

Memorandum 95-26**Administrative Adjudication: Issues on SB 523 (Kopp)**

The staff has the following matters to report on the administrative adjudication project. No Commission action is necessary.

Court Reporters

Existing law under the Administrative Procedure Act is that the proceeding is to be reported by a stenographer unless all parties agree to electronic reporting. The Commission has recommended that this system be revised to allow the presiding officer to select the manner of reporting; if a manner other than stenographic reporting is selected, a party may require stenographic reporting at the party's own expense.

The Court Reporters Association opposed this provision at the hearing on the bill in Senate Appropriations Committee. A motion was made to amend the bill to restore existing law on this matter. The motion was supported by the committee by a vote of four to two, and the committee accepted an author's amendment to restore existing law to the bill before approving it.

If the bill is enacted, the Commission may wish to consider whether to propose the same change next session. In that case, we will need to develop convincing data on the potential cost savings to help persuade the committee of the desirability of the proposed change. We were hurt at the hearing by the fact that the Office of Administrative Hearings was precluded by its department from testifying on the bill.

Fair Political Practices Act

The Fair Political Practices Act was enacted by an initiative measure adopted by the voters in 1974. The Act includes a provision that precludes its amendment by the Legislature unless 12 days notice is given to the FPPC before adoption in each house and the amendment is adopted by a 2/3 vote of each house. Gov't Code § 81012.

Our administrative adjudication proposal does not amend the Act directly, but it could be construed to impliedly amend the Act. The Act states that

administrative hearings to determine violations of the Act are to be conducted “in accordance with the Administrative Procedure Act”. Gov’t Code § 83116. This could be construed to refer to the APA as it existed in 1974; an amendment of the 1974 APA could be required to comply with the special amendment procedure in order to apply to FPPC hearings. There is precedent for such a construction in case law relating to the Act’s similar reference to the rulemaking provisions of the APA. See Gov’t Code § 83112.

Needless to say, the administrative adjudication provisions of the APA have been amended many times since 1974 **without** adhering to the special amendment procedure. Whether the amendments are properly applied to FPPC hearings is not clear. This poses a dilemma for us since many of our revisions build on post-1974 amendments of the APA.

The only sensible way to deal with this is to proceed with our proposal normally, and do nothing special for FPPC hearings. If the special amendment procedure is construed to be necessary to bind FPPC, then ours and all previous revisions will fail together. If the special procedure is construed to be unnecessary to bind FPPC, then ours and all previous revisions will stand together. FPPC hearings should be governed by the same 1995 law that applies to all other agencies, or should be governed by the same 1974 law that used to apply to all other agencies. A hybrid can only cause problems.

The staff would, however, add a severability clause to the bill, so that if the bill is held invalid as applied to FPPC hearings, this would not invalidate its application to other hearings:

If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

We are taking steps to implement this provision in the bill.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary