

Memorandum 96-26

Judicial Review of Agency Action: Revised Tentative Recommendation

Attached is a staff draft of a Revised Tentative Recommendation on *Judicial Review of Agency Action* incorporating Commission decisions at the December, January, and February meetings, and a letter from William Heath of the California School Employees Association. The staff made nonsubstantive revisions to simplify the drafting as directed by the Commission, especially in Sections 1123.420, 1123.430, 1123.440, 1123.450, and 1123.650. The narrative part of the Revised Tentative Recommendation remains to be completed.

Unfinished issues are discussed below, including those raised at the last meeting in a letter from the Department of Industrial Relations. The staff will raise for discussion at the meeting only items below preceded by a bullet [•].

§ 1120. Application of title

Revisions to carry out Commission decisions, and editorial revisions. At the January meeting, the Commission decided to exempt the State Bar Court from the draft statute. To do this, and to make other editorial changes, the staff revised Section 1120 as follows:

1120. (a) Except as provided in ~~subdivision (b)~~ this section, this title governs judicial review of agency action of any of the following entities:

(1) The state, including any agency or instrumentality of the state, whether in the executive department or otherwise.

(2) A local agency, including a county, city, district, public authority, public agency, or other political subdivision or public corporation in the state.

(b) This title does not govern or apply where a statute provides for judicial review of agency action by any of the following means:

(1) A trial de novo, including an action for refund of taxes under the Revenue and Taxation Code.

(2) An action under Division 3.6 (commencing with Section 810) of the Government Code, relating to claims and actions against public entities and public employees.

(c) This title does not govern or apply to judicial review of proceedings of the State Bar Court.

(d) This title does not govern or apply to litigation in which the sole issue is a claim for money damages or compensation and if the agency whose action is at issue does not have statutory authority to determine the claim.

(e) This title does not govern or apply to a proceeding under Chapter 9 (commencing with Section 860) of Title 10 of Part 2, relating to validating proceedings.

(f) This title does not govern or apply to judicial review of a decision of a court.

(g) This title does not govern or apply to judicial review of action of a nongovernmental entity, except a decision of a private hospital board in an adjudicative proceeding.

Public corporation. In subdivision (a)(2), “public corporation” is treated as a kind of local agency. Public corporations are created for governmental purposes, such as incorporated cities or towns (municipal corporations), and quasi-municipal corporations such as irrigation, reclamation, and utility districts. The Legislature may create other types of public corporations, such as a state hospital for the insane and the State Compensation Insurance Fund. 9 B. Witkin, *Summary of California Law Corporations* § 26, at 538 (9th ed. 1989). Thus “public corporation” should not be limited to local agencies, but should be set out in a separate paragraph so it may apply both to local and state entities. (“Public corporation” also includes the State Bar, but the State Bar is exempted from the draft statute by subdivision (c).) **The staff recommends revising subdivision (a) as follows:**

1120. (a) Except as provided in this section, this title governs judicial review of agency action of any of the following entities:

(1) The state, including any agency or instrumentality of the state, whether in the executive department or otherwise.

(2) A local agency, including a county, city, district, public authority, public agency, or other political subdivision ~~or public corporation~~ in the state.

(3) A public corporation in the state.

Quasi-public entities. Elsewhere the Commission is recommending that hearings of quasi-public entities be subject to the Administrative Procedure Act. Tentative Recommendation on *Administrative Adjudication by Quasi-Public Entities* (Feb. 1966). A quasi-public entity is one created by or pursuant to a statute for the purpose of administering a state governmental function. Examples cited in the Tentative Recommendation are the California Insurance Guarantee

Association, Escrow Agents' Fidelity Corporation, State Compensation Insurance Fund, and agricultural produce commissions. If the Commission ultimately recommends subjecting quasi-public entities to the APA, these hearings should also be subject to the judicial review statute. **The staff would do this in a conforming revision in that recommendation by revising subdivision (g) as follows:**

(g) This title does not govern or apply to judicial review of action of a nongovernmental entity, except a decision ~~of a private hospital board~~ in an adjudicative proceeding of any of the following:

(1) A private hospital board.

(2) A private entity to which Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code applies.

• **Arbitration involving public agency.** In the new provisions for alternative dispute resolution added to the Administrative Procedure Act on Commission recommendation is a provision for binding arbitration on consent of all parties. Gov't Code § 11420.10(a)(2). This section says a binding arbitration award is subject to judicial review in the same manner as binding arbitration awards generally under Sections 1285-1288.8 of the Code of Civil Procedure. **We should recognize this special review procedure by adding a subdivision (h) to Section 1120:**

(h) This title does not govern or apply to judicial review of an award in a binding arbitration under Section 11420.10 of the Government Code.

Application of Tort Claims Act. Section 1120(b)(2) says the draft statute does not apply to an "action under Division 3.6 (commencing with Section 810) of the Government Code, relating to claims and actions against public entities and public employees." This is to foreclose a possible argument, somewhat far-fetched, that a tort action against a public entity after rejection of a claim is a form of judicial review subject to the draft statute. This may cause confusion when considered with Section 1123.680(b), which says the "court may award damages or compensation, subject to Division 3.6 (commencing with Section 810) of the Government Code, if applicable, and to other express statute." This latter provision is to codify the existing rule that, if money damages are incidental to the petition for extraordinary relief, the claims filing requirements of the Tort

Claims Act do not apply, but if the claim is primarily for money damages and there is an incidental prayer for extraordinary relief, the claims filing requirements of the Tort Claims Act do apply. *Loehr v. Ventura County Community College Dist.*, 147 Cal. App. 3d 1071, 1081, 195 Cal. Rptr. 576 (1983). To make this clear, we should do one of two things:

(1) Delete subdivision (b)(2) from Section 1120 (draft statute does not apply to claims and actions against public entities), and rely instead on the provision in subdivision (b)(1) of Section 1120 that the draft statute does not apply to a trial de novo.

(2) Clarify the relationship of Sections 1120(b)(2) and 1123.680(b) in the Comment.

- The staff prefers to revise the Comment, because Sections 1120(b)(2) and 1123.680(b) deal with different questions and therefore are not inconsistent with each other: Section 1120(b)(2) deals with application of the draft statute to the Tort Claims Act, while Section 1123.680(b) deals with application of the Tort Claims Act to damages in judicial review proceedings. **The staff recommends adding the following to the Comment to Section 1120:**

Subdivision (b)(2) provides that this title does not apply to an action brought under the California Tort Claims Act. However, subdivision (b)(2) does not prevent the claims requirements of the Tort Claims Act from applying to an action seeking primarily money damages and also extraordinary relief incidental to the prayer for damages. See Section 1123.680(b) (damages subject to Tort Claims Act “if applicable”); *Loehr v. Ventura County Community College Dist.*, 147 Cal. App. 3d 1071, 1081, 195 Cal. Rptr. 576 (1983).

§ 1121.120. Other forms of judicial review replaced

The California Constitution gives the Supreme Court, courts of appeal, and superior courts original jurisdiction “in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.” Cal. Const. Art. VI, § 10. **The staff recommends adding similar language to Section 1121.120 to encourage appellate courts to decline to exercise original writ jurisdiction and to defer instead to superior court jurisdiction under the draft statute:**

1121.120. (a) Except as provided in subdivisions (b) and (c), the procedure provided in this title for judicial review of agency action is a proceeding for extraordinary relief in the nature of mandamus and shall be used in place of administrative mandamus, ordinary

mandamus, certiorari, prohibition, declaratory relief, injunctive relief, and any other judicial procedure, to the extent those procedures might otherwise be used for judicial review of agency action.

....

§ 1121.150. Operative date; application to pending proceedings

The staff asked the Judicial Council whether it needs the one-year delay of the operative date in Section 1121.150 to have time to adopt procedural rules. The staff will report back to the Commission when we have this information.

§ 1121.290. Rulemaking

- Section 1121.290 defines “rulemaking” as “the process for formulation and adoption of a rule.” This seems too obvious to need codification. **The staff is inclined to delete the section.**

§ 1122.010. Application of chapter

Chapter 2 (Sections 1122.010-1122.040) codifies the doctrine of primary jurisdiction under which

a case properly filed in court, that asserts a right of action based on statute, common law or the constitution, may be shifted to an administrative agency that also has statutory power to resolve the issues in that case. Thus the agency, rather than the court, makes the initial decision in the case, but normally that court (or a different one) retains the power to judicially review the agency action.

Asimow, *Judicial Review of Administrative Decision: Standing and Timing* 66 (Sept. 1992) (emphasis omitted).

- By being included in new Title 2 (judicial review) of Part 3 (special proceedings), Chapter 2 is subject to the exclusions of Section 1120. For example, Title 2 will not apply if a statute provides for judicial review of agency action by trial de novo. Although it is not clear “judicial review” is involved in applying the primary jurisdiction doctrine, the exclusion for trials de novo may swallow up the doctrine. We could solve this problem by moving Chapter 2 out of the judicial review provisions to some other location, such as creating a new Chapter 6 (Sections 419.10-419.40) in Title 5 (jurisdiction and forum) of Part 2 (civil actions). **However, the staff prefers to revise the first section in Chapter 2 — Section 1122.010 — as follows:**

1122.010. This Notwithstanding Section 1120, this chapter applies if a judicial proceeding is pending and the court determines that an agency has exclusive or concurrent jurisdiction over the subject matter of the proceeding or an issue in the proceeding.

§ 1122.030. Concurrent agency jurisdiction

As suggested by the Department of Industrial Relations, the staff has revised the Comment to Section 1122.030 as follows:

Section 1122.030 codifies case law preference for judicial rather than administrative action in the case of concurrent jurisdiction, subject to court discretion in appropriate circumstances. See Asimow, *Judicial Review: Standing and Timing* 66-82 (Sept. 1992). The court's discretion to refer the matter or issue to the agency for action gives courts considerable flexibility in the interests of justice. See *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 391-92, 826 P.2d 730, 6 Cal. Rptr. 2d 487, 496 (1992).

§ 1123.230. Public interest standing

• As suggested by the Department of Industrial Relations, the staff would revise subdivision (c) of Section 1123.230 as follows:

1123.230. A person has standing to obtain judicial review of agency action that concerns an important right affecting the public interest if all of the following conditions are satisfied:

....

(c) The person has previously requested the agency to correct the agency action and the agency has not, within a reasonable time, done so. The request shall be in writing unless made orally on the record in the agency proceeding. The agency may by rule require the request to be directed to the proper agency official. As used in this subdivision, a reasonable time shall not be less than 30 days unless the request shows that a shorter period is required to avoid irreparable harm. This subdivision does not apply to judicial review of an agency rule.

§ 1123.420. Review of agency interpretation or application of law

At the last meeting, the Commission eliminated the provision in subdivision (b) for abuse of discretion review of agency interpretation or application of its own statute when a delegation of interpretive authority has occurred. The reason for doing this was that it is virtually impossible to tell when a delegation exists. The Commission thought the question should be treated as one of “appropriate deference” under the independent judgment standard, with court

discretion to determine the appropriate degree of deference using the factors mentioned in the Comment. According to the Comment, these factors include “whether the agency is interpreting a statute or its own regulation,” and “the degree to which the legal text is technical, obscure, or complex and the agency has interpretive qualifications superior to the court’s.” Thus the question of appropriate deference is properly seen as lying “somewhere along a continuum with nonreviewability at one end and independent judgment at the other.” *Western States Petroleum Ass’n v. Superior Court*, 9 Cal. 4th 559, 575-76, 888 P.2d 1268, 38 Cal. Rptr. 2d 139, 147-48 (1995).

- As narrowed at the last meeting, abuse of discretion review under subdivision (b) now applies only to an agency determination that a regulation is reasonably necessary to effectuate the purpose of the statute that authorizes it, and to a local legislative body’s construction or interpretation of its own legislative enactment. The first of these (regulation reasonably necessary) does not appear to involve interpretation or application of law by an agency, but rather involves an exercise of discretion which would be subject to abuse of discretion review under Section 1123.450. The staff would make this clear by moving this provision from Section 1123.420 to Section 1123.450.

- The other remaining application of abuse of discretion review under subdivision (b) (local agency interpreting its own legislative enactment) was justified on the ground that it was needed for consistency: If a state agency enjoys abuse of discretion review of its interpretation of its regulation, the Commission thought similar deference should be accorded to a local agency construing its own legislative enactment. However, we have deleted abuse of discretion review for a state agency with delegated interpretive power. Instead this will be subject to independent judgment review with appropriate deference. The Comment says a factor in determining appropriate deference is “whether the agency is interpreting a statute or its own regulation.” For consistency we should probably also delete abuse of discretion review for a local legislative body construing its own enactment. We would make clear in the Comment that the deference due to a local legislative body construing its own enactment is determined by the same factors as a state agency construing its statute or regulation.

At the last meeting, the Commission approved a provision exempting the three labor law agencies from application of Section 1123.420. Perhaps this exemption should be more narrowly drawn to apply only to interpretations of

law within the regulatory authority of the agency, thus applying Section 1123.420 to other legal issues, such as what constitutes a quorum.

- **These suggested revisions may be accomplished as follows:**

1123.420. (a) The standard for judicial review of any of the following issues is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action:

(1) Whether the agency action, or the statute or regulation on which the agency action is based, is unconstitutional on its face or as applied.

(2) Whether the agency acted beyond the jurisdiction conferred by the constitution, a statute, or a regulation.

(3) Whether the agency has decided all issues requiring resolution.

(4) Whether the agency has erroneously interpreted the law.

(5) Whether the agency has erroneously applied the law to the facts.

~~(b) Notwithstanding subdivision (a), the standard for judicial review of the following agency action is abuse of discretion:~~

~~(1) An agency's determination under Section 11342.2 of the Government Code that a regulation is reasonably necessary to effectuate the purpose of the statute that authorizes the regulation.~~

~~(2) A local legislative body's construction or interpretation of its own legislative enactment.~~

~~(c) This section does not apply to interpretation or application of law by the Public Employment Relations Board, Agricultural Labor Relations Board, or Workers' Compensation Appeals Board within the regulatory authority of those agencies.~~

1123.450. (a) The standard for judicial review whether agency action is a proper exercise of discretion, including an agency's determination under Section 11342.2 of the Government Code that a regulation is reasonably necessary to effectuate the purpose of the statute that authorizes the regulation, is abuse of discretion.

(b) Notwithstanding subdivision (a), to the extent the agency action is based on a determination of fact, made or implied by the agency, the standard for judicial review is whether the agency's determination is supported by substantial evidence in the light of the whole record.

The Department of Industrial Relations cited four cases to support its contention that it now enjoys a highly deferential standard of review on questions of law, and asked to be included in the provision for abuse of discretion review. All four cases appear to involve not a determination of a

question of law, but rather discretionary action of the department. The standard of review of discretionary action is prescribed in Section 1123.450, and is abuse of discretion. *Independent Roofing Contractors v. Department of Industrial Relations*, 23 Cal. App. 4th 345, 28 Cal. Rptr. 2d 550 (1994), involved a decision of the department to rescind a prevailing wage determination for a particular job classification, a discretionary decision. *Pipe Trades Dist. Council No. 51 v. Aubry*, 41 Cal. App. 4th 1457, 49 Cal. Rptr. 2d 208 (1996), involved the department's refusal to publish a jurisdictional agreement between unions as part of the department's prevailing wage determinations, a discretionary decision. *International Brotherhood of Electrical Workers, Local 889 v. Department of Industrial Relations* (Jan. 22, 1996, unpublished opinion) involved the director's determination of the proper bargaining unit for light rail maintenance employees, a discretionary decision. *International Brotherhood of Electrical Workers, Local 11 v. Aubry* (Jan. 29, 1996) involved the directors' decision to reduce the prevailing wage rate for construction electricians in certain areas, a discretionary decision. The draft statute would leave the standard of review prescribed in these cases essentially unchanged. The Comment to Section 1123.450 makes this clear ("discretionary action is based on a choice or judgment" and the "court must not substitute its judgment for that of the agency").

Section 1123.420 treats questions of application of law to facts the same as a pure question of law — independent judgment review with appropriate deference. The Department of Industrial Relations says this inadvertently changes the standard of review of fact-finding of the State Personnel Board. This was a deliberate policy decision of the Commission, not inadvertent. Application questions often contain important policy issues. Moreover, it is easier to distinguish an application question from a pure question of fact than from a pure question of law. The staff recommends no exception or adjustment for the State Personnel Board.

§ 1123.430. Review of agency fact finding

In the previous draft, the staff proposed to move to Section 1123.430 the provision now in the Administrative Procedure Act (Gov't Code § 11425.50) that says on judicial review the court shall give great weight to a determination of the presiding officer based substantially on the credibility of a witness to the extent the determination identifies the observed demeanor, manner, or attitude of the

witness that supports it. The present draft leaves this provision in Section 11425.10 so it will apply to review of an adjudication by a local agency that voluntarily adopts this portion of the Administrative Procedure Act as authorized by Government Code Section 11410.40.

§ 1123.440. Review of fact finding in local agency adjudication

Subdivision (b) provides substantial evidence review of local agency fact-finding if the local agency provides certain basic procedural protections. At the last meeting, the Commission approved two additional procedural protections in local agency adjudications. First, the Commission thought the decision should include *Topanga* findings to get substantial evidence review of fact-finding under subdivision (c). This is already covered by the requirement in subdivision (c)(2) that the procedure shall comply with the administrative adjudication bill of rights, which includes a requirement of *Topanga* findings. See Gov't Code § 11425.50(a) ("decision shall be in writing and shall include a statement of the factual and legal basis for the decision as to each of the principal controverted issues"). The California School Employees Association is satisfied with this.

- Second, the Commission thought there should be independent judgment review where the local agency changes a finding of fact of the hearing officer, similar to Section 1123.430. The staff did this by adding a new subdivision (c), below.

- At the last meeting, concern was expressed about the discovery provision in subdivision (b)(4), because discovery may be inappropriate in many informal adjudications and may require more involvement of lawyers. Moreover, discovery is not such a fundamental right as to be included in the administrative adjudication bill of rights. The staff discussed this with CSEA. CSEA has no objection to deleting the discovery provision from subdivision (b) as set out below.

- The attached letter from CSEA suggests the provision in subdivision (b) for written notice to the parties of the decision be replaced by the more comprehensive rights in the Administrative Procedure Act (Gov't Code § 11517). Under the APA, if a contested case is heard before the agency itself, the administrative law judge who presided at the hearing shall be present during consideration of the case and, if requested, shall assist and advise the agency. No agency member who did not hear the evidence shall vote on the decision. The agency shall issue its decision within 100 days of submission of the case. If a

contested case is heard by an ALJ alone, within 30 days after the case is submitted, the ALJ shall prepare a proposed decision in a form that may be adopted as the decision in the case. Thirty days after receipt of the proposed decision, a copy shall be filed by the agency as a public record, and a copy shall be served by the agency on each party and his or her attorney. The agency may adopt the decision in its entirety, reduce or otherwise mitigate the proposed penalty, and make technical or other minor changes in, or change the legal basis of, the proposed decision. If the proposed decision is not adopted, the agency may decide the case itself on the record including the transcript or an agreed statement of the parties with or without taking additional evidence, or may refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the agency takes none of these actions, the proposed decision is deemed adopted 100 days after delivery to the agency. The decision shall be filed by the agency as a public record and a copy served on each party and his or her attorney. A draft to do this is set out in subdivision (b)(5) below. The staff is unsure whether it is necessary to apply all of Section 11517 to local agency hearings, including, for example, the requirement that the decision be filed as a public record, the requirement that the decision be adopted within a fixed time after submission, and the provision that the proposed decision is deemed adopted if the agency fails to act. The staff will work with CSEA to try to refine this provision.

• **The foregoing suggestions may be accomplished by revising Section 1123.440 as follows:**

1123.440. (a) The standard for judicial review of whether a decision of a local agency in an adjudicative proceeding affecting a fundamental, vested right arising out of employment is based on an erroneous determination of fact made or implied by the agency is the independent judgment of the court whether the decision is supported by the weight of the evidence.

(b) Notwithstanding subdivision (a), the standard for judicial review is whether the decision is supported by substantial evidence in the light of the whole record if the procedure adopted by the agency for the formulation and issuance of the decision satisfies all of the following requirements:

(1) The procedure provides parties with notice of the proceeding at least 10 days before the proceeding.

(2) The procedure complies with Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of

the Government Code, relating to the administrative adjudication bill of rights.

(3) The procedure complies with Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, relating to subpoenas.

(4) ~~The procedure provides parties the right to discovery to the extent provided in Section 11507.6 of the Government Code.~~

(5) The procedure provides parties with the rights provided in Section 11513 of the Government Code, relating to evidence.

(6) ~~(5) The procedure provides for written notice to the parties of the decision. parties with the rights provided in Section 11517 of the Government Code, relating to the decision in contested cases. For the purpose of this paragraph, “administrative law judge” in Section 11517 means hearing officer.~~

(7) ~~(6)~~ The procedure permits parties to apply for reconsideration of the decision, which may be granted or denied in the discretion of the agency.

(c) Subdivision (b) does not apply to a determination of fact made by the presiding officer in the hearing that is changed by the agency.

The Comment says the effect of subdivision (c) is to apply independent judgment review under subdivision (a) to a determination of fact made by a hearing officer that is changed by the agency.

§ 1123.620. Applicability of rules of practice for civil actions

Section 1123.620(a) says, “Except as otherwise provided in this title or by rules of court adopted by the Judicial Council not inconsistent with this title, Part 2 (commencing with Section 307) applies to proceedings under this title.” Part 2 relates to the conduct of civil actions. Section 1123.620 continues the effect of Section 1109 of the Code of Civil Procedure. It is well established that, except as provided by statute, general rules of pleading and practice in ordinary civil cases apply to mandamus proceedings. See California Administrative Mandamus § 8.14, at 268 (Cal. Cont. Ed. Bar 2d ed. 1989).

The Department of Industrial Relations says it is unclear whether the provision in Section 632 of the Code of Civil Procedure for the court to issue a statement of decision on request will apply in judicial review proceedings. The department thinks it should apply. It is clear that under existing law the provision in Section 632 for a statement of decision applies to mandamus proceedings. *Delany v. Toomey*, 111 Cal. App. 2d 570, 571-72, 245 P.2d 26 (1952); see California Administrative Mandamus, *supra*, § 4.39, at 121, §§ 11.17-11.18, at

371-72, § 12.34, at 396-97, §§ 13.2-13.4, at 400-403, § 13.23, at 423-24, §14.7, at 440. This would be continued by Section 1123.620. The staff will add a statement to this effect in the Comment.

- The Department of Industrial Relations would make clear Section 426.30 of the Code of Civil Procedure on compulsory cross-complaint does not apply in judicial review proceedings. The department says that to apply this provision would undesirably force it to cross-complain in a review proceeding initiated by an employer under investigation for other matters, even though the investigation is not yet complete. Arguably, Section 426.30 would not apply to a petition for review under the draft statute, because it only applies to a “a party against whom a complaint has been filed and served.” But it would be risky to rely on this language to avoid the compulsory cross-complaint provision. For example, the provision for a motion to strike a complaint (Code Civ. Proc. § 435) applies to a mandamus petition. California Administrative Mandamus, *supra*, § 10.13, at 351. So the staff would revise Section 1123.620 as follows:

1123.620. (a) Except as otherwise provided in this title or by rules of court adopted by the Judicial Council not inconsistent with this title, Part 2 (commencing with Section 307) applies to proceedings under this title.

(b) Section 426.30 does not apply to a proceeding under this title.

(c) A party may obtain discovery . . . [etc.].

The staff will review the other provisions of Part 2 of the Code of Civil Procedure to make sure the incorporation by Section 1123.620 does not create problems.

§ 1123.650. Time for filing petition for review in adjudicative proceeding

- The Department of Industrial Relations thought state agencies should be authorized to adopt regulations defining when a decision is “effective” for the purpose of the running of the time for judicial review. This suggestion could be adopted as follows:

1123.650. (a) The petition for review of a decision of a state agency in an adjudicative proceeding, and of a decision of any agency in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, shall be filed not later than 30 days after the decision is effective or

after the notice required by Section 1123.640 is given, whichever is later.

(b) For the purpose of this section:

(1) A decision in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is effective at the time provided in Section 11519 of the Government Code.

(2) A decision of a state agency other than in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is effective 30 days after it is delivered or mailed to the person to which the decision is directed, unless any of the following conditions exist:

(A) A reconsideration is ordered within that time pursuant to express statute or regulation.

(B) The agency orders that the decision is effective sooner.

(C) A stay of execution is granted.

(D) A different effective date is provided by a regulation.

....

The Department of Industrial Relations suggested we authorize expedited adoption of regulations to permit a state agency to define what constitutes a “decision” for purposes of judicial review. The staff is opposed to this because it would allow the agency to insulate certain kinds of decisions from judicial review by this method. Only final agency action is subject to judicial review. This includes the “whole or a part of a rule or a decision” and the “failure to issue a rule or decision.” See Sections 1121.240, 1123.110. Even if the department wants to define “decision” for the limited purpose of the limitations period in Section 1123.650, it is still problematic because Section 1123.650 only applies to an adjudicative proceeding. “Decision” is a statutory term in the Administrative Procedure Act. See Section 11425.50. For non-APA adjudications, the “decision” is the end result, and should not be expanded or limited by regulation.

At the last meeting, the Commission asked for historical background as to why a one-year statute of limitations was provided in Welfare and Institutions Code Section 10962 for welfare decisions of the Department of Social Services. Section 10962 was enacted in 1965. Available materials do not show who sponsored the legislation. The purpose of Section 10962 was described generally as “ensuring that aggrieved parties have access to the judicial system to establish their statutory rights.” *Woods v. Superior Court*, 28 Cal. 3d 668, 681, 620 P.2d 1032, 170 Cal. Rptr. 484 (1981). This purpose was confirmed by Robert Campbell, Assistant Chief Counsel for the Department of Social Services. The one-year

statute of limitations appears consistent with this purpose. The Commission also asked the staff to flag Section 10962 for comment on the need for the one-year statute, and the staff has done this in staff notes under Section 1123.650 and Welfare and Institutions Code Section 10962.

The limitations period for judicial review in Unemployment Insurance Code Section 410 (in selected conforming revisions in the draft statute) commences to run from the date of the decision or the date on which it is designated as a precedent decision, whichever is later. Designation of a decision as precedent may increase the motivation of the department or other party to seek judicial review, justifying an extended limitations period. We could generalize this provision by revising subdivision (a) of Section 1123.650 as follows:

1123.650. (a) The petition for review of a decision of a state agency in an adjudicative proceeding, and of a decision of any agency in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, shall be filed not later than 30 days after the decision is effective or ~~after the notice required by Section 1123.640 is given, whichever is later.~~ later of the following:

- (1) The date the decision is effective.
- (2) The date the notice required by Section 1123.640 is given.
- (3) The date the decision is designated as a precedent decision.

