If a licensee fails to pay the monetary penalty in accordance with the terms and conditions of the decision of the commissioner, the commissioner may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the licensee shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the department under the terms of the decision.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars (\$250) for each day of suspension stayed nor a

total of ten thousand dollars (\$10,000) per decision regardless of the number of days of suspension stayed under the decision.

(e) Any monetary penalty received by the department pursuant to this section shall be credited to the Recovery Account of the Real Estate Fund.

Comment. Section 10175.2 is amended to delete the former reference to Section 11518 of the Government Code. The former requirements of Government Code Section 11518 for contents of a decision are now in Government Code Section 11425.50, which applies to adjudicative proceedings of all state agencies. See Gov't Code § 11425.10.

Alcoholic Beverage Control Appeals Board

Bus. & Prof. Code § 23083 (amended). Determination of appeal

23083. (a) The board shall determine the appeal upon the record of the department and upon any briefs which may be filed by the parties. If any party to the appeal requests the right to appear before the board, the board shall fix a time and place for argument. The board shall not receive any evidence other than that contained in the record of the proceedings of the department.

(b) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to the determination.

Comment. Section 23083 is amended to add subdivision (b). Subdivision (b) makes the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to determination of an appeal by the Alcoholic Beverage Control Appeals Board. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 23083 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to determination of an appeal by the Alcoholic Beverage Control Appeals Board. See Gov't Code § 11501(a).

Nothing in Section 23083 excuses compliance with procedural protections required by due process of law.

State Board of Education, California Community Colleges, and California State University

Educ. Code § 232 (technical amendment). Issuance of regulations

232. The State Board of Education, the Board of Governors of the California Community Colleges, and the Trustees of the California State University shall issue regulations pursuant to Chapter 3.5 (commencing with Section 11340) and ~~Chapter 5 (commencing with Section 11500)~~ of Part 1 of Division 3 of Title 2 of the Government Code, commonly referred to as the rulemaking provisions of the Administrative Procedure Act, to implement the provisions of this chapter.

The Regents of the University of California may issue regulations to implement the provisions of this chapter. If the Regents of the University of California choose to issue regulations it may issue them pursuant to Chapter 3.5 (commencing with

Section 11340) and ~~Chapter 5 (commencing with Section 11500)~~ of Part 1 of Division 3 of Title 2 of the Government Code, commonly referred to as the rulemaking provisions of the Administrative Procedure Act.

Comment. Section 232 is amended to delete the references to the administrative adjudication portion of the Administrative Procedure Act. Regulations are issued pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

University of California

Educ. Code § 92001 (added). Provisions inapplicable

92001. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code) does not apply to a hearing conducted by the University of California.

Comment. Section 92001 makes the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to hearings of the University of California. The section recognizes that the University of California enjoys a constitutional exemption. See Cal. Const. Art. 9, § 9 (University of California a public trust with full powers of government, subject to limited legislative control, and independent in administration of its affairs). Nothing in Section 92001 excuses compliance with procedural protections required by due process of law. See also Section 232 (Regents may issue regulations pursuant to rulemaking provisions of Administrative Procedure Act).

Although Section 92001 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to a hearing conducted by the University of California. See Gov't Code § 11501(a).

Council for Private Postsecondary and Vocational Education

Educ. Code § 94323 (amended). Notice and hearing

94323. (a) This section establishes the procedure for notice and hearing required under this chapter and, except as provided in Sections 94319.12 and 94322, may be used in lieu of other notice or hearing requirements provided in this chapter.

(b) If notice of administrative action is required by this chapter, the council shall serve notice stating the following:

- (1) The action, including the penalties and administrative sanctions sought.
- (2) The grounds for the action with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action is based.
- (3) The right to a hearing and the time period within which the party subject to the notice may request a hearing in writing. The time period shall not be less than 15 days after service of the notice unless a longer period is provided by statute.
- (4) The right to be present at the hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.
- (5) The administrative action set forth in the notice will be taken and shall become final if the party subject to the notice does not request a hearing in writing within the time period expressed in the notice.

(c) If a party subject to a notice provided pursuant to subdivision (b) requests a hearing in writing within 10 days of receiving the notice, the council shall schedule a hearing. The hearing shall be held in a location determined pursuant to Section 11508 of the Government Code. The council shall serve reasonable notice of the time and place for the hearing at least 10 days before the hearing. The council may continue the date of the hearing upon a showing of good cause.

(d)(1) Any party, including the council, may submit a written request to any other party before the hearing to obtain the names and addresses of any person who has personal knowledge, or who the party receiving the request claims to have personal knowledge, of any of the transactions, occurrences, violations, or other matters that are the bases of the administrative action. In addition, the requesting party shall have the right to inspect and copy any written statement made by that person and any writing, as defined by Section 250 of the Evidence Code, or thing that is in the custody, or under the control, of the party receiving the request and that is relevant and not privileged. This subdivision shall constitute the exclusive method for prehearing discovery. However, nothing herein shall affect the council's authority, at any time, to investigate, inspect, monitor, or obtain and copy information under any provision of this chapter.

(2) The written request described in paragraph (1) shall be made before the hearing and within 30 days of the service of the notice described in subdivision (b). Each recipient of a request shall comply with the request within 15 days of its service by providing the names and addresses requested and by producing at a reasonable time at the council's office or another mutually agreed reasonable place the requested writings and things. The council may extend the time for response upon a showing of good cause.

(3) Except as provided in this paragraph, no party may introduce the testimony or statement of any person or any writing or thing into evidence at the hearing if that party failed to provide the name and address of the person or to produce the writing or thing for inspection and copying as provided by this subdivision. A party may introduce the testimony, statement, writing, or thing that was not identified or produced as required herein only if there is no objection or the party establishes that the person, writing, or thing was unknown at the time when the response was made to the written request, the party could not have informed other parties within a reasonable time after learning of the existence of the person, writing, or thing, and no party would be prejudiced by the introduction of the evidence.

(e) Before the hearing has commenced, the council shall issue subpoenas at the written request of any party for the attendance of witnesses or the production of documents or other things in the custody or under the control of the person subject to the subpoena. Subpoenas issued pursuant to this section shall be subject to Section 11510 Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(f)(1) The council shall designate an impartial hearing officer to conduct the hearing. The hearing officer may administer oaths and affirmations, regulate the course of the hearing, question witnesses, and otherwise investigate the issues, take official notice according to the procedure provided in Division 4 (commencing with Section 450) of the Evidence Code of any technical or educational matter in the council's special field of expertise and of any matter that may be judicially noticed, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, direct any party to appear and confer to consider the simplification of issues by consent, and prepare a statement of decision.

~~(2) Neither a hearing officer nor any person who has a direct or indirect interest in the outcome of the hearing shall communicate directly or indirectly with each other regarding any issue involved in the hearing while the proceeding is pending without notice and opportunity for all parties to participate in the communication. A hearing officer who receives any ex parte communication shall immediately disclose the communication to the council and all other parties. The council may disqualify the hearing officer if necessary to eliminate the effect of the ex parte communication. If~~ In addition to the sanctions provided in Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, if the council finds that any party willfully violated, or caused the violation of, this paragraph that article, the council shall enter that party's default and impose the administrative sanction set forth in the notice provided pursuant to subdivision (b).

(g)(1) Each party at the hearing shall be afforded an opportunity to present evidence, respond to evidence presented by other parties, cross-examine, and present written argument or, if permitted by the hearing officer, oral argument on the issues involved in the hearing. The council may call any party as a witness who may be examined as if under cross-examination.,

(2) Each party may appear through its representative or through legal counsel.

(3) The technical rules relating to evidence and witnesses shall not apply. However, only relevant evidence is admissible.

(4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who is not proficient in English shall provide, at the proponent's cost, an interpreter proficient in English and the language in which the witness will testify.

(5) The hearing shall be recorded by tape recording or other phonographic means unless all parties agree to another method of recording the proceedings.

(6)(A) At any time 10 or more days before the hearing, any party may serve on the other parties a copy of any declaration which the party proposes to introduce in evidence.

(B) The declaration shall be accompanied by a notice indicating the date of service of the notice and stating that the declarations will be offered into evidence,

the declarants will not be called as witnesses, and there will be no right of cross-examination unless the party receiving the notice requests the right to cross-examine, in writing, within seven days of the service of the declarations and notice.

(C) If no request for cross-examination is served within seven days of the service of the declarations and notice described in subparagraph (B), the right to cross-examine is deemed waived and the declaration shall have the same effect as if the declarant testified orally. Notwithstanding this paragraph, a declaration may be admitted as hearsay evidence without cross-examination.

(7) Disposition of any issues involved in the hearing may be made by stipulation or settlement.

(8) If a party fails to appear at a hearing, that party's default shall be taken and the party shall be deemed to have waived the hearing and agreed to the administrative action and the grounds for that action described in the notice given pursuant to subdivision (b). The council shall serve the party with an order of default including the administrative action ordered. The order shall be effective upon service or at any other time designated by the council. The council may relieve a party from an order of default if the party applies for relief within 15 days after the service of an order of default and establishes good cause for relief. An application for relief from default shall not stay the effective date of the order unless expressly provided by the council.

(h)(1) At any time before the matter is submitted for decision, the council may amend the notice provided pursuant to subdivision (b) to set forth any further grounds for the originally noticed administrative action or any additional administrative action and the grounds therefor. The statement of the further grounds for the originally noticed administrative action, or of the grounds for any additional administrative action, shall be made with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action or additional action is based. The amended notice shall be served on all parties. All parties affected by the amended notice shall be given reasonable opportunity to respond to the amended notice as provided in this section.

(2) The council may amend the notice after the case is submitted for decision. The council shall serve each party with notice of the intended amendment and shall provide the party with an opportunity to show that the party will be prejudiced by the amendment unless the case is reopened to permit the party to introduce additional evidence. If prejudice is shown, the council shall reopen the case to permit the introduction of additional evidence.

(i)(1) Within 30 days after the conclusion of the hearing or at another time established by the council, the hearing officer shall submit a written statement of decision setting forth a recommendation for a final decision ~~and explaining the factual and legal basis for the decision as to each of the grounds for the administrative action set forth in the notice or amended notice.~~ The written statement of decision shall be made as provided in Section 11425.50 of the

Government Code. The council shall serve the hearing officer's statement of decision on each party and its counsel within 10 days of its submission by the hearing officer.

(2) The council shall make the final decision which shall be based exclusively on evidence introduced at the hearing. The final decision shall be supported by substantial evidence in the record. The council shall also issue a statement of decision ~~explaining the factual and legal basis for the final decision as to each of the grounds for the administrative action set forth in the notice or amended notice as provided in Section 11425.50 of the Government Code.~~ The council shall issue an order based on its decision which shall be effective upon service or at any other time designated by the council. The council shall serve a copy of the final decision and order, within 10 days of their issuance, on each party and its counsel.

(3) The council may hold a closed session to deliberate on a decision to be reached based upon evidence introduced at the hearing.

(4) The council shall serve a certified copy of the complete record of the hearing, or any part thereof designated by a party, within 30 days after receiving the party's written request and payment of the cost of preparing the requested portions of the record. The complete record shall include all notices and orders issued by the council, a transcript of the hearing, the exhibits admitted or rejected, the written evidence and any other papers in the case, the hearing officer's statement of decision, and the final decision and order.

(j) The council shall serve all notices and other documents that are required to be served by this section on each party by personal delivery, by certified mail, return receipt requested, or by any other means designated by the council.

(k)(1) Any party aggrieved by the council's final decision and order may seek judicial review by filing a petition for a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days of the issuance of the final decision and order. If review is not sought within that period, the party's right to review shall be deemed waived.

(2) The aggrieved party shall present the complete record of the hearing or all portions of the record necessary for the court's review of the council's final decision and order. The court shall deny the petition for a writ of mandate if the record submitted by the party is incomplete. The court shall not consider any matter not contained in the record. The factual bases supporting the final decision set forth in the council's statement of decision shall be conclusive if supported by substantial evidence on the record considered as a whole.

(3) The final order shall not be stayed or enjoined during review except upon the court's grant of an order on a party's application after due notice to the council and the Attorney General. The order shall be granted only if the party establishes the substantial likelihood that it will prevail on the merits and posts a bond sufficient to protect fully the interests of the students, the council, and the Student Tuition Recovery Fund, from any loss.

(l) The council may adopt regulations establishing alternative means of providing notice and an opportunity to be heard in circumstances in which a full hearing is not required by law.

(m) For purposes of this section, "good cause" shall require sufficient ground or reason for the determination to be made by the council.

Comment. Subdivision (e) of Section 94323 is amended to correct the reference to the provisions of Administrative Procedure Act relating to subpoenas. Subdivision (f)(2) is amended to recognize that the ex parte communications provisions of the Administrative Procedure Act apply to hearings of the council under this section. Gov't Code § 11425.10(a)(8).

Paragraphs (1) and (2) of subdivision (i) are amended to delete the requirement that the decision explain its factual and legal basis as to each of the grounds for the administrative action set forth in the notice or amended notice, and replace it with a reference to Section 11425.50 of the Government Code. This change is nonsubstantive, since Government Code Section 11425.50 requires the decision to be in writing and to include a statement of the factual and legal basis for the decision as to each of the principal controverted issues. In any event, Government Code Section 11425.50 applies to all agency adjudicative proceedings under Government Code Section 11425.10.

General Law

Evid. Code § 755.5 (technical amendment). Interpreter's presence in medical examination

755.5. (a) During any medical examination, requested by an insurer or by the defendant, of a person who is a party to a civil action and who does not proficiently speak or understand the English language, conducted for the purpose of determining damages in a civil action, an interpreter shall be present to interpret the examination in a language that the person understands. ~~Commencing January 1, 1994, the~~ The interpreter shall be certified pursuant to ~~Section 11513 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2~~ of the Government Code.

(b) The fees of interpreters ~~utilized~~ used under subdivision (a) shall be paid by the insurer or defendant requesting the medical examination.

(c) The record of, or testimony concerning, any medical examination conducted in violation of subdivision (a) shall be inadmissible in the civil action for which it was conducted or any other civil action.

(d) This section does not prohibit the presence of any other person to assist a party.

(e) In the event that interpreters certified pursuant to ~~Section 11513 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2~~ of the Government Code cannot be present at the medical examination, upon stipulation of the parties the requester specified in subdivision (a) shall have the discretionary authority to provisionally qualify and ~~utilize~~ use other interpreters.

Comment. Section 755.5 is amended to correct references to the Administrative Procedure Act. The former reference in subdivision (a) to January 1, 1994, is deleted as obsolete.

Public Employment Relations Board (election certification)

Gov't Code § 3541.3 (amended). Powers and duties of board

3541.3. The board shall have all of the following powers and duties:

- (a) To determine in disputed cases, or otherwise approve, appropriate units.
- (b) To determine in disputed cases whether a particular item is within or without the scope of representation.
- (c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and to certify the results of the elections.
- (d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall these lists include persons who are on the staff of the board.
- (e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.
- (f) Within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.
- (g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.
- (h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this chapter, except a hearing to determine an unfair practice charge.
- (i) To investigate unfair practice charges or alleged violations of this chapter, and take such any action and make such any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.
- (j) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

Comment. Section 3541.3 is amended to make the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to proceedings of the Public Employment Relations Board under this chapter, except hearings to determine unfair practice charges. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 3541.3 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to proceedings of the Public Employment Relations Board under this chapter. See Gov't Code § 11501(a).

Nothing in Section 3541.3 excuses compliance with procedural protections required by due process of law.

Gov't Code § 3563 (amended). Powers and duties of board

3563. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall ~~such~~ the lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter ~~4.5~~ 3.5 (commencing with Section ~~11371~~ 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas

duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and take ~~such~~ any action and make ~~such~~ any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(l) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

Comment. Section 3563 is amended to make the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to proceedings of the Public Employment Relations Board under this chapter, except hearings to determine unfair practice charges. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 3563 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to proceedings of the Public Employment Relations Board under this chapter. See Gov't Code § 11501(a).

Nothing in Section 3563 excuses compliance with procedural protections required by due process of law.

Milton Marks Commission on California State Government Organization and Economy

Gov't Code § 8541 (technical amendment). Enumeration of powers

8541. In carrying out its duties and responsibilities, the commission shall have all of the following powers:

- (a) To meet at such times and places as it may deem proper.
- (b) As a body or, on the authorization of the commission, as a subcommittee composed of one or more members, to hold hearings at such times and places as it may deem proper.
- (c) To issue subpoenas to compel the attendance of witnesses and the production of books, records, papers, accounts, reports, and documents.
- (d) To administer oaths.
- (e) To employ, pursuant to laws and regulations governing state civil service, a secretary and such clerical, legal, and technical assistants as may appear necessary.
- (f) To contract with such other agencies, public or private, as it deems necessary, for the rendition and affording of such services, facilities, studies and reports to the commission as will best assist it to carry out its duties and responsibilities.
- (g) To co-operate with and to secure the co-operation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and to direct the sheriff of any county or any marshal to serve subpoenas, orders, and other process.
- (h) To certify to the superior court of any county in which proceedings are held, the facts concerning the disobedience or resistance, by any person, of any lawful order, or the refusal of any person to respond to a subpoena, to take the oath or affirmation as a witness, or to be examined, or the misconduct of any person during a hearing; and to receive the assistance of the court in enforcing orders and process, in the manner prescribed by Section 11525 of this code Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2.
- (i) To co-operate with every department, agency, or instrumentality in the state government; and to secure directly from every department, agency, or instrumentality full co-operation, access to its records, and access to any information, suggestions, estimates, data, and statistics it may have available.
- (j) To authorize its agents and employees to absent themselves from the State where necessary for the performance of their duties.
- (k) To do any and all other things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted it, notwithstanding any authority expressly granted to any officer or employee of the executive branch of state government.

Comment. Section 8541 is amended to correct the reference to the Administrative Procedure Act. A number of provisions formerly found in Government Code Sections 11500-11530 are now located in general provisions on administrative adjudication, which apply to all state adjudicative proceedings. See, e.g., Gov't Code §§ 11410.10 (application of chapter), 11425.10

(administrative adjudication bill of rights), 11430.10-11430.80 (ex parte communications), 11450.10-11450.40 (subpoenas), 11455.10-11455.30 (enforcement of orders and sanctions).

General Law

Gov't Code § 11018 (technical amendment). Language assistance in administrative hearings

11018. Every state agency which is authorized by any law to conduct administrative hearings but is not subject to Chapter 5 (commencing with Section 11500) shall nonetheless comply with ~~subdivision (d) of Section 11513~~ Sections 11435.20 and 11435.25 relative to the furnishing of language assistance at ~~any such~~ the hearing.

Comment. Section 11018 is amended to correct references to the Administrative Procedure Act.

State Agencies Generally

Gov't Code § 11125.7 (amended). Opportunity for public to address state body

11125.7. (a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body.

(b) The state body may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public comment on particular issues and for each individual speaker.

(c) This section is not applicable to closed sessions held pursuant to Section 11126.

(d) This section is not applicable to decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(e) This section is not applicable to hearings conducted by the State Board of Control pursuant to Sections 13963 and 13963.1.

(f) This section is not applicable to agenda items which involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. ~~For the purposes of this subdivision, "adjudicatory hearing" has the same meaning as defined in subdivision (f) of Section 11500 of the Government Code.~~ For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings

underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

Comment. Subdivision (f) of Section 11125.7 is amended to delete the second sentence. "Adjudicatory hearing" is no longer defined in the Administrative Procedure Act.

Fair Employment and Housing Commission

Gov't Code § 12935 (amended). Functions, powers, and duties of commission

12935. The commission shall have the following functions, powers and duties:

(a) To adopt, promulgate, amend, and rescind suitable rules, regulations, and standards (1) to interpret, implement, and apply all provisions of this part, (2) to regulate the conduct of hearings held pursuant to Sections 12967 and 12980, and (3) to carry out all other functions and duties of the commission pursuant to this part.

(b) To conduct hearings pursuant to Sections 12967 and 12981.

(c) To establish and maintain a principal office within the state.

(d) To meet and function at any place within the state.

(e) To appoint an executive secretary, and any attorneys and other employees as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(f) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, examine any person under oath and, in connection therewith, to require the production of any books or papers relating to any matter under investigation or in question before the commission.

(g) To create or provide financial or technical assistance to any advisory agencies and conciliation councils, local or otherwise, as in its judgment will aid in effectuating the purposes of this part, and to empower them to study the problems of discrimination in all or specific fields of human relationships or in particular instances of employment discrimination on the bases enumerated in this part or in specific instances of housing discrimination because of race, religious creed, color, national origin, ancestry, familial status, disability, marital status, or sex, and to foster, through community effort or otherwise, good will, cooperation, and conciliation among the groups and elements of the population of the state and to make recommendations to the commission for the development of policies and procedures in general. These advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay.

(h) With respect to findings and orders made pursuant to this part, to establish a system of published opinions which shall serve as precedent in interpreting and applying the provisions of this part. Commission findings, orders, and opinions in an adjudicative proceeding are subject to Section 11425.60.

(i) To issue publications and results of inquiries and research which in its judgment will tend to promote good will and minimize or eliminate unlawful

discrimination. These publications shall include an annual report to the Governor and the Legislature of its activities and recommendations.

(j) Notwithstanding Sections 11370.3 and 11502, to appoint hearing officers, as it may deem necessary, to conduct hearings. Each hearing officer shall possess the qualifications established by the State Personnel Board for the particular class of position involved.

Comment. Section 12935 is amended to make findings, orders, and opinions in an adjudicative proceeding of the Fair Employment and Housing Commission subject to the precedent decision provision of the Administrative Procedure Act. Under the Administrative Procedure Act, the commission may not expressly rely on an opinion as precedent unless it has been designated as a precedent decision. Gov't Code § 11425.60

Commission on State Mandates

Gov't Code § 17533 (added). Provisions inapplicable

17533. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 does not apply to a hearing by the commission under this part.

