

## Memorandum 95-58

### Administrative Adjudication: Follow-Up Issues

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The administrative adjudication bill requires follow-up legislation before it becomes operative. Attached as an Exhibit are the provisions previously approved by the Commission for inclusion in the follow-up legislation. This memorandum presents additional matters for inclusion in the follow-up legislation. We will supplement this memorandum with any late-arriving materials.

#### Quasi-public entities

The Commission requested the staff to circulate a draft of the proposed provision making the bill of rights and optional provisions applicable in hearings by quasi-public entities. The staff circulated the following draft to the Departments of Corporations, Education, Food and Agriculture, Insurance, and Social Services, all of which we suspect may have quasi-public entities conducting hearings under their auspices.

#### **Gov't Code § 11410.60. Application to quasi-public entities**

SEC. Section 11410.60 is added to the Government Code, to read:

11410.60. This chapter applies to a decision by a private entity made pursuant to a statute that delegates or authorizes delegation of the decisionmaking authority of an agency of the state to the private entity by contract or otherwise, whether or not the decision of the private entity is subject to the direction, control, supervision, or review of the agency, if under the federal or state Constitution or a federal or state statute an evidentiary hearing for determination of facts is required for formulation and issuance of the decision.

**Comment.** Section 11410.60 applies this chapter to decisions of quasi-public entities acting under a delegation of state authority.

#### Cross-References

A new statute making reference to the Administrative Procedure Act was enacted during 1995. The reference should be revised to include the new provisions enacted by SB 523:

Section 11019.6 of the Government Code, as enacted by Chapter 650 of the Statutes of 1995, is amended to read:

11019.6. (a) Notwithstanding any other provision of state law, and to the extent not in conflict with federal law, if a principal agency is not designated by statute, a principal state agency shall be designated by the Governor for the coordination of procedures, forms, and deadlines in every area of regulatory activity under the state's jurisdiction, as determined by the Governor. All other state agencies shall defer to the principal agency in the performance of their duties in a particular regulatory area, or upon a particular project, with respect to procedures, forms, and deadlines, but not with respect to any other areas of authority.

(b) This section shall not apply to the processing of any permit pursuant to Division 34 (commencing with Section 71000) of the Public Resources Code.

(c) No part of this section shall be construed to limit the authority of any agency to hold public hearings on any matter within the jurisdiction of that agency.

(d) No part of this section shall be construed to authorize any state agency to adopt or implement procedures, forms, or deadlines in conflict with those explicitly specified in statute or in conflict with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)).

(e) Nothing in this section shall be construed to confer upon any state agency decisionmaking authority over substantive matters within another agency's jurisdiction, including any informational and public hearing requirements needed to make regulatory and permitting decisions.

(f) As used in this section, "agency" and "principal agency" shall not mean a court or any office of the judicial branch of government.

**Comment.** Section 11019.6 is amended to add a reference to the general provisions on administrative adjudication in the Administrative Procedure Act.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

Exhibit

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**ADMINISTRATIVE ADJUDICATION FOLLOW-UP LEGISLATION**

**Ins. Code § 1861.08 (amended). Conduct of hearings**

SEC. . Section 1861.08 of the Insurance Code is amended to read:

1861.08. Hearings shall be conducted pursuant to ~~Sections 11500 through 11528~~ Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that: (a) ~~hearings~~

(a) Hearings shall be conducted by administrative law judges for purposes of Sections 11512 and 11517, chosen under Section 11502 or appointed by the commissioner; ~~(b) hearings .~~

(b) Hearings are commenced by a filing of a Notice in lieu of Sections 11503 and 11504; ~~(c) the .~~

(c) The commissioner shall adopt, amend or reject a decision only under Section 11517 (c) and (e) and ~~solely on the basis of the record~~; ~~(d) Section 11513.5 shall apply to the commissioner~~; (e) discovery Section 11518.5.

(d) Discovery shall be liberally construed and ~~disputes determined by the administrative law judge.~~

**Comment.** Section 1861.08 is amended to reflect revision of the Administrative Procedure Act by 1995 Cal. Stat. ch 938.

The introductory portion of the section is amended to refer to the entire formal hearing chapter. That chapter is supplemented by Chapter 4.5 (commencing with Section 11400) of the same part, containing general provisions on administrative adjudication applicable to all state agency hearings. See Gov't Code § 11410.10 (application of chapter).

The reference in subdivision (c) to the procedure for adoption, amendment, or rejection of a decision is supplemented by a reference to the new procedure for correction of mistakes and clerical errors in the decision. See Gov't Code § 11518.5. The reference to a decision "solely on the basis of the record" in subdivision (c) is deleted as surplus. All decisions under the Administrative Procedure Act must be based exclusively on the record. Gov't Code § 11425.50 (decision).

The reference to former Government Code Section 11513.5 is deleted as obsolete. It is superseded by Government Code Sections 11430.10-11430.80 (ex parte communications), which apply to all hearings under the Administrative Procedure Act.

The reference in subdivision (d) to determination of discovery disputes by the administrative law judge is deleted as surplus. All discovery disputes under the formal hearing procedure are now determined by the administrative law judge. Gov't Code § 11507.7.

**Staff Note.** *The reference in subdivision (c) to Government Code Section 11517 (c) and (e) is in error. We are attempting to ascertain what the correct reference should be.*

### **1995 Cal. Stat. ch. 938, § 98 (amended). Operative date**

SEC. . Section 98 of Chapter 938 of the Statutes of 1995 is amended to read:

SEC. 98. (a) Except as provided in subdivision (b), this act shall be operative on July 1, 1997.

(b) (1) Sections 9, 9.2, 9.4, 9.6, 15, 15.1, 15.3, 15.5, 15.6, 15.7, 15.8, 24, 57, 58, 64, 64.4, 65, 65.4, 71, 72, 72.4, 78, 82, 95.5, 97.1, and 97.2 shall be operative on January 1, 1996.

(2) Section 97 shall be operative on January 1, 1997.

(3) If Section 443.37 of the Health and Safety Code is repealed before July 1, 1997, then Section 59 of this act shall not become operative.

(4) Notwithstanding Section 11400.10 of the Government Code, Section 11400.20 of the Government Code shall be operative immediately.

### **Operative Date**

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

(b) Section \_\_ of this act [amending Section 98 of Chapter 938 of the Statutes of 1995] shall be operative immediately.

### **Urgency Clause**

SEC. . This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Chapter 938 of the Statutes of 1995 revises administrative hearing procedures of state agencies and permits state agencies to adopt implementing regulations before, on, or after the July 1, 1997, operative date of Chapter 938. To allow sufficient time for state agencies to adopt implementing regulations before July 1, 1997, it is necessary that the provision permitting state agencies to adopt implementing regulations become operative immediately.