The staff is inclined not to do this, because there is no time limit for designating a decision as precedent (Gov't Code § 11425.60), so to measure the limitations period from such a designation would allow an open-ended period for judicial review.

§ 1123.670. Stay of agency action

- Subdivision (d) of Section 1123.670 permits the court to condition a stay of agency action on the giving of security for the protection of “third parties.” The Department of Industrial Relations wants this provision expanded to include security for the protection of the agency. The department says this is of particular concern to an enforcement agency trying to assure payment of wages and workers’ compensation benefits where the employer is approaching insolvency. **The staff is sympathetic to this, and would revise subdivision (d) as follows:**

(d) The court may condition a stay on appropriate terms, including the giving of security for the protection of third parties or others.

The Department of Industrial Relations suggested we codify *Palma v. U. S. Industrial Fasteners*, 36 Cal. 3d 171, 681 P.2d 893, 203 Cal. Rptr. 626 (1984), holding that a peremptory writ of mandamus should not be issued in the first instance by an appellate court, unless the parties have notice that such a procedure is being considered and have an opportunity to respond. The court held the proper procedure is for the appellate court to issue an order calling for issuance of the writ to provide an opportunity for review by the Supreme Court before the writ becomes operative. This case did not involve judicial review of agency action. It was an ordinary negligence action arising out of a vehicle accident. The staff would not codify this case, because it is outside the scope of our administrative law study.

§ 1123.760. New evidence on judicial review

The Department of Industrial Relations asks if the closed record requirement of Section 1123.760 would preclude evidence of agency decisions in prior cases if not cited in the decision under review. This is a matter of which the court may take judicial notice under Evidence Code Section 452(c) (official acts of executive department of any state). Before *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 888 P.2d 1268, 38 Cal. Rptr. 2d 139 (1995), the rules on judicial notice in ordinary civil actions applied in administrative mandamus proceedings. *California Administrative Mandamus*, *supra*, § 12.24, at 389. Failure to have the agency take official notice of a matter did not preclude the reviewing court from taking judicial notice of it. *Harris v. Alcoholic Beverage Control Appeals Bd.*, 62 Cal. 2d 589, 595-96, 400 P.2d 745, 43 Cal. Rptr. 633 (1965).

However, the scope of judicial notice may have been limited by the closed record requirement of *Western States*:

We need not decide whether courts may take judicial notice of evidence not contained in the administrative record when reviewing a quasi-legislative decision for substantial evidence In light of the analogy we draw in this case, it would seem logical to conclude that the rules governing judicial notice in such instances would be akin to those applicable in reviewing courts. . . . However, it would never be proper to take judicial notice of evidence that (1) is absent from the administrative record, and (2)

was not before the agency at the time it made its decision. This is so because only relevant evidence is subject to judicial notice . . . , and the only evidence that is relevant to the question of whether there was substantial evidence to support a quasi-legislative administrative decision . . . is that which was before the agency at the time it made its decision.

9 Cal. 4th 559, 573 n.4, 888 P.2d 745, 752 n.4, 38 Cal. Rptr. 2d 139, 146 n.4.

Thus, in light of *Western States*, it appears evidence of prior agency decisions must be before the agency at the time it made its decision in order for the reviewing court to take judicial notice of it. Presumably the prior decision need not be actually cited in the agency decision under review, as long as it was before the agency in some form. **The staff recommends adding the following to the Comment to Section 1123.760:**

Concerning judicial notice by the reviewing court, see *Western States Petroleum Ass'n v. Superior Court*, *supra*, 9 Cal. 4th at 573 n.4, 888 P.2d at 1275 n.4, 38 Cal. Rptr. 2d at 146 n.4 (1995)

Respectfully submitted,

Robert J. Murphy
Staff Counsel

Memo 96-26

EXHIBIT

Study N-200



California School Employees Association

March 24, 1996

Law Revision Commission
RECEIVEDRobert J. Murphy, Staff Counsel
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, California 94303-1827

MAR 25 1996

File: _____

Re: Judicial Review of Agency Action
Proposed Section 1123.435

Dear Bob:

Please forgive my delay in responding to your March 1 letter.


You are correct, my concern about Topanga findings is addressed in Section 11425.50. As to my other concern, however, I remain suspicious of what happens when local agency board members go into closed session following the presentation of evidence, particularly when they did not hear the evidence but are acting upon a proposed decision of a hearing officer.

To address this problem, the proposed Section 1123.435, subdivision (c)(5) should state: "The procedure provides for written notice to the parties of the decision ~~with the rights provided in Section 11517 of the Government Code.~~ This language would not require the exact procedure, such as delivering a copy of a proposed decision to OAH (subdivision (d)), but only "the rights provided," i.e., the right to adoption of a proposed decision when the agency fails to act.

How about a trade? Senator Kopp was concerned about discovery, although it was then explained that the discovery provided in Section 11507.6 is quite limited. Local agency heads may have the same reaction. After further review of this issue, CSEA would not object to the elimination of the right of discovery if the other rights, including those in section 11517, are protected.

I deeply appreciate the understanding and responsiveness of the Commission and its staff to the issues CSEA has raised.

Sincerely,


William C. Heath
Deputy Chief Counsel

cc: Margie Valdez, CC

2045 Lundy Avenue P.O. Box 640 San Jose, CA 95106 (408) 263-8000 FAX (408) 954-0948



JUDICIAL REVIEW OF AGENCY ACTION

OUTLINE

CODE OF CIVIL PROCEDURE

PART 3. OF SPECIAL PROCEEDINGS OF A CIVIL NATURE

TITLE 2. JUDICIAL REVIEW OF AGENCY ACTION	20
CHAPTER 1. GENERAL PROVISIONS	20
Article 1. Preliminary Provisions	20
§ 1120. Application of title	20
§ 1121.110. Conflicting or inconsistent statute controls	21
§ 1121.120. Other forms of judicial review replaced	21
§ 1121.130. Injunctive relief ancillary	22
§ 1121.140. Exercise of agency discretion	22
§ 1121.150. Operative date	22
Article 2. Definitions	23
§ 1121.210. Application of definitions	23
§ 1121.220. Adjudicative proceeding	23
§ 1121.230. Agency	23
§ 1121.240. Agency action	23
§ 1121.250. Decision	24
§ 1121.255. Local agency	24
§ 1121.260. Party	24
§ 1121.270. Person	24
§ 1121.280. Rule	24
§ 1121.290. Rulemaking	25
CHAPTER 2. PRIMARY JURISDICTION	25
§ 1122.010. Application of chapter	25
§ 1122.020. Exclusive agency jurisdiction	25
§ 1122.030. Concurrent agency jurisdiction	26
§ 1122.040. Judicial review following agency action	27
CHAPTER 3. JUDICIAL REVIEW	27
Article 1. General Provisions	27
§ 1123.110. Requirements for judicial review	27
§ 1123.120. Finality	27
§ 1123.130. Ripeness	28
§ 1123.140. Exception to finality and ripeness requirements	28
§ 1123.150. Proceeding not moot because penalty completed	29
§ 1123.160. Condition of relief	29
Article 2. Standing	29
§ 1123.210. No standing unless authorized by statute	29
§ 1123.220. Private interest standing	30
§ 1123.230. Public interest standing	31
§ 1123.240. Standing for review of decision in adjudicative proceeding	32
Article 3. Exhaustion of Administrative Remedies	33
§ 1123.310. Exhaustion required	33
§ 1123.320. Administrative review of adjudicative proceeding	33
§ 1123.330. Judicial review of rulemaking	33
§ 1123.340. Exceptions to exhaustion of administrative remedies	34
§ 1123.350. Exact issue rule	35

Article 4. Standards of Review	36
§ 1123.410. Standards of review of agency action	36
§ 1123.420. Review of agency interpretation or application of law	36
§ 1123.430. Review of agency fact finding	38
§ 1123.440. Review of fact finding in local agency adjudication	39
§ 1123.450. Review of agency exercise of discretion	40
§ 1123.460. Review of agency procedure	41
§ 1123.470. Burden of persuasion	41
Article 5. Superior Court Jurisdiction and Venue	42
§ 1123.510. Superior court jurisdiction	42
§ 1123.520. Superior court venue	42
Article 6. Review Procedure	43
§ 1123.610. Petition for review	43
§ 1123.620. Applicability of rules of practice for civil actions	43
§ 1123.630. Contents of petition for review	43
§ 1123.640. Notice to parties of period for filing petition for review	44
§ 1123.650. Time for filing petition for review in adjudication of state agency and formal adjudication of local agency	44
§ 1123.660. Time for filing petition for review in other adjudicative proceedings	45
§ 1123.670. Stay of agency action	46
§ 1123.680. Type of relief	47
§ 1123.690. Jury trial	48
Article 7. Record for Judicial Review	48
§ 1123.710. Administrative record exclusive basis for judicial review	48
§ 1123.720. Contents of administrative record	48
§ 1123.730. Preparation of record	50
§ 1123.750. Disposal of administrative record	50
§ 1123.760. New evidence on judicial review	51
Article 8. Costs and Fees	52
§ 1123.810. Fee for transcript and preparation and certification of record	52
§ 1123.820. Recovery of costs of suit	52
§ 1123.830. No renewal or reinstatement of license on failure to pay costs	52
§ 1123.840. Proceedings in forma pauperis	53
§ 1123.850. Attorney fees in action to review administrative proceeding	53
SELECTED CONFORMING REVISIONS	54
MEDICAL BOARD OF CALIFORNIA	54
Bus. & Prof. Code § 2337 (amended). (Second of two, operative 1/1/96, repealed 1/1/99) Judicial review	54
ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD	54
Bus. & Prof. Code § 23090 (amended). Jurisdiction	54
Bus. & Prof. Code § 23090.1 (repealed). Writ of review	55
Bus. & Prof. Code § 23090.2 (repealed). Scope of review	55
Bus. & Prof. Code § 23090.3 (amended). Right to appear in judicial review proceeding	55
Bus. & Prof. Code § 23090.4 (amended). Judicial review	56
Bus. & Prof. Code § 23090.5 (amended). Courts having jurisdiction	56
Bus. & Prof. Code § 23090.6 (repealed). Stay of order	56
Bus. & Prof. Code § 23090.7 (amended). Effectiveness of order	57
TAXPAYER ACTIONS	57
Code Civ. Proc. § 526a (amended). Taxpayer actions	57
WRIT OF MANDATE	57
Code Civ. Proc. § 1085 (amended). Courts which may issue writ of mandate	57
Code Civ. Proc. § 1085.5 (repealed). Review of action of Director of Food and Agriculture	58
Code Civ. Proc. § 1094.5 (repealed). Administrative mandamus	58

Code Civ. Proc. § 1094.6 (repealed). Review of local agency decision	62
COMMISSION ON PROFESSIONAL COMPETENCE	63
Educ. Code § 44945 (amended). Judicial review	63
BOARD OF GOVERNORS OF CALIFORNIA COMMUNITY COLLEGES	64
Educ. Code § 87682 (amended). Judicial review	64
COSTS IN CIVIL ACTIONS RESULTING FROM ADMINISTRATIVE PROCEEDINGS	64
Gov't Code § 800 (repealed). Costs in action to review administrative proceeding	64
PUBLIC EMPLOYMENT RELATIONS BOARD	65
Gov't Code § 3520 (amended). Judicial review of unit determination or unfair practice case	65
Gov't Code § 3542 (amended). Review of unit determination	66
Gov't Code § 3564 (amended). Judicial review of unit determination or unfair practice case	67
ADMINISTRATIVE PROCEDURE ACT — RULEMAKING	68
Gov't Code § 11350 (amended). Judicial declaration on validity of regulation	68
ADMINISTRATIVE PROCEDURE ACT — ADJUDICATION	69
Gov't Code § 11523 (repealed). Judicial review	69
Gov't Code § 11524 (amended). Continuances	70
STATE PERSONNEL BOARD	71
Gov't Code § 19630 (amended). When action barred	71
LOCAL AGENCIES	72
Gov't Code § 54962 (added). Decision	72
ZONING ADMINISTRATION	72
Gov't Code § 65907 (amended). Time for attacking administrative determination	72
AGRICULTURAL LABOR RELATIONS BOARD	73
Lab. Code § 1160.8 (amended). Review of final order of board	73
WORKERS' COMPENSATION APPEALS BOARD	74
Lab. Code § 5950 (amended). Judicial review	74
Lab. Code § 5951 (repealed). Writ of review	74
Lab. Code § 5952 (repealed). Scope of review	74
Lab. Code § 5953 (amended). Right to appear in judicial review proceeding	75
Lab. Code § 5954 (amended). Judicial review	75
Lab. Code § 5955 (amended). Courts having jurisdiction	75
Lab. Code § 5956 (repealed). Stay of order	76
Lab. Code § 6000 (amended). Undertaking on stay order	76
CALIFORNIA ENERGY COMMISSION	76
Pub. Res. Code § 25531 (amended). Judicial review	76
PUBLIC UTILITIES COMMISSION	77
Pub. Util. Code § 1756 (amended). Review of commission decisions	77
Pub. Util. Code § 1757 (repealed). New evidence	78
Pub. Util. Code § 1758 (repealed). Parties	78
Pub. Util. Code § 1760 (repealed). Independent judgment	79
UNEMPLOYMENT INSURANCE APPEALS BOARD	79
Unemp. Ins. Code § 410 (amended). Finality of decisions	79
DEPARTMENT OF MOTOR VEHICLES	79
Veh. Code § 13559 (amended). Petition for review	79
Veh. Code § 14401 (amended). Statute of limitations on review	80
DEPARTMENT OF SOCIAL SERVICES	80
Welf. & Inst. Code § 10962 (amended). Judicial review	80
BILL PROVISIONS	81
Uncodified (added). Severability	81
Uncodified (added). Operative date	81

Title 2 (commencing with Section 1120) is added to Part 3 of the Code of Civil Procedure to read:

TITLE 2. JUDICIAL REVIEW OF AGENCY ACTION

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

§ 1120. Application of title

1120. (a) Except as provided in this section, this title governs judicial review of agency action of any of the following entities:

(1) The state, including any agency or instrumentality of the state, whether in the executive department or otherwise.