Comment. Section 17533 makes the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to hearings of the Commission on State Mandates under this part. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 17533 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to proceedings of the Commission on State Mandates under this part. See Gov't Code § 11501(a).

Nothing in Section 17533 excuses compliance with procedural protections required by due process of law.

State Personnel Board

Gov't Code § 19582.5 (amended). Functions, powers, and duties of commission

19582.5. The board may designate certain of its decisions as precedents. ~~Precedential decisions shall not be subject to Chapter 3.5. (commencing with Section 11340) of Part 1 of Division 3.~~ Decisions of the board are subject to Section 11425.60. The board may provide by rule for the reconsideration of a previously issued decision to determine whether or not it shall be designated as a precedent decision. All decisions designated as precedents shall be published in a manner determined by the board.

Comment. Section 19582.5 is amended to make decisions of the State Personnel Board subject to the precedent decision provision of the Administrative Procedure Act. Under the Administrative Procedure Act, the board may not expressly rely on a decision as precedent unless it has been designated as a precedent decision. Gov't Code § 11425.60.

The substance of the former second sentence of Section 19582.5 (decisions not subject to rulemaking provisions of Administrative Procedure Act) is continued in subdivision (b) of Section 11425.60.

Municipal Hospitals

Gov't Code § 37624.2 (technical amendment). Subpoenas

37624.2. The governing body or the hearing officer, if one is appointed, shall have the same power with respect to the issuance of subpoenas and subpoenas duces tecum as that granted to any agency or hearing officer pursuant to Section 11510 Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2. Any subpoena or subpoena duces tecum issued pursuant to this section shall have the same force and effect and impose the same obligations upon witnesses as that provided in Section 11510 11450.40.

Comment. Section 37624.2 is amended to correct references to the Administrative Procedure Act.

Judicial Council

Gov't Code § 68560.5 (technical amendment). Definitions

68560.5. As used in this article:

(a) "Court proceeding" means a civil, criminal, or juvenile proceeding, excluding a small claims proceeding, and a deposition.

(b) "Interpreter" does not include (1) an interpreter qualified under Section 754 of the Evidence Code to interpret for deaf or hard-of-hearing persons, or (2) an interpreter qualified for administrative hearings or noncourt settings under Section 11513 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2.

Comment. Section 68560.5 is amended to correct the reference to a provision of the Administrative Procedure Act.

Office of Statewide Health Planning and Development

Health & Safety Code § 443.37 (technical amendment). Review

443.37. (a) Any health facility affected by any determination made under this part by the office may petition the office for review of the decision. This petition shall be filed with the office within 15 business days, or within ~~such a~~ greater time as the office, with the advice of the commission, may allow, and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing shall be commenced within 60 calendar days of the date on which the petition was filed. The hearing shall be held before an employee of the office, a ~~hearing officer~~ an administrative law judge employed by the Office of Administrative Hearings, or a committee of the commission chosen by the chairperson for this purpose. If held before an employee of the office or a committee of the commission, the hearing shall be held in accordance with ~~such~~ procedures as the office, with the advice of the commission, shall prescribe. If held before a ~~hearing officer~~ an administrative law judge employed by the Office of Administrative Hearings, the hearing shall be held in accordance with Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The employee, ~~hearing officer~~ administrative law judge, or committee shall prepare a recommended decision including findings of fact and conclusions of law and present it to the office for its adoption. The decision of the office shall be in writing and shall be final. The decision of the office shall be made within 60 calendar days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(c) Judicial review of any final action, determination, or decision may be had by any party to the proceedings as provided in Section 1094.5 of the Code of Civil Procedure. The decision of the office shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.

(d) The employee of the office, the ~~hearing officer~~ administrative law judge employed by the Office of Administrative Hearings, the Office of Administrative Hearings, or the committee of the commission, may issue subpoenas and subpoenas duces tecum in a manner and subject to the conditions established by Section 11510 Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 443.37 is amended to correct references to the Administrative Procedure Act. A hearing held in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code is also subject to Chapter 4.5 (administrative adjudication general provisions) of that part, division, and title. Gov't Code §§ 11410.40, 11501.

Note. The part in which Section 443.37 appears has a sunset provision, and is repealed on January 1, 1997. See Section 443.46. This is addressed in the operative date provision at the end of these conforming revisions.

State Department of Health Services

Health & Safety Code § 1551.5 (technical amendment). Witness fees

~~1551.5. Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition to the witness fees and mileage provided by Government Code Section 11450.40, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.~~

Comment. Section 1551.5 is amended to recognize that witness fees and mileage are provided by Section 11450.40 of the Government Code. Under Section 1551, hearings under this article are held in accordance with the Administrative Procedure Act. This change is nonsubstantive, since witness fees and mileage under the Administrative Procedure Act are the same as those allowed in a civil case. Mileage and fees for a witness in a civil case are provided by Government Code Section 68093.

Health & Safety Code § 1568.065 (technical amendment). Conduct of proceedings

1568.065. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all those powers granted by the provisions. In the event of conflict between this chapter and those provisions of the Government Code, this chapter shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1568.082, the hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of any of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(d) ~~Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition to the witness fees and mileage provided by Government Code Section 11450.40, the~~ department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

(e)(1) The withdrawal of an application for a license or a special permit after it has been filed with the department shall not deprive the department of its authority to institute or continue a proceeding against the applicant for the denial of the license or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any such ground.

(2) The suspension, expiration, or forfeiture by operation of law of a license issued by the department, or its suspension, forfeiture, or cancellation by order of the department or by order of a court of law, or its surrender, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(f)(1) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.3 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1568.062, this section, or any other provision of law.

(2) If an application for a license indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) and the application was denied within the last year, the department shall cease further review of the application under either of the following circumstances:

(A) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(B) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1568.063 and the applicant did not petition for a hearing, the department shall cease further review of the application

until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence.

Comment. Subdivision (d) of Section 1568.065 is amended to recognize that witness fees and mileage are provided by Section 11450.40 of the Government Code. Under subdivision (a), hearings under this article are held in accordance with the Administrative Procedure Act. This change is nonsubstantive, since witness fees and mileage under the Administrative Procedure Act are the same as those allowed in a civil case. Mileage and fees for a witness in a civil case are provided by Government Code Section 68093.

Health & Safety Code § 1569.515 (technical amendment). Witness fees

~~1569.515. Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition to the witness fees and mileage provided by Government Code Section 11450.40, the~~ department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

Comment. Section 1569.515 is amended to recognize that witness fees and mileage are provided by Section 11450.40 of the Government Code. Under Section 1569.51, hearings under this article are held in accordance with the Administrative Procedure Act. This change is nonsubstantive, since witness fees and mileage under the Administrative Procedure Act are the same as those allowed in a civil case. Mileage and fees for a witness in a civil case are provided by Government Code Section 68093.

Health & Safety Code § 1596.8875 (technical amendment). Witness fees

~~1596.8875. Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this article who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition to the witness fees and mileage provided by Government Code Section 11450.40, the~~ department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

Comment. Section 1596.8875 is amended to recognize that witness fees and mileage are provided by Section 11450.40 of the Government Code. Under Section 1596.887, hearings under this article are held in accordance with the Administrative Procedure Act. This change is nonsubstantive, since witness fees and mileage under the Administrative Procedure Act are the same as those allowed in a civil case. Mileage and fees for a witness in a civil case are provided by Government Code Section 68093.

State Department of Alcohol and Drug Programs

Health & Safety Code § 11834.37 (technical amendment). Conduct of proceedings

11834.37. (a) Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between this chapter and the Government Code, the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) The department shall commence and process licensure revocations under this chapter in a timely and expeditious manner. ~~Notwithstanding Section 11502.1 of the Government Code, the~~ The Office of Administrative Hearings shall give priority calendar preference to licensure revocation hearings pursuant to this chapter, particularly revocations where the health and safety of the residents are in question.

Comment. Section 11834.37 is amended to delete the reference to former Section 11502.1 of the Government Code, which has been repealed. A proceeding conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code is also subject to the provisions of Chapter 4.5 (administrative adjudication general provisions) of that part, division, and title. Gov't Code §§ 11410.40, 11501.

Building Standards Commission

Health & Safety Code § 18949.6 (technical amendment). Building standards; regulations

18949.6. (a) The commission shall adopt regulations setting forth the procedure for the adoption of building standards and administrative regulations that apply directly to the implementation or enforcement of building standards.

(b) Regulatory adoption shall be accomplished so as to facilitate the triennial adoption of the specified model codes pursuant to Section 18928.

(c) The regulations shall allow for the distribution of proposed building standards and regulatory changes to the public for review in compliance with the requirements of the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) ~~, Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500)~~ of Part 1 of Division 3 of Title 2 of the Government Code) and for the acceptance of responses from the public.

Comment. Section 18949.6 is amended to correct the reference to the Administrative Procedure Act.

Department of Toxic Substances Control

Health & Safety Code § 25149 (amended). Endangerment to health and environment

25149. (a) Notwithstanding any other provision of law, except as provided in Section 25149.5 or 25181 of this code or Section 731 of the Code of Civil Procedure, no city or county, whether chartered or general law, or district may enact, issue, enforce, suspend, revoke, or modify any ordinance, regulation, law, license, or permit relating to an existing hazardous waste facility so as to prohibit or unreasonably regulate the disposal, treatment, or recovery of resources from hazardous waste or a mix of hazardous and solid wastes at that facility, unless, after public notice and hearing, the director determines that the operation of the facility may present an imminent and substantial endangerment to health and the environment. However, nothing in this section authorizes an operator of that facility to violate any term or condition of a local land use permit or any other provision of law not in conflict with this section.

(b) The director shall, pursuant to subdivision (c), conduct the hearing specified in subdivision (a) to determine whether the operation of an existing hazardous waste facility may present an imminent and substantial endangerment to health and the environment whenever any of the following occurs:

(1) A state or federal public agency requires any person to evacuate a residence or requires the evacuation of a school, place of employment, commercial establishment, or other facility to which the public has access, because of the release of a hazardous substance from the facility.

(2) For more than five days in any month, the air emissions from the facility result in the violation of an emission standard for a hazardous air pollutant established pursuant to Section 7412 of Title 42 of the United States Code or the threshold exposure level for a toxic air contaminant, as defined in Section 39655.

(3) A state or federal public agency requires that the use of a source of drinking water be discontinued because of the contamination of the source by a release of hazardous waste, hazardous substances, or leachate from the facility.

(4) A state agency, or the board of supervisors of the county in which the facility is located, upon recommendation of its local health officer, makes a finding that the public health has been affected by a release of hazardous wastes from the facility. The finding shall be based on statistically significant data developed in a health effects study conducted according to a study design, and using a methodology, which are developed after considering the suggestions on study design and methodology made by interested parties and which are approved by the Epidemiological Studies Section in the Epidemiology and Toxicology Branch of the State Department of Health Services before beginning the study.

(5) The owner or operator of the facility is in violation of an order issued pursuant to Section 25187 which requires one or both of the following:

(A) The correction of a violation or condition that has resulted, or threatens to result, in an unauthorized release of hazardous waste or a constituent of hazardous waste from the facility into either the onsite or offsite environment.

(B) The cleanup of a release of hazardous waste or a constituent of hazardous waste, the abatement of the effects of the release, and any other necessary remedial action.

(6) The facility is in violation of an order issued pursuant to Article 1 (commencing with Section 13300) of, or Article 2 (commencing with Section 13320) of, Chapter 5 of Division 7 of the Water Code or in violation of a temporary restraining order, preliminary injunction, or permanent injunction issued pursuant to Article 4 (commencing with Section 13340) of Chapter 5 of Division 7 of the Water Code.

(c) Whenever the director determines that a hearing is required, as specified in subdivision (b), the director shall immediately request the Office of Administrative Hearings to assign a ~~hearing officer~~ an administrative law judge to conduct the hearing, pursuant to this subdivision.

(1) After a ~~hearing officer~~ an administrative law judge is assigned by the Office of Administrative Hearings, the director shall transmit to the ~~hearing officer~~ administrative law judge and to the operator of the existing hazardous waste facility, all relevant documents, information, and data that were the basis for the director's determination. The director shall also prepare a notice specifying the time and place of the hearing. The notice shall also include a clear statement of the reasons for conducting the hearing, a description of the facts, data, circumstances, or occurrences that are the cause for conducting the hearing, and the issues to be addressed at the hearing. The hearing shall be held as close to the location of the existing hazardous waste facility as is practicable and shall commence no later than 30 days following the director's request to the Office of Administrative Hearings to assign a ~~hearing officer~~ an administrative law judge to the case.

(2) The hearing specified in paragraph (1) shall be conducted in accordance with Sections ~~11510~~ 11511 to 11515, inclusive, and ~~Section 11525~~, of the Government Code. The ~~hearing officer's~~ administrative law judge's proposed decision shall be transmitted to the director within 30 days after the case is submitted.

(3) The director may adopt the proposed decision of the ~~hearing officer~~ administrative law judge in its entirety or may decide the case upon the record, as provided in Section 11517 of the Government Code. The director's decision shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision is subject to judicial review in accordance with Section 11523 of the Government Code.

Comment. Section 25149 is amended to reflect the repeal of Sections 11510 and 11525 of the Government Code. A number of provisions formerly found in Government Code Sections 11500-11515 are now located in general provisions on administrative adjudication, which apply to all state adjudicative proceedings. See, e.g., Gov't Code §§ 11410.10 (application of chapter), 11425.10 (administrative adjudication bill of rights), 11430.10-11430.80 (ex parte

communications), 11450.10-11450.40 (subpoenas), 11455.10-11455.30 (enforcement of orders and sanctions).

Health & Safety Code § 25229 (technical amendment). Decision and findings of fact; degree of proof; required remedial actions

25229. (a) If, after the hearing, the director makes the decision that the subject land should not be designated a hazardous waste property or border zone property, the director shall issue that decision in writing and serve it in the manner provided in subdivision (c).

(b) If, after the hearing, the director makes the decision, upon a preponderance of the evidence, including any evidence developed at any time prior to the hearing, that the land should be designated a hazardous waste property or a border zone property, the director shall issue that decision in writing, which shall identify the subject land, or portion thereof, by street address, assessor's parcel number, or legal description and the name of the owner of record, contain findings of fact based upon the issues presented, including the reasons for this designation, the substances on, under, or in the land, and the significant existing or potential hazards to present or future public health and safety, and order every owner of the designated land to take all of the following actions:

(1) Execute before a notary a written instrument which imposes an easement, covenant, restriction, or servitude, or any combination thereof, as appropriate, upon the present and future uses of the land pursuant to Section 25230. The written instrument shall also include a copy of the director's decision.

(2) Return the executed instrument to the director within 30 days after the decision is delivered or mailed. Within 10 days after receiving the instrument, the director shall execute the written instrument and return the instrument to the owner.

(3) Record the written instrument pursuant to Section 25230 within 10 days after receiving the written instrument executed by the director, as specified in paragraph (2).

(4) Return the recorded written instrument to the director within 10 days after the owner records the instrument, as specified in paragraph (3).

(c) Copies of the determination shall be delivered or sent by certified mail to the owner of the property, the legislative body of the city or county in whose jurisdiction the land is located, and any other persons who were served pursuant to Section 25222 or who were permitted to intervene in the proceeding pursuant to Section 25226.

(d) Failure or refusal to comply with any order issued pursuant to this section shall be treated in the manner provided by Section 11525 Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 25229 is amended to correct the reference to the Administrative Procedure Act. A number of provisions formerly found in Government Code Sections 11500-11530 are now located in general provisions on administrative adjudication, which apply to all state adjudicative

proceedings. See, e.g., Gov't Code §§ 11410.10 (application of chapter), 11425.10 (administrative adjudication bill of rights), 11430.10-11430.80 (ex parte communications), 11450.10-11450.40 (subpoenas), 11455.10-11455.30 (enforcement of orders and sanctions).

Local Hospital Districts

Health & Safety Code § 32154 (technical amendment). Subpoenas

32154. The board or the hearing officer, if one is appointed, shall have the same power with respect to the issuance of subpoenas and subpoenas duces tecum as that granted to any agency or hearing presiding officer pursuant to Section 11510 Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code. Any such subpoena or subpoena duces tecum issued pursuant to this section shall have the same force and effect and impose the same obligations upon witnesses as that provided in Section 11510 Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 32154 is amended to correct references to provisions of the Administrative Procedure Act.

Air Resources Board

Health & Safety Code § 40843 (technical amendment). Superior court proceedings

40843. Upon receipt of a report submitted pursuant to Section 40842, the superior court shall proceed as specified in Section 11525 11455.20 of the Government Code.

Comment. Section 40843 is amended to correct the reference to a provision of the Administrative Procedure Act.

Agricultural Labor Relations Board (election certification)

Lab. Code § 1144.5 (added). Provisions inapplicable

1144.5. (a) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this part, except a hearing to determine an unfair labor practice charge.

(b) Notwithstanding Sections 11425.30 and 11430.10 of the Government Code, in a hearing to determine an unfair labor practice charge, a person who has participated in a determination of probable cause, injunctive or other pre-hearing relief, or other equivalent preliminary determination in an adjudicative proceeding may serve as presiding officer or as a supervisor of the presiding officer or may assist or advise the presiding officer in the same proceeding.

Comment. Subdivision (a) of Section 1144.5 makes the administrative adjudication provisions of the Administrative Procedure Act inapplicable to proceedings of the Agricultural Labor Relations Board under this part, except hearings to determine unfair labor practice charges. Nothing in Section 1144.5 excuses compliance with procedural protections otherwise

required by due process of law. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 1144.5 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to proceedings of the Agricultural Labor Relations Board under this part. See Gov't Code § 11501(a).

Subdivision (b) provides a broader exception for the Agricultural Labor Relations Board than the comparable provisions in the Administrative Procedure Act. See Gov't Code §§ 11425.30(b) (when separation not required), 11430.10 (ex parte communications prohibited).

Division of Workers' Compensation — Workers' Compensation Appeals Board

Lab. Code § 4600 (technical amendment). Responsibility of employer

4600. Medical, surgical, chiropractic, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatus, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer. In the case of his or her neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. After 30 days from the date the injury is reported, the employee may be treated by a physician of his or her own choice or at a facility of his or her own choice within a reasonable geographic area. However, if an employee has notified his or her employer in writing prior to the date of injury that he or she has a personal physician, the employee shall have the right to be treated by that physician from the date of injury. If an employee requests a change of physician pursuant to Section 4601, the request may be made at any time after the injury, and the alternative physician or chiropractor shall be provided within five days of the request as required by Section 4601. For the purpose of this section, "personal physician" means the employee's regular physician and surgeon, licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, who has previously directed the medical treatment of the employee, and who retains the employee's medical records, including his or her medical history.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, or a workers' compensation judge, the employee submits to examination by a physician, he or she shall be entitled to receive in addition to all other benefits herein provided all reasonable expenses of transportation, meals and lodging incident to reporting for the examination, together with one day of temporary disability indemnity for each day of wages lost in submitting to the examination. Regardless of the date of injury, "reasonable expenses of transportation" includes mileage fees from the employee's home to the place of the examination and back at the rate of twenty-one cents (\$0.21) a mile or the mileage rate adopted by the Director of the Department of Personnel Administration pursuant to Section 19820 of the Government Code, whichever is

higher, plus any bridge tolls. The mileage and tolls shall be paid to the employee at the time he or she is given notification of the time and place of the examination.

Where at the request of the employer, the employer's insurer, the administrative director, the appeals board, a workers' compensation judge, an employee submits to examination by a physician and the employee does not proficiently speak or understand the English language, he or she shall be entitled to the services of a qualified interpreter in accordance with conditions and a fee schedule prescribed by the administrative director. These services shall be provided by the employer. For purposes of this section, "qualified interpreter" means a language interpreter certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 11513 or 68566 of, the Government Code.

Comment. Section 4600 is amended to correct the reference to a provision of the Administrative Procedure Act.

Lab. Code § 5278 (amended). Disclosure of settlement offers; ex parte communications

5278. (a) No disclosure of any offers of settlement made by any party shall be made to the arbitrator prior to the filing of the award.

(b) ~~There shall be no ex parte communication by counsel or the parties with Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code applies to a communication to the arbitrator or a potential arbitrator except for the purpose of scheduling the arbitration hearing or requesting a continuance.~~

Comment. Section 5278 is amended to make arbitration proceedings under this part subject to the ex parte communications provisions of the Administrative Procedure Act. In any event, the ex parte communications provisions of the Administrative Procedure Act would apply to arbitration proceedings under Government Code Sections 11425.10 (requirements apply to "adjudicative proceeding") and 11405.20 ("adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision).

Formerly subdivision (b) of Section 5278 applied to ex parte communications "with" the arbitrator or potential arbitrator. The ex parte communications provisions of the Administrative Procedure Act apply only to communications "to" the presiding officer. Gov't Code § 11430.10. Thus the arbitrator may initiate an ex parte communication with a party. See the Comment to Gov't Code § 11430.10.

The former "except" clause in subdivision (b), permitting ex parte communications for the purpose of scheduling the arbitration hearing or requesting a continuance, is continued in substance in Government Code Section 11430.20(b).

Lab. Code § 5710 (technical amendment). Depositions

5710. (a) The appeals board, a workers' compensation judge, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a workers'

compensation judge in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear workers' compensation matters in those other jurisdictions.

(b) Where the employer or insurance carrier requests a deposition to be taken of an injured employee, or any person claiming benefits as a dependent of an injured employee, the deponent is entitled to receive in addition to all other benefits:

(1) All reasonable expenses of transportation, meals and lodging incident to the deposition.