(2) A local agency, including a county, city, district, public authority, public agency, or other political subdivision or public corporation in the state.

(b) This title does not govern or apply where a statute provides for judicial review of agency action by any of the following means:

(1) A trial de novo, including an action for refund of taxes under the Revenue and Taxation Code.

(2) An action under Division 3.6 (commencing with Section 810) of the Government Code, relating to claims and actions against public entities and public employees.

(c) This title does not govern or apply to judicial review of proceedings of the State Bar Court.

(d) This title does not govern litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(e) This title does not govern or apply to a proceeding under Chapter 9 (commencing with Section 860) of Title 10 of Part 2, relating to validating proceedings.

(f) This title does not govern or apply to judicial review of a decision of a court.

(g) This title does not govern or apply to judicial review of action of a nongovernmental entity, except a decision of a private hospital board in an adjudicative proceeding.

Comment. Section 1120 makes clear that the judicial review provisions of this title apply to actions of local agencies as well as state government. The term “local agency” is defined in Government Code Section 54951. See Section 1121.255 & Comment.

Under subdivision (b)(1), this title does not apply where a statute provides for judicial review by a trial de novo. See, e.g., Educ. Code §§ 33354 (hearing on compliance with federal law on interscholastic activities), 67137.5 (judicial review of college or university withholding student records); Food & Ag. Code § 31622 (hearing concerning vicious dog); Gov’t Code § 53088.2 (judicial review of local action concerning video provider); Lab. Code §§ 98.2 (judicial review of order of Labor Commissioner on employee complaint), 1543 (judicial review of determination of Labor Commissioner involving athlete agent), 1700.44

(judicial review of order of Labor Commissioner involving talent agency); Rev. & Tax. Code § 1605.5 (change of property ownership or new construction); Welf. & Inst. Code § 5334 (judicial review of capacity hearing).

Subdivision (b)(2) provides that this title does not apply to an action brought under the California Tort Claims Act. However, subdivision (b)(2) does not prevent the claims requirements of the Tort Claims Act from applying to an action seeking primarily money damages and also extraordinary relief incidental to the prayer for damages. See Section 1123.680(b) (damages subject to Tort Claims Act “if applicable”); *Loehr v. Ventura County Community College Dist.*, 147 Cal. App. 3d 1071, 1081, 195 Cal. Rptr. 576 (1983).

Under subdivision (c), this title does not apply to proceedings of the State Bar Court, which are reviewed by the California Supreme Court as prescribed by rules of that court. Bus. & Prof. Code § 6082.

Under subdivision (d), this title does not apply, for example, to enforcement of a government bond in an action at law, or to actions involving contract, intellectual property, or copyright. Under subdivision (e), this title does not apply to a validating proceeding under Sections 860-870.

In applying this title to judicial review of a decision of a private hospital board, subdivision (g) continues the effect of former Code of Civil Procedure Section 1094.5(d).

References in section Comments in this title to the “1981 Model State APA” mean the Model State Administrative Procedure Act (1981) promulgated by the National Conference of Commissioners on Uniform State Laws. See 15 U.L.A. 1 (1990). References to the “Federal APA” mean the Federal Administrative Procedure Act, 5 U.S.C. §§ 551-583, 701-706, 1305, 3105, 3344, 5372, 7521 (1988 & Supp. V 1993), and related sections (originally enacted as Act of June 11, 1946, ch. 324, 60 Stat. 237).

See also Section 1123.160 (condition of relief).

§ 1121.110. Conflicting or inconsistent statute controls

1121.110. A statute applicable to a particular entity or a particular agency action prevails over a conflicting or inconsistent provision of this title.

Comment. Section 1121.110 is drawn from the first sentence of former Government Code Section 11523 (judicial review in accordance with provisions of Code of Civil Procedure “subject, however, to the statutes relating to the particular agency”). As used in Section 1121.110, “statute” does not include a local ordinance. See Cal. Const. Art. IV, § 8(b) (statute enacted only by bill in the Legislature); *id.* Art. XI, § 7 (local ordinance).

§ 1121.120. Other forms of judicial review replaced

1121.120. (a) Except as provided in subdivisions (b) and (c), the procedure provided in this title for judicial review of agency action shall be used in place of administrative mandamus, ordinary mandamus, certiorari, prohibition, declaratory relief, injunctive relief, and any other judicial procedure, to the extent those procedures might otherwise be used for judicial review of agency action.

(b) Nothing in this title limits use of the writ of habeas corpus.

(c) Notwithstanding Section 427.10, no cause of action may be joined in a proceeding under this title unless it states independent grounds for relief.

Comment. Subdivision (a) of Section 1120.120 is drawn from 1981 Model State APA § 5-101. By establishing this title as the exclusive method for judicial review of agency action, Section 1120.120 continues and broadens the effect of former Section 1094.5. See, e.g., *Viso v. State*, 92 Cal. App. 3d 15, 21, 154 Cal. Rptr. 580, 584 (1979). However, subdivision (a) does not supersede the original writ jurisdiction given by Article VI, Section 10, of the California Constitution.

1 Under subdivision (b), this title does not apply to the writ of habeas corpus. See Cal. Const.
2 Art. I, § 11; Art. VI, § 10. See also *In re* McVickers, 29 Cal. 2d 264, 176 P.2d 40 (1946); *In*
3 *re* Stewart, 24 Cal. 2d 344, 149 P.2d 689 (1944); *In re* DeMond, 165 Cal. App. 3d 932, 211
4 Cal. Rptr. 680 (1985).

5 Subdivision (c) continues prior law. See, e.g., *State v. Superior Court*, 12 Cal. 3d 237, 249-
6 51, 524 P.2d 1281, 115 Cal. Rptr. 497, 504 (1974) (declaratory relief not appropriate to
7 review administrative decision, but is appropriate to declare a statute facially unconstitutional);
8 *Hensler v. City of Glendale*, 8 Cal. 4th 1, 876 P.2d 1043, 32 Cal. Rptr. 2d 244, 253 (1994)
9 (inverse condemnation action may be joined in administrative mandamus proceeding
10 involving same facts); *Mata v. City of Los Angeles*, 20 Cal. App. 4th 141, 147-48, 24 Cal.
11 Rptr. 2d 314, 318 (1993) (complaint for violation of civil rights may be joined with
12 administrative mandamus). If other causes of action are joined with a proceeding for judicial
13 review, the court may sever the causes for trial. See Section 1048. See also Section 598.

14 Nothing in this section limits the type of relief or remedial action available in a proceeding
15 under this title. See Section 1123.680 (type of relief).

16 § 1121.130. Injunctive relief ancillary

17 1121.130. Injunctive relief is ancillary to and may be used as a supplemental
18 remedy in connection with a proceeding under this title.

19 **Comment.** Section 1121.130 makes clear that the procedures for injunctive relief may be
20 used in a proceeding under this title. See Section 1123.680 (injunctive relief authorized).

21 § 1121.140. Exercise of agency discretion

22 1121.140. Nothing in this title authorizes the court to interfere with a valid
23 exercise of agency discretion or to direct an agency how to exercise its
24 discretion.

25 **Comment.** Section 1121.140 is drawn from 1981 Model State APA § 1-116(c)(8)(i), and is
26 consistent with the last clause in former Section 1094.5(f).

27 § 1121.150. Operative date; application to pending proceedings

28 1121.150. (a) Except as provided in this section, this title becomes operative on
29 January 1, 1999.

30 (b) This title does not apply to a proceeding for judicial review of agency action
31 pending on the operative date, and the applicable law in effect continues to apply
32 to the proceeding.

33 (c) On and after January 1, 1998, the Judicial Council may adopt any rules of
34 court necessary so that this title may become operative on January 1, 1999.

35 **Comment.** Section 1121.150 provides a deferred operative date to enable the courts,
36 Judicial Council, and parties to make any necessary preparations for operation under this title.

37 Subdivision (b) is drawn from a portion of 1981 Model State APA § 1-108. Pending
38 proceedings for administrative mandamus, declaratory relief, and other proceedings for
39 judicial review of agency action are not governed by this title but should be completed under
40 the applicable provisions other than this title.

Article 2. Definitions

§ 1121.210. Application of definitions

1121.210. Unless the provision or context requires otherwise, the definitions in this article govern the construction of this title.

Comment. Section 1121.210 limits these definitions to judicial review of agency action. Some parallel provisions may be found in the statutes governing adjudicative proceedings by state agencies. See Gov't Code §§ 11405.10-11405.80 (operative July 1, 1997).

§ 1121.220. Adjudicative proceeding

1121.220. "Adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.

Comment. Section 1121.220 is drawn from the Administrative Procedure Act. See Gov't Code § 11405.20 (operative July 1, 1997) & Comment ("adjudicative proceeding" defined). See also Sections 1121.230 ("agency" defined), 1121.250 ("decision" defined).

§ 1121.230. Agency

1121.230. "Agency" means a board, bureau, commission, department, division, governmental subdivision or unit of a governmental subdivision, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf of or under the authority of the agency head.

Comment. Section 1121.230 is drawn from the Administrative Procedure Act. See Gov't Code § 11405.30 (operative July 1, 1997) & Comment ("agency" defined). The intent of the definition is to subject as many governmental units as possible to this title.

§ 1121.240. Agency action

1121.240. "Agency action" means any of the following:

(a) The whole or a part of a rule or a decision.

(b) The failure to issue a rule or a decision.

(c) An agency's performance of, or failure to perform, any other duty, function, or activity, discretionary or otherwise.

Comment. Section 1121.240 is drawn from 1981 Model State APA Section 1-102(2). The term "agency action" includes a "rule" and a "decision" defined in Sections 1121.280 (rule) and 1121.250 (decision), and an agency's failure to issue a rule or decision. It goes further, however. Subdivision (c) makes clear that "agency action" includes everything and anything else that an agency does or does not do, whether its action or inaction is discretionary or otherwise. There are no exclusions from that all encompassing definition. As a consequence, there is a category of "agency action" that is neither a "decision" nor a "rule" because it neither establishes the legal rights of any particular person nor establishes law or policy of general applicability.

The principal effect of the broad definition of "agency action" is that everything an agency does or does not do is subject to judicial review if the limitations provided in Chapter 3 (commencing with Section 1123.110) are satisfied. See Section 1123.110 (requirements for judicial review). Success on the merits in such cases, however, is another thing. See also Section 1123.160 (condition of relief).

See also Section 1121.230 (“agency” defined).

§ 1121.250. Decision

1121.250. “Decision” means an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

Comment. Section 1121.250 is drawn from the Administrative Procedure Act. See Gov’t Code § 11405.50 (operative July 1, 1997) & Comment (“decision” defined). See also Sections 1121.240 (“agency action” defined), 1121.270 (“person” defined).

§ 1121.255. Local agency

1121.255. “Local agency” means “local agency” as defined in Section 54951 of the Government Code.

Comment. Section 1121.255 is drawn from former Section 1094.6, and is broadened to include school districts. See also Section 1121.230 (“agency” defined).

§ 1121.260. Party

1121.260. “Party”:

(a) As it relates to agency proceedings, means the agency that is taking action, the person to which the agency action is directed, and any other person named as a party or allowed to appear or intervene in the agency proceedings.

(b) As it relates to judicial review proceedings, means the person seeking judicial review of agency action and any other person named as a party or allowed to participate as a party in the judicial review proceedings.

Comment. Subdivision (a) of Section 1121.260 is drawn from the Administrative Procedure Act. See Gov’t Code § 11405.60 (operative July 1, 1997) & Comment (“decision” defined). This section is not intended to address the question of whether a person is entitled to judicial review. Standing to obtain judicial review is dealt with in Article 2 (commencing with Section 1123.210) of Chapter 3. See also Sections 1121.230 (“agency” defined), 1121.260 (“party” defined).

§ 1121.270. Person

1121.270. “Person” includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.

Comment. Section 1121.270 is drawn from the Administrative Procedure Act. See Gov’t Code § 11405.70 (operative July 1, 1997) & Comment (“person” defined). It supplements the definition in Section 17 and is broader in its application to a governmental subdivision or unit; this would include an agency other than the agency against which rights under this title are asserted by the person. Inclusion of such agencies and units of government insures, therefore, that other agencies or other governmental bodies will be accorded all the rights that a person has under this title.

§ 1121.280. Rule

1121.280. “Rule” means both of the following:

(a) “Regulation” as defined in Section 11342 of the Government Code.

(b) The whole or a part of an agency statement, regulation, order, or standard of general applicability that implements, interprets, makes specific, or prescribes law or policy, or the organization, procedure, or practice requirements of an agency, except one that relates only to the internal management of the agency. The term includes the amendment, supplement, repeal, or suspension of an existing rule.

(c) A local agency ordinance.

Comment. Subdivision (a) of Section 1121.280 only applies to state agencies. See Gov't Code § 11342(g).