(2) Reimbursement for any loss of wages incurred during attendance at the deposition.

(3) A copy of the transcript of the deposition, without cost.

(4) A reasonable allowance for attorney's fees for the deponent, if represented by an attorney licensed by the state bar of this state. The fee shall be discretionary with, and, if allowed, shall be set by, the appeals board, but shall be paid by the employer or his or her insurer.

(5) A reasonable allowance for interpreter's fees for the deponent, if interpretation services are needed and provided by a language interpreter certified or deemed certified pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 44513 or 68566 of, the Government Code. The fee shall be in accordance with the fee schedule set by the administrative director and paid by the employer or his or her insurer. Payment for interpreter's services shall be allowed for deposition of a non-English-speaking injured worker, and for such other deposition-related events as permitted by the administrative director.

Comment. Section 5710 is amended to correct the reference to a provision of the Administrative Procedure Act.

Lab. Code § 5811 (technical amendment). Fees and costs

5811. (a) No fees shall be charged by the clerk of any court for the performance of any official service required by this division, except for the docketing of awards as judgments and for certified copies of transcripts thereof. In all proceedings under this division before the appeals board, costs as between the parties may be allowed by the appeals board.

(b) It shall be the responsibility of any party producing a witness requiring an interpreter to arrange for the presence of a qualified interpreter. A qualified interpreter is a language interpreter who is certified, or deemed certified, pursuant to Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, or Section 44513 or 68566 of, the Government Code.

Interpreter fees which are reasonably, actually, and necessarily incurred shall be allowed as cost under this section, provided they are in accordance with the fee schedule set by the administrative director.

A qualified interpreter may render services during the following:

(1) A deposition.

(2) An appeals board hearing.

(3) During those settings which the administrative director determines are reasonably necessary to ascertain the validity or extent of injury to an employee who cannot communicate in English.

Comment. Section 5811 is amended to correct a reference to the Administrative Procedure Act.

Occupational Safety and Health Appeals Board

Lab. Code § 6603 (technical amendment). Rules of practice and procedure

6603. (a) The rules of practice and procedure adopted by the appeals board shall be consistent with Sections 11507, 11507.6, 11507.7, ~~11510~~, 11513, 11514, 11515, and 11516, ~~and 11525~~ of the Government Code, and shall provide affected employees or representatives of affected employees an opportunity to participate as parties to a hearing under Section 6602.

(b) The superior courts shall have jurisdiction over contempt proceedings, as provided in Section 11525 Article 12 (commencing with Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 6603 is amended to correct references to sections in the Administrative Procedure Act. Former Section 11510 of the Government Code is superseded by Sections 11450.10-11450.40 of the Government Code (subpoenas). Former Section 11525 of the Government Code is superseded by Sections 11455.10-11455.30 of the Government Code (enforcement of orders and sanctions). Rules of practice and procedure adopted by the appeals board must be consistent with these provisions, and with all other general provisions governing administrative adjudication found in Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

Military Department

Mil. & Vet. Code § 105 (added). Provisions inapplicable

105. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing conducted by the Military Department under this code.

Comment. Section 105 exempts California Military Department hearings under this code from the general provisions of the administrative adjudication portion of the Administrative Procedure Act. The hearings are a hybrid of federal and special state provisions that are unique and involve primarily matters of military classification and discipline. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 105 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to hearings of the California Military Department under this code. See Gov't Code § 11501(a).

Department of Corrections and related entities (Board of Prison Terms, Youth Authority, Youthful Offender Parole Board, and Narcotic Addict Evaluation Authority — part 1)

Pen. Code § 3066 (added). Provisions inapplicable

3066. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of an inmate or parolee conducted by the Department of Corrections or the Board of Prison Terms.

Comment. Section 3066 makes the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to a parole hearing or other adjudication of rights of an inmate or parolee conducted by the Department of Corrections or the Board of Prison Terms. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 3066 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to a parole hearing or other adjudication of rights of an inmate or parolee conducted by the Department of Corrections or the Board of Prison Terms. See Gov't Code § 11501(a).

Nothing in Section 3066 excuses compliance with procedural protections required by due process of law.

State Mining and Geology Board

Pub. Res. Code § 663.1 (technical amendment). Ex parte communications on matters within board's jurisdiction

663.1 (a) For the purposes of this section, "ex parte communication" means any oral or written communication between a member of the board and an interested person about a matter within the board's jurisdiction that does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) For purposes of this section, "a matter within the board's jurisdiction" means any action on a reclamation plan or financial assurance appealed pursuant to subdivision (e) of Section 2770, any review of an order setting administrative penalties pursuant to Section 2774.2, or any review of an appeal pursuant to Section 2775.

(c)(1) A board member or any person, other than a staff member of the board, department, or any other state agency, who is acting in his or her official capacity and who intends to influence the decision of the board on a matter within the board's jurisdiction, shall not conduct an ex parte communication, unless the board member or the person who engages in the communication with the board member discloses that communication in one of the following ways:

(A) The board member or the person fully discloses the communication and makes public the ex parte communication by providing a full report of the

communication to the executive officer or, if the communication occurs within seven days of the next board hearing, to the board on the record of the proceeding of that hearing.

(B) When two or more board members receive substantially the same written communication or receive the same oral communication from the same party on the same matter, one of the board members fully discloses the communication on behalf of the other board member or members who received the communication and requests in writing that it be placed in the board's official record of the proceeding.

(d)(1) The board shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) The identity of the person or persons initiating and the person or persons receiving the communication.

(C) A complete description of the content of the communication, including the complete text of any written material that was part of the communication.

(2) The executive officer shall place in the public record any report of an ex parte communication.

(e) Communications shall cease to be ex parte communications when fully disclosed and placed in the board's official record.

(f) In addition to any other applicable penalty, a board member who knowingly violates this section is subject to a civil fine, not to exceed seven thousand five hundred dollars (\$7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

(g) Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the board under this code.

Comment. Section 663.1 is amended to make clear that the ex parte communications provisions of the Administrative Procedure Act do not apply to proceedings of the State Mining and Geology Board under this code.

State Energy Resources Conservation and Development Commission

Pub. Res. Code § 25513.3 (added). Permissible assistance or advice

25513.3. Notwithstanding Sections 11425.30 and 11430.10 of the Government Code, unless a party demonstrates other statutory grounds for disqualification, a person who has served as investigator or advocate in an adjudicative proceeding of the commission under this code may serve as a supervisor of the presiding officer or assist or advise the presiding officer in the same proceeding if the service, assistance, or advice occurs more than one year after the time the person served as

investigator or advocate, provided the content of any advice is disclosed on the record and all parties have an opportunity to comment on the advice.

Comment. Section 25513.3 is added to provide an exception to the separation of functions and ex parte communications provisions of the Administrative Procedure Act necessary to ensure efficient operation of the commission.

California Coastal Commission

Pub. Res. Code § 30329 (added). Provisions inapplicable

30329. Notwithstanding Section 11425.10 of the Government Code, the ex parte communications provisions of the Administrative Procedure Act (Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) do not apply to proceedings of the California Coastal Commission under this division.

Comment. Section 30329 is added to make clear that the ex parte communications provisions of the Administrative Procedure Act do not apply to proceedings of the California Coastal Commission. This article continues to apply to proceedings of the Coastal Commission under the California Coastal Act.

California Integrated Waste Management Board

Pub. Res. Code § 40412 (amended). Ex parte communication

40412. (a) ~~For the purposes of this section, "ex parte communication" means any oral or written communication concerning matters, other than purely procedural matters, Subject to subdivision (c), Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code applies to matters~~ under the board's jurisdiction which are subject to a rollcall vote pursuant to Section 40510.

(b) ~~No board member or any person, excepting a staff member of the board acting in his or her official capacity, who intends to influence the decision of a board member on a matter before the board, shall conduct an ex parte communication, except as follows:~~

(1) ~~If an ex parte a communication in violation of this section occurs, the board member shall notify the interested party that a full disclosure of the ex parte communication shall be entered in the board's record.~~

(2) ~~Communications cease to be ex parte communications when (c) It is not a violation of this section if~~ either of the following occurs:

(A) (1) The board member or the person who engaged in the communication with the board member fully discloses the communication and requests in writing that it be placed in the board's official record of the proceeding.

(B) (2) When two or more board members receive substantially the same written communication, or are party to the same oral communication, from the same party on the same matter, and a single board member fully discloses the communication on behalf of the other board member or members who received the communication

and requests in writing that it be placed in the board's official record of the proceeding.

Comment. Section 40412 is amended to apply the ex parte communications provisions of the Administrative Procedure Act to matters under the jurisdiction of the California Integrated Waste Management Board which are subject to a rollcall vote under Section 40510. These provisions do not apply to matters which are not subject to a rollcall vote under Section 40510.

Pub. Res. Code § 40413 (amended). Penalties for violations

40413. (a) Any person who violates Section 40411 or 40412 is punishable by a fine of not more than fifty thousand dollars (\$50,000) or by imprisonment for not more than one year in the county jail or in the state prison, or by both that fine and imprisonment.

(b) In addition to the sanctions provided in Article 7 (commencing with Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, any person who violates Section 40412 is punishable by a fine of not more than fifty thousand dollars (\$50,000) or by imprisonment for not more than one year in the county jail or in the state prison, or by both that fine and imprisonment.

Comment. Section 40413 is amended to make clear that the penalty for violating Section 40412 is in addition to the sanctions provided by the ex parte communications provisions of the Administrative Procedure Act.

Public Utilities Commission

Pub. Util. Code § 1701 (amended). Rules of procedure

1701. (a) All hearings, investigations, and proceedings shall be governed by this part and by rules of practice and procedure adopted by the commission, and in the conduct thereof the technical rules of evidence need not be applied. No informality in any hearing, investigation, or proceeding or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

(b) Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the commission under this part.

Comment. Section 1701 is amended to make the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to a hearing of the Public Utilities Commission under the Public Utilities Act. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 1701 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to a hearing of the Public Utilities Commission under the Public Utilities Act. See Gov't Code § 11501(a).

Nothing in Section 1701 excuses compliance with procedural protections required by due process of law.

State Board of Equalization

Rev. & Tax. Code § 1636 (technical amendment). Hearing officers

1636. The county board of supervisors may appoint one or more assessment hearing officers or contract with the Office of Administrative ~~Procedure~~ Hearings for the services of a ~~hearing officer~~ an administrative law judge pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code to conduct hearings on any assessment protests filed under Article 1 (commencing with Section 1601) of this chapter and to make recommendations to the county board of equalization or assessment appeals board concerning such the protests. Only persons meeting the qualifications prescribed by Section 1624 may be appointed as an assessment hearing officer.

Comment. Section 1636 is amended to correct a reference to the Office of Administrative Hearings. See Gov't Code §§ 11370.2, 27727 (Office of Administrative Hearings).

Unemployment Insurance Appeals Board

Unemp. Ins. Code § 409 (amended). Assignment and determination of cases; contents and publication of decisions

409. The chairperson shall assign cases before the board to any two members of the board for consideration and decision. Assignments by the chairperson of members to the cases shall be rotated so as to equalize the workload of the members, but with the composition of the members so assigned being varied and changed to assure that there shall never be a fixed and continuous composition of members. Except as otherwise provided, the decision of the two members assigned the case shall be the decision of the appeals board. In the event that the two members do not concur in the decision, the chairperson or another member of the board designated by the chairperson shall be assigned to the panel and shall resolve the impasse. A case shall be considered and decided by the appeals board acting as a whole at the request of any member of the appeals board.

The appeals board shall meet as a whole when the chairperson may direct to consider and pass on any matters that the chairperson may bring before it, and to consider and decide cases that present issues of first impression or that will enable the appeals board to achieve uniformity of decisions by the respective members.

The appeals board, acting as a whole, may designate certain of its decisions as precedents. Precedent decisions shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code. The appeals board, acting as a whole, may, on its own motion, reconsider a previously issued decision solely to determine whether or not the decision shall be designated as a precedent decision. Decisions of the appeals board acting as a whole shall be by a majority vote of its members. The director and the appeals board administrative law judges shall be controlled by those precedents except as modified by judicial review.

~~The decisions of the appeals board shall contain a statement of the facts upon which the decision is based, and a statement of the decision itself and the reasons for the decision. If the appeals board issues decisions other than those designated as precedent decisions, anything incorporated in those decisions shall be physically attached to and be made a part of the decisions. The appeals board shall maintain an index of significant legal and policy determinations made in precedent decisions. The index shall be updated at least annually, unless no precedent decision has been designated since the most recent update. The appeals board may make a reasonable charge as it deems necessary to defray the costs of publication and distribution of its precedent decisions and index of precedent decisions.~~

Comment. Section 409 is amended to recognize that decisions of the Unemployment Insurance Appeals Board are subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. Gov't Code § 11410.10 (application of chapter). Thus, for example, decisions of the Unemployment Insurance Appeals Board are subject to Government Code Sections 11425.50 (decision shall be in writing and include statement of factual and legal basis as to each principal controverted issue) and 11425.60 (board may not expressly rely on decision as precedent unless designated as a precedent decision; board shall maintain an index of significant legal and policy determinations made in precedent decisions). Language that duplicates provisions in Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code is deleted from Section 409. The former second sentence of the third paragraph of Section 409 (decisions not subject to rulemaking provisions of Administrative Procedure Act) is continued in substance in subdivision (b) of Section 11425.60. The last sentence of Section 409 is consistent with Government Code Section 6257 (state agency may charge fee covering direct costs of duplicating public records).

Department of Motor Vehicles

Veh. Code § 3066 (technical amendment). Hearings on protests

3066. (a) Upon receiving a notice of protest pursuant to Section 3060, 3062, 3064, or 3065, the board shall fix a time, which shall be within 60 days of the order, and place of hearing, and shall send by registered mail a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups which have requested notification by the board of protests and decisions of the board. Except in any case involving a franchisee who deals exclusively in motorcycles, the board or its secretary may, upon a showing of good cause, accelerate or postpone the date initially established for a hearing, but in no event shall the hearing be rescheduled more than 90 days after the board's initial order. For the purpose of accelerating or postponing a hearing date, "good cause" includes, but is not limited to, the effects upon, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. The board, or a hearing officer designated by the board, shall hear and consider the oral and documented evidence introduced by the parties and other interested individuals and groups, and the board shall make its decision solely on the record so made. Sections 11507.6, 11507.7, ~~except subdivision (c), 11510, 11511, 11513, 11514, 11515, and 11517~~ of the Government Code apply to these proceedings.

(b) In any hearing on a protest filed pursuant to Section 3060 or 3062, the franchisor shall have the burden of proof to establish that there is good cause to modify, replace, terminate, or refuse to continue a franchise. The franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing or relocating an additional motor vehicle dealership.

(c) In any hearing on a protest filed pursuant to Section 3064 or 3065, the franchisee shall have the burden to establish that the schedule of compensation or the warranty reimbursement schedule is not reasonable.

(d) A member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, any matter involving a protest filed pursuant to this article.

Comment. Section 3066 is amended to correct the reference to a provision of the Administrative Procedure Act. A number of provisions formerly found in Government Code Sections 11500-11530 are now located in general provisions on administrative adjudication, which apply to all state adjudicative proceedings. See, e.g., Gov't Code §§ 11410.10 (application of chapter), 11425.10 (administrative adjudication bill of rights), 11430.10-11430.80 (ex parte communications), 11450.10-11450.40 (subpoenas), 11455.10-11455.30 (enforcement of orders and sanctions). See also Gov't Code § 11435.15 (language assistance requirement applicable to Department of Motor Vehicles),

Veh. Code § 11728 (technical amendment). Penalties as part of settlement agreement

11728. As part of a compromise settlement agreement entered into pursuant to Section 11707 or 11808.5, the department may assess a monetary penalty of not more than two thousand five hundred dollars (\$2,500) per violation and impose a license suspension of not more than 30 days for any dealer who violates subdivision (r) of Section 11713. The extent of the penalties shall be based on the nature of the violation and effect of the violation on the purposes of this article. Except for the penalty limits provided for in Sections 11707 and 11808.5, all the provisions governing compromise settlement agreements for dealers, salesmen, and wholesalers apply to this section, and Section 11415.60 of the Government Code does not apply.

Comment. Section 11728 is amended to make clear that Government Code Section 11415.60 does not apply to this section.

Veh. Code § 14112 (amended). Exemption from separation of functions

14112. (a) All matters in a hearing not covered by this chapter shall be governed, as far as applicable, by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) Subdivision (a) of Section 11425.30 of the Government Code does not apply to a proceeding for issuance, denial, revocation, or suspension of a driver's license pursuant to this division. The Department of Motor Vehicles shall study the effect of that subdivision on proceedings involving vehicle operation certificates and shall report to the Legislature by December 31, 1999, with recommendations concerning experience with its application in those proceedings.

Comment. Subdivision (b) is added to Section 14112 in recognition of the personnel problem faced by the Department of Motor Vehicles due to the large volume of drivers' licensing cases. Subdivision (b) makes separation of functions requirements inapplicable in drivers' licensing cases, including license classifications and endorsements. However, the separation of functions requirements remain applicable in other Department of Motor Vehicle hearings, including schoolbus and ambulance operation certificate hearings, on which the department is required to report.

Department of Corrections and related entities (Board of Prison Terms, Youth Authority, Youthful Offender Parole Board, and Narcotic Addict Evaluation Authority — part 2)

Welf. & Inst. Code § 1778 (added). Provisions inapplicable

1778. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a parole hearing or other adjudication concerning rights of a person committed to the control of the Youth Authority conducted by the Youth Authority or the Youthful Offender Parole Board.

Comment. Section 1778 makes the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to a parole hearing or other adjudication of rights of a ward conducted by the Youth Authority or the Youthful Offender Parole Board. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 1778 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to a parole hearing or other adjudication of rights of a ward conducted by the Youth Authority or the Youthful Offender Parole Board. See Gov't Code § 11501(a).

Nothing in Section 1778 excuses compliance with procedural protections required by due process of law.

Welf. & Inst. Code § 3158 (added). Provisions inapplicable

3158. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code) does not apply to a release hearing or other adjudication concerning rights of a person committed to the custody of the Director of Corrections conducted by the Narcotic Addiction Evaluation Authority.

Comment. Section 3158 makes the general provisions of the administrative adjudication portion of the Administrative Procedure Act inapplicable to a parole hearing or other adjudication of rights of a civil addict conducted by the Narcotic Addiction Evaluation Authority. Exemption of the agency's hearings from the Administrative Procedure Act does not exempt the hearings from the language assistance requirements of that act. Gov't Code § 11435.15(d).

Although Section 3158 is silent on the question, the formal hearing provisions of the administrative adjudication portion of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code) do not apply to a parole hearing or other adjudication of rights of a civil addict conducted by the Narcotic Addiction Evaluation Authority. See Gov't Code § 11501(a).

Nothing in Section 3158 excuses compliance with procedural protections required by due process of law.

Department of Developmental Services

Welf. & Inst. Code § 4689.5 (technical amendment). Conduct of proceedings

4689.5. (a) Proceeding for the termination, or denial of vendorization as a family home agency or family home pursuant to Section 4689.4 shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the State Department of Developmental Services shall have all the powers granted by Chapter 5. In the event of conflict between this section and Chapter 5, Chapter 5 shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be a preponderance of the evidence.

(c) The hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may grant a continuance of the hearing, but only upon finding the existence of one or more of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of that person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

(4) A stipulation for continuance signed by all parties or their authorized representatives that is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

(d) ~~Notwithstanding Section 11510 of the Government Code, witnesses subpoenaed at the request of the department for a hearing conducted pursuant to this section who attend a hearing may be paid by the department witness fees and mileage as provided by Section 68093 of the Government Code. In addition to the witness fees and mileage provided by 11450.40 of the Government Code, the~~ department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status,. The department may pay witness expenses pursuant to this section in advance of the hearing.

Comment. Subdivision (d) of Section 4689.5 is amended to recognize that witness fees and mileage are provided by Section 11450.40 of the Government Code. Under subdivision (a), hearings under this section are held in accordance with the Administrative Procedure Act. This change is nonsubstantive, since witness fees and mileage under the Administrative Procedure Act are the same as those allowed in a civil case. Mileage and fees for a witness in a civil case are provided by Government Code Section 68093.

OPERATIVE DATE

Uncodified. Operative date

SEC. ____ (a) Except as provided in subdivision (b), this act is operative on July 1, 1997.

(b) If Section 443.37 of the Health and Safety Code is repealed before July 1, 1997, then Section [] of this act does not become operative.

Exhibit 2

**TEXT OF EX PARTE COMMUNICATION STATUTES TO BE KEPT
UNCHANGED**

Division of Worker's Compensation

Lab. Code § 4062.2. Agreed medical evaluator

4062.2. (a) As part of their agreement on an evaluator, the parties shall agree what information is to be provided to the agreed medical evaluator.

(b) Any party may provide to the qualified medical evaluator selected by an unrepresented worker from a three-member panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(c) Information which a party proposes to provide to the qualified medical evaluator selected by an unrepresented worker from a three-member panel shall be served on the opposing party 20 days before the information is provided to the evaluator. If the opposing party objects to consideration of nonmedical records within 10 days thereafter, the records shall not be provided to the evaluator. Either party may use discovery to establish the accuracy or authenticity of nonmedical records prior to the evaluation.

(d) In any formal medical evaluation, the agreed or qualified medical evaluator shall identify the following:

(1) All information received from the parties.

(2) All information reviewed in preparation of the report.

(3) All information relied upon in the formulation of his or her opinion.

(e) All communications with an agreed medical evaluator or a qualified medical evaluator selected by an unrepresented worker from a three-member panel before a formal medical evaluation shall be in writing and shall be served on the opposing party 20 days in advance of the evaluation. Any subsequent communication with the medical evaluator shall be in writing and shall be served on the opposing party when sent to the medical evaluator.