Subdivision (b) is drawn from 1981 Model State APA § 1-102(10) and Government Code Section 11342(g). Although subdivision (b) applies to state and local agencies, its usefulness is to provide a definition for local agencies. The definition includes all agency statements of general applicability that implement, interpret, or prescribe law or policy, without regard to the terminology used by the issuing agency to describe them. The exception in subdivision (b) for an agency statement that relates only to the internal management of the agency is drawn from Government Code Section 11342(g), and is generalized to apply to local agencies. See also Sections 1121.230 ("agency" defined), 1121.255 ("local agency" defined).

This title applies to an agency rule whether or not the rule is a "regulation" to which the rulemaking provisions of the Administrative Procedure Act apply.

§ 1121.290. Rulemaking

1121.290. "Rulemaking" means the process for formulation and adoption of a rule.

Comment. Section 1121.290 is drawn from 1981 Model State APA § 1-102(11). See also Section 1121.280 ("rule" defined).

CHAPTER 2. PRIMARY JURISDICTION

§ 1122.010. Application of chapter

1122.010. This chapter applies if a judicial proceeding is pending and the court determines that an agency has exclusive or concurrent jurisdiction over the subject matter of the proceeding or an issue in the proceeding.

Comment. Section 1122.010 makes clear that the provisions governing primary jurisdiction come into play only when there is exclusive or concurrent jurisdiction in an agency over a matter that is the subject of a pending judicial proceeding. The term "judicial proceeding" is used to mean any proceeding in court, including a civil action or a special proceeding.

This chapter deals with original jurisdiction over a matter, rather than with judicial review of previous agency action on the matter. If the matter has previously been the subject of agency action and is currently the subject of judicial review, the governing provisions relating to the court's jurisdiction are found in Chapter 3 (commencing with Section 1123.110) (judicial review) rather than in this chapter.

§ 1122.020. Exclusive agency jurisdiction

1122.020. If an agency has exclusive jurisdiction over the subject matter of the proceeding or an issue in the proceeding, the court shall decline to exercise jurisdiction over the subject matter or the issue. The court may dismiss the proceeding or retain jurisdiction pending agency action on the matter or issue.

1 **Comment.** Section 1122.020 requires the court to yield primary jurisdiction to an agency
2 in the case of a legislative scheme to vest the determination in the agency. Adverse agency
3 action is subject to judicial review. Section 1122.040 (judicial review following agency
4 action).

5 **§ 1122.030. Concurrent agency jurisdiction**

6 1122.030. (a) If an agency has concurrent jurisdiction over the subject matter of
7 the proceeding or an issue in the proceeding, the court shall exercise jurisdiction
8 over the subject matter or issue unless the court in its discretion refers the matter
9 or issue for agency action. The court may exercise its discretion to refer the matter
10 or issue for agency action only if the court determines the reference is clearly
11 appropriate taking into consideration all relevant factors including, but not limited
12 to, the following:

13 (1) Whether agency expertise is important for proper resolution of a highly
14 technical matter or issue.

15 (2) Whether the area is so pervasively regulated by the agency that the
16 regulatory scheme should not be subject to judicial interference.

17 (3) Whether there is a need for uniformity that would be jeopardized by the
18 possibility of conflicting judicial decisions.

19 (4) Whether there is a need for immediate resolution of the matter, and any
20 delay that would be caused by referral for agency action.

21 (5) The costs to the parties of additional administrative proceedings.

22 (6) Whether agency remedies are adequate and whether any delay for agency
23 action would limit judicial remedies, either practically or due to running of statutes
24 of limitation or otherwise.

25 (7) Any legislative intent to prefer cumulative remedies or to prefer
26 administrative resolution.

27 (b) This section does not apply to a criminal proceeding.

28 (c) Nothing in this section confers concurrent jurisdiction on a court over the
29 subject matter of a pending disciplinary proceeding under the administrative
30 adjudication, formal hearing, provisions of the Administrative Procedure Act,
31 Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
32 the Government Code.

33 **Comment.** Section 1122.030 codifies the case law preference for judicial rather than
34 administrative action in the case of concurrent jurisdiction, subject to court discretion in
35 appropriate circumstances. See Asimow, *Judicial Review: Standing and Timing* 66-82 (Sept.
36 1992). The court's discretion to refer the matter or issue to the agency for action gives courts
37 considerable flexibility in the interests of justice. See *Farmers Ins. Exch. v. Superior Court*, 2
38 Cal. 4th 377, 391-92, 826 P.2d 730, 6 Cal. Rptr. 2d 487, 496 (1992).

39 Court retention of jurisdiction does not preclude agency involvement. For example, the
40 court in its discretion may request that the agency file an amicus brief setting forth its views
41 on the matter as an alternative to actually referring the matter to the agency.

42 If the matter is referred to the agency, the agency action remains subject to judicial review.
43 Section 1122.040 (judicial review following agency action).

1 **§ 1122.040. Judicial review following agency action**

2 1122.040. If an agency has exclusive or concurrent jurisdiction over the subject
3 matter of the proceeding or an issue in the proceeding, agency action on the
4 matter or issue is subject to judicial review to the extent provided in Chapter 3
5 (commencing with Section 1123.110).

6 **Comment.** Section 1122.040 makes clear that judicial review principles apply to agency
7 action even though an agency has exclusive jurisdiction or the court refers a matter of
8 concurrent jurisdiction to the agency for action under this chapter.

9 **CHAPTER 3. JUDICIAL REVIEW**

10 **Article 1. General Provisions**

11 **§ 1123.110. Requirements for judicial review**

12 1123.110. (a) Subject to subdivision (b), a person who has standing under this
13 chapter and who satisfies the requirements governing exhaustion of
14 administrative remedies, ripeness, time for filing, and other preconditions is entitled
15 to judicial review of final agency action.

16 (b) The court may summarily decline to grant judicial review if the petition for
17 review does not present a substantial issue for resolution by the court.

18 **Comment.** Section 1123.110 is drawn from 1981 Model State APA Section 5-102(a). It
19 ties together the threshold requirements for obtaining judicial review of final agency action,
20 and guarantees the right to judicial review if these requirements are met. See, e.g., Sections
21 1123.120 (finality), 1123.130 (ripeness), 1123.210 (standing), 1123.310 (exhaustion of
22 administrative remedies), 1123.650-1123.660 (time for filing petition for review of decision
23 in adjudicative proceeding).

24 The term “agency action” is defined in Section 1121.240. The term includes rules,
25 decisions, and other types of agency action and inaction. This chapter contains provisions for
26 judicial review of all types of agency action.

27 Subdivision (b) continues the former discretion of the courts to decline to grant a writ of
28 administrative mandamus. *Parker v. Bowron*, 40 Cal. 2d 344, 351, 254 P.2d 6, 9 (1953); *Dare*
29 *v. Board of Medical Examiners*, 21 Cal. 2d 790, 796, 136 P.2d 304, 308 (1943); *Berry v.*
30 *Coronado Bd. of Education*, 238 Cal. App. 2d 391, 397, 47 Cal. Rptr. 727 (1965); *California*
31 *Administrative Mandamus* § 1.3, at 5 (Cal. Cont. Ed. Bar, 2d ed. 1989). *Cf.* Code Civ. Proc.
32 § 437c (summary judgment in civil action on ground that action has no merit).

33 **§ 1123.120. Finality**

34 1123.120. A person may not obtain judicial review of agency action unless the
35 agency action is final.

36 **Comment.** Section 1123.120 continues the finality requirement of former Section
37 1094.5(a) in language drawn from 1981 Model State APA Section 5-102(b)(2). This
38 requirement is crucial, since Section 1123.110 (requirements for judicial review) guarantees
39 the right to judicial review of agency action if the stated requirements are met. Agency action
40 is typically not final if the agency intends that the action is preliminary, preparatory,
41 procedural, or intermediate with regard to subsequent agency action of that agency or
42 another agency. For example, state agency action concerning a proposed rule subject to the
43 rulemaking part of the Administrative Procedure Act is not final until the agency submits the
44 proposed rule to the Office of Administrative Law for review as provided by that act, and the

1 Office of Administrative Law approves the rule pursuant to Government Code Section
2 11349.3.

3 For an exception to the requirement of finality, see Section 1123.140 (exception to finality
4 and ripeness requirements).

5 **§ 1123.130. Ripeness**

6 1123.130. A person may not obtain judicial review of an agency rule until the
7 rule has been applied by the agency.

8 **Comment.** Section 1123.130 codifies the case law ripeness requirement for judicial review
9 of an agency rule. See, e.g., *Pacific Legal Foundation v. California Coastal Comm'n*, 33 Cal.
10 3d 158, 655 P.2d 306, 188 Cal. Rptr. 104 (1982). A rule includes an agency statement of law
11 or policy. Section 1121.280 ("rule" defined). For an exception to the requirement of
12 ripeness, see Section 1123.140 (exception to finality and ripeness requirements).

13 An allegation that procedures followed in adopting a state agency rule were legally
14 deficient would not be ripe for judicial review until the agency completed the rulemaking
15 process and formally adopted the rule (typically by submitting it to the Office of
16 Administrative Law pursuant to Government Code Section 11343), the Office of
17 Administrative Law approved the rule and submitted it to the Secretary of State pursuant to
18 Government Code Section 11349.3 thus allowing it to become final, and the adopting agency
19 applied the rule. See also Section 1123.140(b) (rulemaking may not be enjoined or
20 prohibited).

21 **§ 1123.140. Exception to finality and ripeness requirements**

22 1123.140. (a) A person may obtain judicial review of agency action that is not
23 final or, in the case of an agency rule, that has not been applied by the agency, if
24 all of the following conditions are satisfied:

25 (1) It appears likely that the person will be able to obtain judicial review of the
26 agency action when it becomes final or, in the case of an agency rule, when it has
27 been applied by the agency.

28 (2) The issue is fit for immediate judicial review.

29 (3) Postponement of judicial review would result in an inadequate remedy or
30 irreparable harm disproportionate to the public benefit derived from
31 postponement.

32 (b) Nothing in this section authorizes a court to enjoin or otherwise prohibit an
33 agency from adopting a rule.

34 **Comment.** Section 1123.140 codifies an exception to the finality and ripeness
35 requirements in language drawn from 1981 Model State APA Section 5-103. For this
36 purpose, issues are fit for immediate judicial review if they are primarily legal rather than
37 factual in nature and can be adequately reviewed in the absence of a concrete application by
38 the agency. Under this language the court must assess and balance the fitness of the issues for
39 immediate judicial review against the hardship to the person from deferral of review. See, e.g.,
40 *BKHN, Inc. v. Department of Health Services*, 3 Cal. App. 4th 301, 4 Cal. Rptr. 2d 188
41 (1992); *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

42 Subdivision (b) continues *State Water Resources Control Bd. v. Office of Admin. Law*, 12
43 Cal. App. 4th 697, 707-708, 16 Cal. Rptr. 2d 25, 31-32 (1993). Subdivision (b) prohibits, for
44 example, a court from enjoining a state agency from holding a public hearing or otherwise
45 proceeding to adopt a proposed rule on the ground that the notice was legally defective.
46 Similarly, subdivision (b) prohibits a court from enjoining the Office of Administrative Law

1 from reviewing or approving a proposed rule that has been submitted by a regulatory agency
2 pursuant to Government Code Section 11343(a).

3 **§ 1123.150. Proceeding not moot because penalty completed**

4 1123.150. A proceeding under this chapter is not made moot by satisfaction of a
5 penalty imposed by agency action during the pendency of the proceeding.

6 **Comment.** Section 1123.150 continues the substance of the seventh sentence of former
7 Section 1094.5(g), and the fourth sentence of former Section 1094.5(h)(3).

8 **§ 1123.160. Condition of relief**

9 1123.160. The court may grant relief under this chapter only if it determines that
10 agency action is invalid on grounds specified in Article 4 (commencing with
11 Section 1123.410) for reviewing agency action.

12 **Comment.** Section 1123.160 is drawn from 1981 Model State APA Section 5-116(c)
13 (introductory clause). It supersedes the provision in former Section 1094.5(b) that the
14 inquiry in an administrative mandamus case is whether the agency proceeded without or in
15 excess of jurisdiction, whether there was a fair trial, and whether there was any prejudicial
16 abuse of discretion. The grounds for invalidating agency action under Article 4 are the
17 following (see Sections 1123.420-1123.460):

18 (1) Whether the agency action, or the statute or regulation on which the agency action is
19 based, is unconstitutional on its face or as applied.

20 (2) Whether the agency acted beyond the jurisdiction conferred by the constitution, a
21 statute, or a regulation.

22 (3) Whether the agency has decided all issues requiring resolution.

23 (4) Whether the agency has erroneously interpreted the law.

24 (5) Whether the agency has erroneously applied the law to the facts.

25 (6) Whether agency action is based on an erroneous determination of fact made or implied
26 by the agency.

27 (7) Whether agency action is a proper exercise of discretion.

28 (8) Whether the agency has engaged in an unlawful procedure or decision making process,
29 or has failed to follow prescribed procedure.

30 (9) Whether the persons taking the agency action were improperly constituted as a decision
31 making body or subject to disqualification.

32 **Article 2. Standing**

33 **§ 1123.210. No standing unless authorized by statute**

34 1123.210. A person does not have standing to obtain judicial review of agency
35 action unless standing is conferred by this article or is otherwise expressly
36 provided by statute.

37 **Comment.** Section 1123.210 states the intent of this article to override existing case law
38 standing principles and to replace them with the statutory standards prescribed in this article.
39 Other statutes conferring standing include Public Resources Code Section 30801 (judicial
40 review of decision of Coastal Commission by “any aggrieved person”).