(f) Ex parte communication with an agreed medical evaluator or a qualified medical evaluator selected by an unrepresented worker from a three-member panel

is prohibited. If a party communicates with the agreed medical evaluator or the qualified medical evaluator selected by an unrepresented worker from a three-member panel in violation of subdivision (d), the aggrieved party may elect to terminate the formal medical evaluation and seek a new evaluation from another qualified medical evaluator, or proceed with the initial evaluation.

(g) The party making the communication prohibited by this section shall be subject to being charged with contempt before the appeals board and shall be liable for the costs incurred by the aggrieved party as a result of the prohibited communication, including the cost of the formal medical evaluation, additional discovery costs, and attorney's fees for related discovery.

(h) This section shall not apply to oral communications by the employee or, if the employee is deceased, the employee's dependent, or to forms and documents requested by the evaluator or provided by the evaluator to the employee or, if the employee is deceased, the employee's dependent, pursuant to the examination.

Transportation Agencies

Pub. Cont. Code § 20216. Competitive negotiation process

20216. (a) Notwithstanding any other provision of law, any contract by the San Francisco Bay Area Rapid Transit District, the Southern California Rapid Transit District, the Golden Gate Bridge, Highway and Transportation District, the San Diego Metropolitan Transit Development Board, the North San Diego County Transit Development Board, or a county transportation commission that is subject to the competitive negotiation provisions of Section 20229.1, 20231.5, or 20916.3 of this code, or Section 120224.4, 125228, or 130238 of the Public Utilities Code, and any other transportation agency that is authorized to use comparable competitive negotiation provisions after July 1, 1992, shall comply with the requirements of this section.

(b) Other than proprietary information, the content of any request for proposal, any proposal received, and any other communications between a transportation agency and a potential bidder of a contract that is subject to subdivision (a) shall be made available to the public no later than the same time that a recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a bidder, except that the price proposed in any bidder's initial proposal shall be available upon the opening of the bid by the agency requesting the proposal.

(c) No person shall participate in the evaluation of any proposal for the award of a contract that is subject to subdivision (a) if any of the following conditions apply:

(1) The person has a financial interest in the outcome of the evaluation or the contract.

(2) The person has received a gift of over two hundred fifty dollars (\$250) during the previous 12 months from a bidder directly, or indirectly through an

intermediary, if it is known to the person that the gift was in whole or in part funded by the bidder.

(d) The agency board or any person responsible for awarding a contract under this article shall not have any ex parte communication with a bidder or any representative of the bidder except in writing and provided that the communication shall be made public.

(e) A contract may not be awarded until 15 days after the staff recommendation has been made available to the public.

(f) An agency using the competitive negotiation process shall maintain in writing and make available upon request a complete description of the process and the policies and procedures used by the agency in doing so, including all standards, criteria, public protest procedures, and method of contract award. The agency shall also keep a complete record of its actions on each procurement.

(g) For purposes of this section and Sections 20229.1, 20231.5, and 20916.3 of this code and Sections 120224.4, 125228, and 130238 of the Public Utilities Code, "competitive negotiation" means a procurement process used by an agency in lieu of a competitive sealed bid process when conditions are not appropriate for the use of sealed bids, and that permits the consideration of price, technical experience, past performance, management, or other factors in selecting the most cost-effective proposal for the manufacture and delivery of specified goods, transit vehicles, or equipment. The process includes negotiations with manufacturers or providers after the receipt of initial proposals during which performance or technical standards and other criteria may be revised in order to secure proposals most advantageous to the purchasing agency or to cure any deficiencies contained in the original proposals.

State Mining and Geology Board

Pub. Res. Code § 663.2. Use of official position to influence board decision

663.2. (a) No board member shall make, participate in making, or in any other way attempt to use his or her official position to influence a board decision about which the member has knowingly had an ex parte communication that has not been reported pursuant to Section 663.1.

(b) In addition to any other applicable penalty, including a civil fine imposed pursuant to subdivision (f) of Section 663.1, a board member who knowingly violates this section shall be subject to a civil fine, not to exceed seven thousand five hundred dollars (\$7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

Note. The State Mining and Geology Board would be exempted from the ex parte communications provisions of the draft statute by amendments to Public Resources Code Section 663.1 set out in Exhibit 1.

California Coastal Commission

Pub. Res. Code § 30320. Findings and declarations

30320. (a) The people of California find and declare that the duties, responsibilities, and quasi-judicial actions of the commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law require that the commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority. It is further found that, to be effective, California's coastal protection program requires public awareness, understanding, support, participation, and confidence in the commission and its practices and procedures. Accordingly, this article is necessary to preserve the public's welfare and the integrity of, and to maintain the public's trust in, the commission and the implementation of this division.

(b) The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government which require that the public's business be conducted in public meetings, with limited exceptions for sensitive personnel matters and litigation, and on the official record. Reasonable restrictions are necessary and proper to prevent future abuses and misuse of governmental power so long as all members of the public are given adequate opportunities to present their views and opinions to the commission through written or oral communications on the official record either before or during the public hearing on any matter before the commission.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30321. "Matter within commission's jurisdiction"

30321. For purposes of this article, "a matter within the commission's jurisdiction" means any permit action, federal consistency review, appeal, local coastal program, port master plan, public works plan, long-range development plan, categorical or other exclusions from coastal development permit requirements, or any other quasi-judicial matter requiring commission action, for which an application has been submitted to the commission.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30322. "Ex parte communication"

30322. (a) For purposes of this article, except as provided in subdivision (b), an "ex parte communication" is any oral or written communication between a member of the commission and an interested person, about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

(b) The following communications are not ex parte communications:

(1) Any communication between a staff member acting in his or her official capacity and any commission member or interested person.

(2) Any communication limited entirely to procedural issues, including, but not limited to, the hearing schedule, location, format, or filing date.

(3) Any communication which takes place on the record during an official proceeding of a state, regional, or local agency that involves a member of the commission who also serves as an official of that agency.

(4) Any communication between a member of the commission, with regard to any action of another state agency or of a regional or local agency of which the member is an official, and any other official or employee of that agency, including any person who is acting as an attorney for the agency.

(5) Any communication between a nonvoting commission member and a staff member of a state agency where both the commission member and the staff member are acting in an official capacity.

(6) Any communication to a nonvoting commission member relating to an action pending before the commission, where the nonvoting commission member does not participate in that action, either through written or verbal communication, on or off the record, with other members of the commission.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30323. "Interested person"

30323. For purposes of this article, an "interested person" is any of the following:

(a) Any applicant, an agent or an employee of the applicant, or a person receiving consideration for representing the applicant, or a participant in the proceeding on any matter before the commission.

(b) Any person with a financial interest, as described in Article 1 (commencing with Section 87100) of Chapter 7 of Title 9 of the Government Code, in a matter before the commission, or an agent or employee of the person with a financial interest, or a person receiving consideration for representing the person with a financial interest.

(c) A representative acting on behalf of any civic, environmental, neighborhood, business, labor, trade, or similar organization who intends to influence the decision of a commission member on a matter before the commission.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30324. Conduct of ex parte communication

30324. (a) No commission member, nor any interested person, shall conduct an ex parte communication unless the commission member fully discloses and makes public the ex parte communication by providing a full report of the communication to the executive director within seven days after the communication or, if the

communication occurs within seven days of the next commission hearing, to the commission on the record of the proceeding at that hearing.

(b)(1) The commission shall adopt standard disclosure forms for reporting ex parte communications which shall include, but not be limited to, all of the following information:

(A) The date, time, and location of the communication.

(B) The identity of the person or persons initiating and the person or persons receiving the communication.

(C) A complete description of the content of the communication, including the complete text of any written material that was a part of the communication.

(2) The executive director shall place in the public record any report of an ex parte communication.

(c) Communications shall cease to be ex parte communications when fully disclosed and placed in the commission's official record.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30325. Testimony at official proceeding; submission of written comments

30325. Nothing in this article prohibits any person or any interested person from testifying at a commission hearing, workshop, or other official proceeding, or from submitting written comments for the record on a matter before the commission. Written comments shall be submitted by mail or delivered to a commission office, or may be delivered to the commission at the time and place of a scheduled hearing.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30326. Workshops

30326. Any person, including a commission member, may request the commission staff to conduct a workshop on any matter before the commission or on any subject that could be useful to the commission. When the executive director determines that a request is appropriate and feasible, a workshop shall be scheduled at an appropriate time and location.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30327. Improper use of official position to influence commission decision

30327. (a) No commission member or alternate shall make, participate in making, or any other way attempt to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported pursuant to Section 30324.

(b) In addition to any other applicable penalty, including a civil fine imposed pursuant to Section 30824, a commission member who knowingly violates this section shall be subject to a civil fine, not to exceed seven thousand five hundred

dollars (\$7,500). Notwithstanding any law to the contrary, the court may award attorneys' fees and costs to the prevailing party.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Pub. Res. Code § 30328. Violation of article; writ of mandate

30328. If a violation of this article occurs and a commission decision may have been affected by the violation, an aggrieved person, as described in Section 30801, may seek a writ of mandate from a court requiring the commission to revoke its action and rehear the matter.

Note. The Coastal Commission would be exempted from the ex parte communications provisions of the draft statute by Public Resources Code Section 30329 set out in Exhibit 1.

Exhibit 3

LIST OF OTHER STATUTES TO BE KEPT UNCHANGED

Open Hearings

Educ. Code § 56501 (due process hearing procedures), 89542.5 (grievance or disciplinary hearing of California State University).

Food & Ag. Code § 31621 (hearing to declare dog potentially vicious).

Gov't Code § 13963.1 (hearing of State Board of Control on application by crime victim for benefits).

Harb. & Nav. Code § 1106 (fine, penalty, or revocation or suspension of pilot's license).

Lab. Code §§ 5703-5704 (hearing of Workers Compensation Appeals Board).

Pub. Res. Code § 25214 (hearing of Energy Commission).

Pub. Util. Code § 21692 (hearing of Department of Transportation).

Rev. & Tax. Code 743 (hearing of State Board of Equalization).

Water Code § 8732.5 (hearing of Reclamation Board).

Welf. & Inst. Code § 700.2 (minor's right to open hearing), 4712 (fair hearing).

Freedom of Presiding Officer from Bias

Bus. & Prof. Code §§ 2293 (bias of professional competency examiner), 7085.5 (bias of prospective arbitrator in Contractors' Board cases).

Educ. Code §§ 44374 (bias of accreditation team), 45266 (bias of personnel director of personnel commission), 88086 (same).

Ins. Code § 12921.4 (bias of Department of Insurance in evaluating complaint).

Lab. Code § 4068 (bias in treating physician's report).

Pub. Util. Code § 309.6 (Public Utilities Commission to adopt procedure to disqualify administrative law judges for bias).

Written Decision

Bus. & Prof. Code §§ 6203 (arbitration award), 9855.8 (decision of citation review conference), 10471.3 (decision of Real Estate Advisory Commission on claim against licensee), 23088 (order of Alcoholic Beverage Control Appeals Board).

Civ. Code § 1947.8 (local agency decision on permissible rent levels).

Educ. Code §§ 44244 (decision of Committee of Credentials), 45307 (decision of Commission on Professional Competence), 88126 (decision of personnel commission), 89546 (personnel decision), 94342 (decision of Council for Private Postsecondary and Vocational Education).

Elec. Code § 15104 (decision of Secretary of State on voting machines).

Fin. Code §§ 5616 (denial of permit to sell securities), 5713 (approval or denial of conversion to association), 8051 (decision of Savings and Loan Commissioner), 17331.2 (decision of Fidelity Corporation), 17347 (decision of Commissioner of Corporations on by-laws of Fidelity Corporation).

Fish & Game Code § 5992 (decision of Department of Water Resources on installation of fish screens).

Food & Ag. Code §§ 11512.5 (decision of Director of Food and Agriculture on appeal from suspension of county registration or permit), 13167 (decision of Director of Food and Agriculture on certificate of interim registration), 31622 (determination whether dog is potentially dangerous), 67112 (decision of California Avocado Commission), 73254 (decision of California Navel Orange Commission on brand credit).

Gov't Code §§ 13961.1 (decision of State Board of Control denying emergency award), 19582 (decision of State Personnel Board), 19806 (decision of State Personnel Board on local merit system), 65957.5 (decision of Director of Department of Transportation on construction permit), 83115 (decision of Fair Political Practices Commission on action to be taken on complaint).

Health & Safety Code §§ 199.50 (decision of State Board of Control on compensation claim of AIDS vaccine victim), 1280 (decision of State Director of Health Services to correct deficiency in health facility), 1317.4 (decision of State Director of Health Services on proposed fine of hospital), 1358.21 (decision of health care service plan to discontinue Medicare supplement), 1367.15 (decision of health care service plan to close a block of business), 1428 (decision of State Director of Health Services on citation of licensee), 1569.17 (notification from State Department of Social Services to terminate employment of convicted sex

offender), 12724 (decision of State Fire Marshal on seized fireworks), 18021.7 (decision of Department of Housing and Community Development on citation), 18946 (decision of Commission of Housing and Community Development on appeal), 25199.10-25199.13 (decision of appeal board), 25229 (decision of State Director of Health Services on designation of hazardous waste property), 25232 (approval by State Department of Health Services on variance), 25299.56 (decision of State Water Resources Control Board on claim), 25374 (decision of State Board of Control), 25517 (decision concerning reward), 26263 (decision of State Department of Health Services refusing export document), 28518.8 (decision of State Department of Health Services on violation), 40860 (decision of hearing board on air pollution questions), 42316 (decision of State Air Resources Board on air quality measures).

Ins. Code §§ 839 (decision of Insurance Commissioner denying application), 1280.7 (decision of board of trustees of cooperative corporation to terminate a member), 11751.2 (decision of Insurance Commissioner denying application for license).

Lab. Code §§ 5908.5 (decision of appeals board), 6623 (decision of appeals board on reconsideration).

Mil. & Vet. Code § 86 (decision of California Veterans Board).

Pen. Code §§ 3003 (certain parole decisions of Board of Prison Terms), 3041.5 (same), 7511 (decision of chief medical officer on HIV testing of inmate), 7515 (decision of three-person panel on HIV testing of inmate), 7516 (findings of three-person panel on HIV testing of inmate).

Pub. Cont. Code §§ 10240.8 (arbitration decision), 10337 (decision of executive officer of State Personnel Board on proposed contract), 10632 (same).

Pub. Res. Code § 44814 (decision of hearing panel).

Pub. Util. Code §§ 25815 (decision of transit district board), 29045 (decision of San Francisco BART Board), 30645 (decision of Southern California Rapid Transit District Board).

Unemp. Ins. Code § 1334 (fair hearing).

Veh. Code § 3067 (decision of New Motor Vehicle Board).

Welf. & Inst. Code §§ 1767.1 (decision of Youthful Offender Parole Board), 4710.7 (decision of service agency director after informal meeting), 10958 (decision after fair hearing), 14499.5 (decision of Director of Social Services to reject proposal for pilot project), 19352.5 (decision of habitation specialist), 19354.5 (decision of administrative review committee).

Language Assistance

Health & Safety Code §§ 1259 (language assistance in acute care hospitals), 1596.797 (language assistance rules of child care review panel for review of violations), 50514 (services and publications of Department of Housing and Community Development).

Lab. Code § 139.6 (pamphlet in Spanish for injured workers).

Welf. & Inst. Code §§ 13600 (social services forms in languages other than English), 19013 (language assistance in rehabilitation services).

Settlement

Gov't Code §§ 8670.68 (settlement between administrator for oil spill response and respondent), 18681 (settlement between employee and appointing power), 19581.5 (settlement conference of State Personnel Board).

Health & Safety Code §§ 1596.887 (settlement by State Department of Social Services), 18064.5 (settlement between Department of Housing and Community Development and licensee), 25359.3 (settlement between State Department of Health Services and respondent), 25364.1 (same), 25893 (same), 26814 (same), 28550 (same), 44036 (settlement between Department of Consumer Affairs and licensee), 44055 (same).

Lab. Code §§ 98.2 (approval of Labor Commissioner of settlement between employer and employee), 3715 (settlement by Director of Industrial Relations of proceeding between employer and employee), 3859 (settlement by employee of claim against third party), 3860 (same).

Pub. Res. Code §§ 6107, (approval of Governor of settlement by State Lands Commission), 42851 (settlement by California Integrated Waste Management Board and respondent).

Rev. & Tax. Code §§ 7093.5 (approval of tax settlement by State Board of Equalization), 9271 (approval of small tax settlement by State Board of Control), 19442 (approval of tax settlement by Franchise Tax Board), 30459.1 (approval of small tax settlement by State Board of Control), 32471 (same), 40211 (same), 41171 (same), 43522 (same), 45867 (same), 50156.11 (same), 55332 (same).

Veh. Code §§ 11111.5, 11218, 11302.5, 11408, 11509.1, 11613.5, 11707, 11808.5, 11903.5.

Water Code § 43005 (contract of board of directors of water storage district for settlement of water rights).

Interim Suspension Orders and Other Emergency Orders

Bus. & Prof. Code §§ 494 (order for interim suspension of licensee), 6007(c) (attorney), 10086(a) (real estate licensee).

Educ. Code §§ 66017 (immediate suspension of student), 94319.12 (emergency suspension of approval of private postsecondary institution to operate).

Fin. Code § 8201 (immediate removal of officer or employee of savings association).

Food & Ag. Code § 56537 (Director of Food and Agriculture).

Health & Safety Code §§ 1550.5 (health facilities and day care centers), 1569.50 (same), 1596.886 (same).

Pub. Util. Code § 1070.5 (trucking license).

Veh. Code § 11706 (DMV license suspension).

Subpoenas

Bus. & Prof. Code §§ 310 (Director of Consumer Affairs), 7265 (Board of Funeral Directors and Embalmers), 9717 (Cemetery Board), 9783 (same), 10239.29 (Real Estate Commissioner), 18826 (State Athletic Commission), 18834 (same), 18845-18846 (same), 18847 (disobedience of subpoena), 19436 (same), 19804 (Attorney General), 19816 (disobedience).

Corp. Code §§ 25100 (Commissioner of Corporations), 25531 (same), 29541 (same), 31401 (same).

Educ. Code §§ 22220 (Teachers' Retirement Board), 45311-45312 (Commission on Teacher Credentialing).

Elec. Code § 15103 (Secretary of State).

Fin. Code §§ 1877 (Superintendent of Banks), 1908 (same), 3562 (same), 5310 (Attorney General), 17611 (Commissioner of Corporations), 30700 (same), 30702 (same), 31110 (Superintendent of Banks), 33207 (same).

Food. & Ag. Code §§ 5034 (Director of Food and Agriculture), 18855 (same), 18903-18905 (same), 18908 (same), 55781 (same), 55783-55784 (same), 55811 (same), 56471-56473 (same), 56501 (same), 59203 (same), 59612 (same), 59615 (disobedience as contempt), 61476 (Director of Food and Agriculture), 61477 (disobedience as contempt), 65654 (California Table Grape Commission), 66646 (California Iceberg Lettuce Commission).

Gov't Code §§ 3563 (Public Employment Relations Board), 7474 (subpoena for financial records), 7476 (same), 8527 (Milton Marks Commission on California State Government Organization and Economy), 8545.4 (State Auditor), 10535-

10536 (Auditor General), 12589 (Attorney General), 12935 (Fair Employment and Housing Commission), 12963.1 (Department of Fair Employment and Housing), 12963.3 (same), 12963.5 (enforcement), 15614 (State Board of Equalization), 15615 (disobedience), 18671 (State Personnel Board), 18672 (100-mile limit on subpoena), 18678 (disobedience), 19815.4 (Director of Department of Personnel Administration), 23259 (County Boundary Review Commission), 23339 (County Formation Review Commission), 23533 (County Consolidation Review Commission), 68751 (Commission on Judicial Performance), 68753 (same), 83118 (Fair Political Practices Commission).

Harb. & Nav. Code § 1155 (Board of Pilot Commissioners).

Health & Safety Code §§ 1346 (Commissioner of Corporations), 1704 (State Department of Health Services), 25356.4 (arbitration panel), 40840-40842 (district hearing board).

Ins. Code §§ 791.15 (Insurance Commissioner), 1042 (same), 1872.3 (same), 11580.2 (arbitration proceeding), 11587 (Insurance Commissioner), 12975.5 (witness fees).

Lab. Code §§ 93 (Labor Commissioner), 131 (witness fees), 132 (court enforcement), 1137.3 (board of investigation of transportation strike), 1151 (Agricultural Labor Relations Board), 1176 (Industrial Welfare Commission), 4055.2 (workers' compensation proceeding), 5157 (Commissioner of Corporations).

Mil. & Vet. Code §§ 460 (military court), 462 (disobedience).

Pub. Res. Code §§ 3357 (Director of Conservation), 3358 (witness fees), 3359 (disobedience as misdemeanor), 3769 (State Oil and Gas Supervisor), 3770 (witness fees), 3771 (disobedience as misdemeanor), 44810 (hearing panel).

Pub. Util. Code §§ 1791 (witness fees), 1792-1793 (court enforcement), 3741 (Public Utilities Commission), 5258 (same), 21692 (Department of Transportation), 28773 (transit district board), 30263 (same).

Rev. & Tax. Code §§ 13820.2 (State Board of Equalization), 13830.6 (board of arbitration), 14203 (Controller), 14204 (court enforcement), 19141.6 (Franchise Tax Board), 38006 (Multistate Tax Compact).

Unemp. Ins. Code § 1953 (Unemployment Insurance Appeals Board).

Water Code § 1080 (State Water Resources Control Board), 1081-1085 (witness fees), 1090-1097 (court enforcement, contempt), 5976 (California-Nevada Compact Commission).