41 This title provides a single judicial review procedure for all types of agency action. See
42 Section 1121.120. The provisions on standing therefore accommodate persons who seek
43 judicial review of the entire range of agency actions, including rules, decisions, and other
44 actions. See Section 1121.240 (“agency action” defined).

1 **§ 1123.220. Private interest standing**

2 1123.220. (a) An interested person has standing to obtain judicial review of
3 agency action.

4 (b) An organization that does not otherwise have standing under subdivision
5 (a) has standing if an interested person is a member of the organization, or a
6 nonmember the organization is required to represent, and the agency action is
7 germane to the purposes of the organization.

8 **Comment.** Section 1123.220 governs private interest standing for judicial review of agency
9 action other than adjudication. For special rules governing standing for judicial review of a
10 decision in an adjudicative proceeding, see Section 1123.240. *Cf.* Section 1121.240
11 (“agency action” defined).

12 The provision of subdivision (a) that an “interested” person has standing is drawn from
13 the law governing writs of mandate, and from the law governing judicial review of state
14 agency regulations. See, e.g., Code Civ. Proc. §§ 1060 (interested person may obtain
15 declaratory relief), 1069 (party beneficially interested may obtain writ of review), 1086 (party
16 beneficially interested may obtain writ of mandate); Gov’t Code § 11350(a) (interested
17 person may obtain judicial declaration on validity of state agency regulation); *cf.* Code Civ.
18 Proc. § 902 (appeal by party aggrieved). This requirement continues case law that a person
19 must suffer some harm from the agency action in order to have standing to obtain judicial
20 review of the action on a private interest, as opposed to a public interest, basis. See, e.g.,
21 Sperry & Hutchinson Co. v. California State Bd. of Pharmacy, 241 Cal. App. 2d 229, 50 Cal.
22 Rptr. 489 (1966); Silva v. City of Cypress, 204 Cal. App. 2d 374, 22 Cal. Rptr. 453 (1962). A
23 plaintiff’s private interest is sufficient to confer standing if that interest is over and above that
24 of members of the general public. Carsten v. Psychology Examining Committee, 27 Cal. 3d
25 793, 796, 614 P.2d 276, 166 Cal. Rptr. 844 (1980). Non-pecuniary injuries, such as
26 environmental or aesthetic claims, are sufficient to satisfy the private interest test. Bozung v.
27 Local Agency Formation Comm’n, 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249
28 (1975); Albion River Watershed Protection Ass’n v. Department of Forestry, 235 Cal. App.
29 3d 358, 286 Cal. Rptr. 573 (1991); Kane v. Redevelopment Agency of Hidden Hills, 179 Cal.
30 App. 3d 899, 224 Cal. Rptr. 922 (1986); Citizens Ass’n for Sensible Development v. County
31 of Inyo, 172 Cal. App. 3d 151, 217 Cal. Rptr. 893 (1985). See generally Asimow, *Judicial*
32 *Review: Standing and Timing* 6-8 (Sept. 1992).

33 Subdivision (b) codifies case law giving an incorporated or unincorporated association such
34 as a trade union or neighborhood association standing to obtain judicial review on behalf of
35 its members. See, e.g., Professional Fire Fighters, Inc. v. City of Los Angeles, 60 Cal. 2d 276,
36 384 P. 2d 158, 32 Cal. Rptr. 830 (1963); Residents of Beverly Glen, Inc. v. City of Los
37 Angeles, 34 Cal. App. 3d 117, 109 Cal. Rptr. 724 (1973). This principle extends as well to
38 standing of the organization to obtain judicial review where a nonmember is adversely
39 affected, as in a case where a trade union is required to represent the interests of nonmembers.
40 For an organization to have standing under this subdivision, there must be an adverse effect
41 on an actual member or other represented person; discovery would be appropriate to
42 ascertain this fact.

43 It should be noted that the standing of a person to obtain judicial review under this section
44 is not limited to private persons, but extends to public entities as well, whether state or local.
45 See Section 1121.270 (“person” includes governmental subdivision). See also Bus. & Prof.
46 Code § 23090 (Department of ABC may get judicial review of decision of ABCAB); Veh.
47 Code § 3058 (DMV may get judicial review of order of New Motor Vehicle Board); Martin v.
48 Alcoholic Beverage Control Appeals Bd., 52 Cal. 2d 238, 243, 340 P.2d 1, 4 (1959)
49 (Department of Alcoholic Beverage Control could get judicial review of decision of Alcoholic
50 Beverage Control Appeals Board); Tieberg v. Superior Court, 243 Cal. App. 2d 277, 283, 52
51 Cal. Rptr. 33, 37 (1966) (Director of Department of Employment could get judicial review of
52 decision of Unemployment Insurance Appeals Board, a division of that department); Los

Angeles County Dep't of Health Serv. v. Kennedy, 163 Cal. App. 3d 799, 209 Cal. Rptr. 595 (1984) (county department of health services could get judicial review of decision of county civil service commission); County of Los Angeles v. Tax Appeals Bd. No. 2, 267 Cal. App. 2d 830, 834, 73 Cal. Rptr. 469, 471 (1968) (county could get judicial review of tax appeals board decision); County of Contra Costa v. Social Welfare Bd., 199 Cal. App. 2d 468, 471, 18 Cal. Rptr. 573, 575 (1962) (county could get judicial review of State Social Welfare Board decision ordering county to reinstate welfare benefits); Board of Permit Appeals v. Central Permit Bureau, 186 Cal. App. 2d 633, 9 Cal. Rptr. 83 (1960) (local permit appeals board could get traditional mandamus against inferior agency that did not comply with its decision). But cf. Star-Kist Foods, Inc. v. County of Los Angeles, 42 Cal. 3d 1, 719 P.2d 987, 227 Cal. Rptr. 391 (1986) (city or county standing to challenge state action as violating federal constitutional rights).

§ 1123.230. Public interest standing

1123.230. A person has standing to obtain judicial review of agency action that concerns an important right affecting the public interest if all of the following conditions are satisfied:

(a) The person resides or conducts business in the jurisdiction of the agency or is an organization that has a member that resides or conducts business in the jurisdiction of the agency, if the agency action is germane to the purposes of the organization.

(b) The person is a proper representative of the public and will adequately protect the public interest.

(c) The person has previously requested the agency to correct the agency action and the agency has not, within a reasonable time, done so. The request shall be in writing unless made orally on the record in the agency proceeding. As used in this subdivision, a reasonable time shall not be less than 30 days unless the request shows that a shorter period is required to avoid irreparable harm. This subdivision does not apply to judicial review of an agency rule.

Comment. Section 1123.230 governs public interest standing for judicial review of agency action other than adjudication. For special rules governing standing for judicial review of a decision in an adjudicative proceeding, see Section 1123.240. Cf. Section 1121.240 ("agency action" defined).

Section 1123.230 codifies the California case law doctrine that a member of the public may obtain judicial review of agency action (or inaction) to implement the public right to enforce a public duty. See, e.g., *Green v. Obledo*, 29 Cal. 3d 126, 624 P.2d 256, 172 Cal. Rptr. 206 (1981); *Hollman v. Warren*, 32 Cal. 2d 351, 196 P.2d 562 (1948); *Board of Social Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 162 P.2d 627 (1945); *California Homeless & Housing Coalition v. Anderson*, 31 Cal. App. 4th 450, 37 Cal. Rptr. 2d 639 (1995); *Environmental Law Fund, Inc. v. Town of Corte Madera*, 49 Cal. App. 3d 105, 122 Cal. Rptr. 282 (1975); *American Friends Service Committee v. Procunier*, 33 Cal. App. 3d 252, 109 Cal. Rptr. 22 (1973).

Section 1123.230 supersedes the standing rules of Section 526a (taxpayer actions). Under Section 1123.230 a person, whether or not a taxpayer within the jurisdiction, has standing to obtain judicial review, including restraining and preventing illegal expenditure or injury by an officer, agent, or other person acting on behalf of an entity, provided the general public interest requirements of this section are satisfied.

Section 1123.230 applies to all types of relief sought, whether pecuniary or nonpecuniary, injunctive or declaratory, or otherwise. The test of standing under this section is whether there

1 is a duty owed to the general public or a large class of persons. A person may have standing
2 under the section, regardless of any private interest or personal adverse effect, in order to have
3 the law enforced in the public interest.

4 The limitations in subdivisions (a)-(c) are drawn loosely from other provisions of state and
5 federal law. See, e.g., Section 1021.5 (attorney fees in public interest litigation); Section
6 1123.220 & Comment (private interest standing); first portion of Section 526a (taxpayer
7 within jurisdiction); Corp. Code § 800(b)(2) (allegation in shareholder derivative action of
8 efforts to secure action from board); Fed. R. Civ. Proc. 23(a) (representative must fairly and
9 adequately protect interests of class).

10 The requirement in subdivision (c) of a request to the agency does not supersede the
11 California Environmental Quality Act. See Section 1121.110 (conflicting or inconsistent
12 statute controls); Pub. Res. Code § 21177 (objection may be oral or written).

13 **§ 1123.240. Standing for review of decision in adjudicative proceeding**

14 1123.240. (a) This section governs judicial review of a decision in an
15 adjudicative proceeding notwithstanding any other provision of this article.

16 (b) The following persons have standing to obtain judicial review of a decision
17 in an adjudicative proceeding:

18 (1) A party to a proceeding under Chapter 4.5 (commencing with Section
19 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

20 (2) A participant in a proceeding other than a proceeding described in
21 paragraph (1), if the participant also satisfies Section 1123.220 or Section
22 1123.230.

23 **Comment.** Section 1123.240 provides special rules for standing to obtain judicial review of
24 a decision in an adjudicative proceeding. Standing to obtain judicial review of other agency
25 actions is governed by Sections 1123.220 (private interest standing) and 1123.230 (public
26 interest standing). Special statutes governing standing requirements for judicial review of an
27 agency decision prevail over this section. Section 1123.210 (standing expressly provided by
28 statute); see, e.g., Pub. Res. Code § 30801 (judicial review of decision of Coastal Commission
29 by “any aggrieved person”).

30 Subdivision (b)(1) governs standing to challenge a decision in an adjudicative proceeding
31 under the Administrative Procedure Act. The provision is thus limited primarily to a state
32 agency adjudication where an evidentiary hearing for determination of facts is statutorily or
33 constitutionally required for formulation and issuance of a decision. See Gov’t Code §§
34 11410.10-11410.50 (application of administrative adjudication provisions of Administrative
35 Procedure Act) (operative July 1, 1997).

36 A party to an adjudicative proceeding under the Administrative Procedure Act includes the
37 person to whom the agency action is directed and any other person named as a party or
38 allowed to intervene in the proceeding. Section 1121.260 (“party” defined). This codifies
39 existing law. See, e.g., *Temescal Water Co. v. Department of Public Works*, 44 Cal. 2d 90, 279
40 P. 2d 1 (1955); *Covert v. State Bd. of Equalization*, 29 Cal. 2d 125, 173 P. 2d 545 (1946).
41 Under this test, a complainant or victim who is not made a party does not have standing. A
42 nonparty who might otherwise have private or public interest standing under Section
43 1123.220 or 1123.230 would not have standing to obtain judicial review of a decision under
44 the Administrative Procedure Act.

45 Subdivision (b)(2) applies to a decision in an adjudicative proceeding other than a
46 proceeding subject to the Administrative Procedure Act. Under this provision, a person does
47 not have standing to obtain judicial review unless the person both (1) was a participant in the
48 proceeding and (2) satisfies the requirements of either Section 1123.220 (private interest
49 standing) or Section 1123.230 (public interest standing). Participation may include appearing

1 and testifying, submitting written comments, or other appropriate activity that indicates a
2 direct involvement in the agency action.

3 Article 3. Exhaustion of Administrative Remedies

4 § 1123.310. Exhaustion required

5 1123.310. A person may obtain judicial review of agency action only after
6 exhausting all administrative remedies available within the agency whose action
7 is to be reviewed and within any other agency authorized to exercise
8 administrative review, unless judicial review before that time is permitted by this
9 article or otherwise expressly provided by statute.

10 **Comment.** Section 1123.310 codifies the exhaustion of remedies doctrine of existing law.
11 See, e.g., *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 109 P. 2d 942 (1941)
12 (exhaustion requirement jurisdictional). Exceptions to the exhaustion requirement are stated
13 in other provisions of this article. See Sections 1123.340 (exceptions to exhaustion of
14 administrative remedies), 1123.350 (exact issue rule).

15 This chapter does not provide an exception from the exhaustion requirement for judicial
16 review of an administrative law judge's denial of a continuance. *Cf.* former subdivision (c) of
17 Gov't Code § 11524. Nor does it provide an exception for discovery decisions. *Cf.* *Shively v.*
18 *Stewart*, 65 Cal. 2d 475, 421 P.2d 65, 55 Cal. Rptr. 217 (1966). This chapter does not
19 continue the exemption found in the cases for a local tax assessment alleged to be a nullity.
20 *Cf.* *Stenocord Corp. v. City and County of San Francisco*, 2 Cal. 3d 984, 471 P.2d 966, 88
21 Cal. Rptr. 166 (1970). Judicial review of such matters should not occur until conclusion of
22 administrative proceedings.

23 § 1123.320. Administrative review of adjudicative proceeding

24 1123.320. If the agency action being challenged is a decision in an adjudicative
25 proceeding, all administrative remedies available within an agency are deemed
26 exhausted for the purpose of Section 1123.310 if no higher level of review is
27 available within the agency, whether or not a rehearing or other lower level of
28 review is available within the agency, unless a statute or regulation requires a
29 petition for rehearing or other administrative review.

30 **Comment.** Section 1123.320 restates the existing California rule that a petition for a
31 rehearing or other lower level administrative review is not a prerequisite to judicial review of a
32 decision in an adjudicative proceeding. See provisions of former Gov't Code § 11523; Gov't
33 Code § 19588 (State Personnel Board). This overrules any contrary case law implication. *Cf.*
34 *Alexander v. State Personnel Bd.*, 22 Cal. 2d 198, 137 P. 2d 433 (1943).

35 A statute may require further administrative review before judicial review is permitted. See,
36 e.g., Pub. Util. Code § 1756 (Public Utilities Commission).

37 It should be noted that administrative remedies are deemed exhausted under this section
38 only when no further higher level review is available within the agency issuing the decision.
39 This does not excuse any requirement of further administrative review by another agency
40 such as an appeals board.

41 § 1123.330. Judicial review of rulemaking

42 1123.330. (a) A person may obtain judicial review of rulemaking
43 notwithstanding the person's failure to petition the agency promulgating the rule
44 for, or otherwise to seek, amendment, repeal, or reconsideration of the rule.

(b) A person may obtain judicial review of an agency's failure to adopt a rule under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, notwithstanding the person's failure to request or obtain a determination from the Office of Administrative Law under Section 11340.5 of the Government Code.

Comment. Subdivision (a) of Section 1123.330 continues the former second sentence of subdivision (a) of Government Code Section 11350, and generalizes it to apply to local agencies as well as state agencies. See Sections 1120 (application of title), 1121.230 ("agency" defined), 1121.280 ("rule" defined). The petition to the agency referred to in subdivision (a) is authorized by Government Code Section 11340.6.

Subdivision (b) is new, and makes clear that exhaustion of remedies does not require filing a complaint with the Office of Administrative Law that an agency rule is an underground regulation. Cf. Gov't Code § 11340.5.

§ 1123.340. Exceptions to exhaustion of administrative remedies

1123.340. The requirement of exhaustion of administrative remedies is jurisdictional and the court may not relieve a person of the requirement unless any of the following conditions is satisfied:

(a) The remedies would be inadequate.

(b) The requirement would be futile.

(c) The requirement would result in irreparable harm disproportionate to the public and private benefit derived from exhaustion.

(d) The person was entitled to notice of a proceeding in which relief could be provided but lacked timely notice of the proceeding. The court's authority under this subdivision is limited to remanding the case to the agency to conduct a supplemental proceeding in which the person has an opportunity to participate.

(e) The person seeks judicial review on the ground that the agency lacks subject matter jurisdiction in the proceeding.

(f) The person seeks judicial review on the ground that a statute, regulation, or procedure is facially unconstitutional.

Comment. Section 1123.340 authorizes the reviewing court to relieve the person seeking judicial review of the exhaustion requirement in limited circumstances; this enables the court to exercise some discretion. This section may not be used as a means to avoid compliance with other requirements for judicial review, however, such as the exact issue rule. See Section 1123.350.

The exceptions to the exhaustion of remedies requirement consolidate and codify a number of existing case law exceptions, including:

Inadequate remedies. Under subdivision (a), administrative remedies need not be exhausted if the available administrative review procedure, or the relief available through administrative review, is insufficient. This codifies case law. See, e.g., *Common Cause of Calif. v. Board of Supervisors*, 49 Cal. 3d 432, 443, 777 P.2d 610, 261 Cal. Rptr. 574 (1989); *Endler v. Schutzbank*, 68 Cal. 2d 162, 168, 436 P.2d 297, 65 Cal. Rptr. 297 (1968); *Rosenfield v. Malcolm*, 65 Cal. 2d 559, 421 P.2d 697, 55 Cal. Rptr. 505 (1967); see generally Asimow, *Judicial Review: Standing and Timing* 42-45 (Sept. 1992).

Futility. The exhaustion requirement is excused under subdivision (b) if it is certain, not merely probable, that the agency would deny the requested relief. See Asimow, *supra*, 39-42.

Irreparable harm. Subdivision (c) codifies the existing narrow case law exception to the exhaustion of remedies requirement where exhaustion would result in irreparable harm

disproportionate to the benefit derived from requiring exhaustion. The standard is drawn from 1981 Model State APA Section 5-107(3), but expands the factors to be considered to include private as well as public benefit.

Lack of notice. Lack of sufficient or timely notice of the agency proceeding is an excuse under subdivision (d). See Asimow, *supra*, 49-50.

Lack of subject matter jurisdiction. Subdivision (e) recognizes an exception to the exhaustion requirement where the challenge is to the agency's subject matter jurisdiction in the proceeding. See Asimow, *supra*, 43.

Constitutional issues. Under subdivision (f) administrative remedies need not be exhausted for a challenge to a statute, regulation, or procedure as unconstitutional on its face; there is no exception for a challenge to a provision as applied, even though phrased in constitutional terms. See Asimow, *supra*, 45-49.

§ 1123.350. Exact issue rule

1123.350. (a) Except as provided in subdivision (b), a person may not obtain judicial review of an issue that was not raised before the agency either by the person seeking judicial review or by another person.

(b) The court may permit judicial review of an issue that was not raised before the agency if any of the following conditions is satisfied:

(1) The agency did not have jurisdiction to grant an adequate remedy based on a determination of the issue.

(2) The person did not know and was under no duty to discover, or did not know and was under a duty to discover but could not reasonably have discovered, facts giving rise to the issue.

(3) The agency action subject to judicial review is an agency rule and the person has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue.

(4) The agency action subject to judicial review is a decision in an adjudicative proceeding and the person was not adequately notified of the adjudicative proceeding. If a statute or regulation requires the person to maintain an address with the agency, adequate notice includes notice given to the person at the address maintained with the agency.

(5) The interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the agency action or from agency action occurring after the person exhausted the last feasible opportunity to seek relief from the agency.

Comment. Subdivision (a) of Section 1123.350 codifies the case law exact issue rule. See Asimow, *Judicial Review: Standing and Timing* 37-39 (Sept. 1992). It limits the issues that may be raised and considered in the reviewing court to those that were raised before the agency. The exact issue rule is in a sense a variation of the exhaustion of remedies requirement — the agency must first have had an opportunity to determine the issue that is subject to judicial review.

Under subdivision (b) the court may relieve a person of the exact issue requirement in circumstances that are in effect an elaboration of the doctrine of exhaustion of administrative remedies. See also Section 1123.340 & Comment (exceptions to exhaustion of administrative remedies).

1 The intent of paragraph (1) of subdivision (b) is to permit the court to consider an issue
2 that was not raised before the agency if the agency did not have jurisdiction to grant an
3 adequate remedy based on a determination of the issue. Examples include: (A) an issue as to
4 the facial constitutionality of the statute that enables the agency to function to the extent state
5 law prohibits the agency from passing on the validity of the statute; (B) an issue as to the
6 amount of compensation due as a result of an agency's breach of contract to the extent state
7 law prohibits the agency from passing on this type of question.

8 Paragraph (2) permits a party to raise a new issue in the reviewing court if the issue arises
9 from newly discovered facts that the party excusably did not know at the time of the agency
10 proceedings.

11 Paragraph (3) permits a party to raise a new issue in the reviewing court if the challenged
12 agency action is an agency rule and if the person seeking to raise the new issue in court was
13 not a party in an adjudicative proceeding which provided an opportunity to raise the issue
14 before the agency.

15 Paragraph (4) permits a new issue to be raised in the reviewing court by a person who was
16 not properly notified of the adjudicative proceeding which produced the challenged decision.
17 This does not give standing to a person not otherwise entitled to notice of the adjudicative
18 proceeding.

19 Paragraph (5) permits a new issue to be raised in the reviewing court if the interests of
20 justice would be served thereby and the new issue arises from a change in controlling law, or
21 from agency action after the person exhausted the last opportunity for seeking relief from the
22 agency. See *Lindeleaf v. Agricultural Labor Relations Bd.*, 41 Cal. 3d 861, 718 P.2d 106, 226
23 Cal. Rptr. 119 (1986).

24 Article 4. Standards of Review

25 § 1123.410. Standards of review of agency action

26 1123.410. Except as otherwise provided by statute, the validity of agency
27 action shall be determined on judicial review under the standards of review
28 provided in this article.

29 **Comment.** Section 1123.410 is drawn from 1981 Model State APA Section 5-116(a)(2).
30 The scope of judicial review provided in this article may be qualified by another statute that
31 establishes review based on different standards than those in this article. See, e.g., Rev. & Tax.
32 Code §§ 5170, 6931-6937.

33 § 1123.420. Review of agency interpretation or application of law

34 1123.420. (a) The standard for judicial review of any of the following issues is
35 the independent judgment of the court, giving deference to the determination of
36 the agency appropriate to the circumstances of the agency action:

37 (1) Whether the agency action, or the statute or regulation on which the agency
38 action is based, is unconstitutional on its face or as applied.

39 (2) Whether the agency acted beyond the jurisdiction conferred by the
40 constitution, a statute, or a regulation.

41 (3) Whether the agency has decided all issues requiring resolution.

42 (4) Whether the agency has erroneously interpreted the law.

43 (5) Whether the agency has erroneously applied the law to the facts.

44 (b) Notwithstanding subdivision (a), the standard for judicial review of the
45 following agency action is abuse of discretion:

(1) An agency's determination under Section 11342.2 of the Government Code that a regulation is reasonably necessary to effectuate the purpose of the statute that authorizes the regulation.

(2) A local legislative body's construction or interpretation of its own legislative enactment.

(c) This section does not apply to the Public Employment Relations Board, Agricultural Labor Relations Board, or Workers' Compensation Appeals Board.

Comment. Section 1123.420 clarifies and codifies existing case law on judicial review of agency interpretation of law.

Subdivision (a) applies the independent judgment test for judicial review of questions of law with appropriate deference to the agency's determination. Subdivision (a) codifies the case law rule that the final responsibility to decide legal questions belongs to the courts, not to administrative agencies. See, e.g., *Association of Psychology Providers v. Rank*, 51 Cal. 3d 1, 793 P.2d 2, 270 Cal. Rptr. 796 (1990). This rule is qualified by the requirement that the courts give deference to the agency's interpretation appropriate to the circumstances of the agency action. Factors in determining the deference appropriate include such matters as (1) whether the agency is interpreting a statute or its own regulation, (2) whether the agency's interpretation was contemporaneous with enactment of the law, (3) whether the agency has been consistent in its interpretation and the interpretation is long-standing, (4) whether there has been a reenactment with knowledge of the existing interpretation, (5) the degree to which the legal text is technical, obscure, or complex and the agency has interpretive qualifications superior to the court's, and (6) the degree to which the interpretation appears to have been carefully considered by responsible agency officials. See Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1195-98 (1995). See also *Jones v. Tracy School Dist.*, 27 Cal. 3d 99, 108, 611 P.2d 441, 165 Cal. Rptr. 100 (1980) (no deference for statutory interpretation in internal memo not subject to notice and hearing process for regulation and written after agency became amicus curiae in case at bench); *Hudgins v. Neiman Marcus Group, Inc.*, 34 Cal. App. 4th 1109, 41 Cal. Rptr. 2d 46 (1995) (deference to contemporaneous interpretation long acquiesced in by interested persons); *City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal. App. 3d 1427, 262 Cal. Rptr. 446 (1989) (no deference for interpretation of city ordinance in internal memo not adopted as regulation); *Johnston v. Department of Personnel Administration*, 191 Cal. App. 3d 1218, 1226, 236 Cal. Rptr. 853 (1987) (no deference for interpretation in inter-departmental communication rather than in formal regulation); *California State Employees Ass'n v. State Personnel Bd.*, 178 Cal. App. 3d 372, 380, 223 Cal. Rptr. 826 (1986) (formal regulation entitled to deference, informal memo prepared for litigation not entitled to deference).

Under subdivision (a), the question of the appropriate degree of judicial deference to the agency interpretation or application of law is treated as "a continuum with nonreviewability at one end and independent judgment at the other." See *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 575-76, 888 P.2d 1268, 38 Cal. Rptr. 2d 139, 147-48 (1995). Subdivision (a) is consistent with and continues the substance of cases saying courts must accept statutory interpretation by an agency within its expertise unless "clearly erroneous" as that standard was applied in *Nipper v. California Auto. Assigned Risk Plan*, 19 Cal. 3d 35, 45, 560 P.2d 743, 136 Cal. Rptr. 854 (1977) (courts respect "administrative interpretations of a law and, unless clearly erroneous, have deemed them significant factors in ascertaining statutory meaning and purpose"). The "clearly erroneous" standard was another way of requiring the courts in exercising independent judgment to give appropriate deference to the agency's interpretation of law. See *Bodinson Mfg. Co. v. California Employment Comm'n*, 17 Cal. 2d 321, 325-26, 109 P.2d 935 (1941).

The deference due the agency's determination does not override the ultimate authority of the court to substitute its own judgment for that of the agency under the standard of

subdivision (b), especially when constitutional questions are involved. See *People v. Louis*, 42 Cal. 3d 969, 987, 728 P.2d 180, 232 Cal. Rptr. 110 (1986); Cal. Const. Art. III, § 3.5.

Subdivision (a)(2) continues a portion of former Section 1094.5(b) (respondent has proceeded without or in excess of jurisdiction).

Subdivision (a)(3), providing for judicial relief if the agency has not decided all issues requiring resolution, deals with the possibility that the reviewing court may dispose of the case on the basis of issues that were not considered by the agency. An example would arise if the court had to decide on the facial constitutionality of the agency's enabling statute where an agency is precluded from passing on the question. This provision is not intended to authorize the reviewing court initially to decide issues that are within the agency's primary jurisdiction — such issues should first be decided by the agency, subject to the standards of judicial review provided in this article.

Subdivision (a)(5) changes case law that an issue of application of law to fact (often referred to as a mixed question of law and fact) is treated for purposes of judicial review as an issue of fact, if the facts in the case (or inferences to be drawn from the facts) are disputed. See *S. G. Borello & Sons, Inc. v. Dept. of Industrial Relations*, 48 Cal. 3d 341, 349, 769 P.2d 399, 256 Cal. Rptr. 543 (1989). Subdivision (a)(5) broadens and applies to all application issues the case law rule that undisputed facts and inferences are treated as issues of law. See *Halaco Engineering Co. v. South Central Coast Regional Comm'n*, 42 Cal. 3d 52, 74-77, 720 P.2d 15, 227 Cal. Rptr. 667 (1986). Agency application of law to facts should not be confused with basic fact-finding. Typical findings of facts include determinations of what happened or will happen in the future, when it happened, and what the state of mind of the participants was. These findings may be subject to substantial evidence review under Section 1123.430 or 1123.440. After fact-finding, the agency must decide abstract legal issues that can be resolved without knowing anything of the basic facts in the case. Finally, the agency must apply the general law to the basic facts, a situation-specific application of law which will be subject to independent judgment review under Section 1123.420. See Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1211-12 (1995).

Agency application of law to facts should not be confused with an exercise of discretion that is based on a choice or judgment. See the Comment to Section 1123.450. Typical exercises of discretion include whether to impose a severe or lenient penalty, whether there is cause to deny a license, whether a particular land use should be permitted, and whether a corporate reorganization is fair. Asimow, *supra*, at 1224. The standard of review for an exercise of discretion is provided in Section 1123.450.

Under subdivision (c), Section 1123.420 does not affect case law for the Public Employment Relations Board, Agricultural Labor Relations Board, or Workers' Compensation Appeals Board under which legal interpretations by those agencies of statutes within their area of expertise have been given special deference. See, e.g., *Banning Teachers Ass'n v. Public Employment Relations Bd.*, 44 Cal. 3d 799, 804, 750 P.2d 313, 244 Cal. Rptr. 671 (1988); *Agricultural Labor Relations Bd. v. Superior Court*, 16 Cal. 3d 392, 400, 411, 546 P.2d 687, 128 Cal. Rptr. 183 (1976); *Judson Steel Corp. v. Workers' Compensation Appeals Bd.*, 22 Cal. 3d 658, 668, 586 P.2d 564, 150 Cal. Rptr. 250 (1978); *United Farm Workers v. Agricultural Labor Relations Bd.*, 41 Cal. App. 4th 303, 48 Cal. Rptr. 2d 696, 703 (1995).

§ 1123.430. Review of agency fact finding

1123.430. (a) The standard for judicial review of whether agency action is based on an erroneous determination of fact made or implied by the agency is whether the agency's determination is supported by substantial evidence in the light of the whole record.

(b) Notwithstanding subdivision (a), the standard for judicial review of a determination of fact made by an administrative law judge employed by the Office of Administrative Hearings that is changed by the agency head is the independent judgment of the court whether the determination is supported by the weight of the evidence.

Comment. Section 1123.430 supersedes former Section 1094.5(b)-(c) (abuse of discretion if decision not supported by findings or findings not supported by evidence).

Subdivision (a) eliminates the rule of former Section 1094.5(c), providing for independent judgment review in cases where “authorized by law.” The former standard was interpreted to provide for independent judgment review where a fundamental vested right is involved. *Bixby v. Pierno*, 4 Cal. 3d 130, 144, 481 P.2d 242, 93 Cal. Rptr. 234 (1971); see generally Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1161-76 (1995).

The substantial evidence test of subdivision (a) is not a toothless standard which calls for the court merely to rubber stamp an agency’s finding if there is any evidence to support it: The court must examine the evidence in the record both supporting and opposing the agency’s findings. *Bixby v. Pierno*, *supra*. If a reasonable person could have made the agency’s findings, the court must sustain them. But if the agency head comes to a different conclusion about credibility than the administrative law judge, the substantiality of the evidence supporting the agency’s decision is called into question. *Cf.* Gov’t Code § 11425.50 (operative July 1, 1997).

In an adjudicative proceeding to which Government Code Section 11425.50 applies, the court shall give great weight to a determination of the presiding officer based substantially on the credibility of a witness to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it. Gov’t Code § 11425.50(b). Government Code Section 11425.50 applies to adjudications of most state agencies (see Gov’t Code § 11410.20 & Comment) and to adjudications of state and local agencies that voluntarily apply the section to the proceeding. See Gov’t Code § 11410.40.

§ 1123.440. Review of fact finding in local agency adjudication

1123.440. (a) The standard for judicial review of whether a decision of a local agency in an adjudicative proceeding affecting a fundamental, vested right arising out of employment is based on an erroneous determination of fact made or implied by the agency is the independent judgment of the court whether the decision is supported by the weight of the evidence.

(b) Notwithstanding subdivision (a), the standard for judicial review is whether the decision is supported by substantial evidence in the light of the whole record if the procedure adopted by the agency for the formulation and issuance of the decision satisfies all of the following requirements:

(1) The procedure provides parties with notice of the proceeding at least 10 days before the proceeding.

(2) The procedure complies with Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, relating to the administrative adjudication bill of rights.

(3) The procedure complies with Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, relating to subpoenas.

(4) The procedure provides parties the right to discovery to the extent provided in Section 11507.6 of the Government Code.

(5) The procedure conforms with Section 11513 of the Government Code, relating to evidence.

(6) The procedure provides for written notice to the parties of the decision.

(7) The procedure permits parties to apply for reconsideration of the decision, which may be granted or denied in the discretion of the agency.

(c) Subdivision (b) does not apply to a determination of fact made by the presiding officer in the hearing that is changed by the agency.

Comment. Section 1123.440 establishes a special rule for judicial review of local agency fact-finding. The requirement in subdivision (b)(2) that to have substantial evidence review of fact-finding the local agency procedure must comply with Sections 11425.10-11425.60 (administrative adjudication bill of rights) includes a requirement that the decision shall be in writing and shall include a statement of the factual and legal basis for the decision as to each of the principal controverted issues. Gov't Code § 11425.50 (operative July 1, 1997).

The effect of subdivision (c) is to apply independent judgment review under subdivision (a) to a determination of fact made by a hearing officer that is changed by the agency.

§ 1123.450. Review of agency exercise of discretion

1123.450. (a) The standard for judicial review of whether agency action is a proper exercise of discretion is abuse of discretion.

(b) Notwithstanding subdivision (a), to the extent the agency action is based on a determination of fact, made or implied by the agency, the standard for judicial review is whether the agency's determination is supported by substantial evidence in the light of the whole record.

Comment. Section 1123.450 codifies the existing authority of the court to review agency action that constitutes an exercise of agency discretion. A court may decline to exercise review of discretionary action in circumstances where the Legislature so intended or where there are no standards by which a court can conduct review. *Cf.* Federal APA § 701(a)(2).

Section 1123.450 applies, for example, to a local agency land use decision as to whether a planned project is consistent with the agency's general plan. *E.g.*, *Sequoyah Hills Homeowners Ass'n v. City of Oakland*, 23 Cal. App. 4th 704, 717-20, 29 Cal. Rptr. 2d 182, 189-91 (1993); *Dore v. County of Ventura*, 23 Cal. App. 4th 320, 328-29, 28 Cal. Rptr. 2d 299, 304 (1994). See also *Local & Regional Monitor v. City of Los Angeles*, 16 Cal. App. 4th 630, 638, 20 Cal. Rptr. 2d 228, 239 (1993); *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223, 243, 242 Cal. Rptr. 37 (1987); *Greenebaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 400-02, 200 Cal. Rptr. 237 (1984).

Subdivision (a) continues a portion of former Section 1094.5(b) (prejudicial abuse of discretion). Subdivisions (a) and (b) clarify the standards for court determination of abuse of discretion but do not significantly change existing law. See Code Civ. Proc. § 1094.5(c) (administrative mandamus); Gov't Code § 11350(b) (review of regulations).

The standard for reviewing agency discretionary action is whether there is abuse of discretion. The analysis consists of two elements. First, to the extent that the discretionary action is based on factual determinations, there must be substantial evidence in the light of the whole record in support of those factual determinations. This is the same standard that a court uses to review agency findings of fact generally. Section 1123.430 (review of agency fact finding). However, it should be emphasized that discretionary action such as agency rulemaking is frequently based on findings of legislative rather than adjudicative facts. Legislative facts are general in nature and are necessary for making law or policy (as opposed

1 to adjudicative facts which are specific to the conduct of particular parties). Legislative facts
2 are often scientific, technical, or economic in nature. Often, the determination of such facts
3 requires specialized expertise and the fact findings involve a good deal of guesswork or
4 prophecy. A reviewing court must be appropriately deferential to agency findings of
5 legislative fact and should not demand that such facts be proved with certainty. Nevertheless, a
6 court can still legitimately review the rationality of legislative fact finding in light of the
7 evidence in the whole record.

8 Second, discretionary action is based on a choice or judgment. A court reviews this choice
9 by asking whether there is abuse of discretion in light of the record and the reasons stated by
10 the agency. See Section 1123.720(d) (agency must supply reasons when necessary for proper
11 judicial review). This standard is often encompassed by the terms “arbitrary” or
12 “capricious.” The court must not substitute its judgment for that of the agency, but the
13 agency action must be rational. See Asimow, *The Scope of Judicial Review of Decisions of*
14 *California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1228-29 (1995). Abuse of
15 discretion is established if it appears from the record viewed as a whole that the agency action
16 is unreasonable, arbitrary, or capricious. Cf. ABA Section on Administrative Law, Restatement
17 of Scope of Review Doctrine, 38 Admin. L. Rev. 235 (1986) (grounds for reversal include
18 policy judgment so unacceptable or reasoning so illogical as to make agency action arbitrary,
19 or agency’s failure in other respects to use reasoned decisionmaking).

20 § 1123.460. Review of agency procedure

21 1123.460. The standard for judicial review of any of the following issues is the
22 independent judgment of the court, giving deference to the agency’s
23 determination of appropriate procedures:

24 (a) Whether the agency has engaged in an unlawful procedure or decision
25 making process, or has failed to follow prescribed procedure.

26 (b) Whether the persons taking the agency action were improperly constituted
27 as a decision making body or subject to disqualification.

28 **Comment.** Section 1123.460 codifies existing law concerning the independent judgment of
29 the court and the deference due agency determination of procedures. Cf. Federal APA §
30 706(2)(D); *Mathews v. Eldridge*, 424 U.S. 319 (1976).

31 Section 1123.460 is drawn from 1981 Model State APA Section 5-116(c)(5)-(6). It
32 continues a portion of former Section 1094.5(b) (inquiry of the court extends to questions
33 whether there has been a fair trial or the agency has not proceeded in the manner required by
34 law). One example of an agency’s failure to follow prescribed procedure is the agency’s
35 failure to act within the prescribed time upon a matter submitted to the agency.

36 The degree of deference to be given to the agency’s determination under Section
37 1123.460 is for the court to determine. The deference is not absolute. Ultimately, the court
38 must still use its judgment on the issue.

39 § 1123.470. Burden of persuasion

40 1123.470. Except as otherwise provided by statute, the burden of
41 demonstrating the invalidity of agency action is on the party asserting the
42 invalidity.

43 **Comment.** Section 1123.470 codifies existing law. See California Administrative
44 Mandamus §§ 4.157, 12.7 (Cal. Cont. Ed. Bar, 2d ed. 1989). It is drawn from 1981 Model
45 State APA Section 5-116(a)(1).

Article 5. Superior Court Jurisdiction and Venue

§ 1123.510. Superior court jurisdiction

1123.510. (a) Except as otherwise provided by statute, jurisdiction for judicial review under this chapter is in the superior court.

(b) Nothing in this section prevents the Supreme Court or courts of appeal from exercising original jurisdiction under Section 10 of Article VI of the California Constitution.

Comment. Section 1123.510 is drawn from 1981 Model State APA Section 5-104, alternative A. Under prior law, except where the issues were of great public importance and had to be resolved promptly or where otherwise provided by statute, the superior court was the proper court for administrative mandamus proceedings. See *Mooney v. Pickett*, 4 Cal. 3d 669, 674-75, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971). Although the Supreme Court and courts of appeal may exercise original mandamus jurisdiction in exceptional circumstances, the superior court is in a better position to determine questions of fact than is an appellate tribunal and is therefore the preferred court. *Roma Macaroni Factory v. Giambastiani*, 219 Cal. 435, 437, 27 P.2d 371 (1933).

The introductory clause of Section 1123.510 recognizes that statutes applicable to particular proceedings provide that judicial review is in the court of appeal or Supreme Court. See Bus. & Prof. Code § 23090 (Alcoholic Beverage Control Appeals Board and Department of Alcoholic Beverage Control); Gov't Code §§ 3520(c), 3542(c), 3564(c) (Public Employment Relations Board); Lab. Code §§ 1160.8 (Agricultural Labor Relations Board), 5950 (Workers' Compensation Appeals Board); Pub. Res. Code § 25531 (California Energy Conservation and Development Commission); Pub. Util. Code § 1756 (Public Utilities Commission).

§ 1123.520. Superior court venue

1123.520. (a) Except as otherwise provided by statute, the proper county for judicial review under this chapter is:

(1) In the case of state agency action, the county where the cause of action, or some part thereof, arose, or Sacramento County.

(2) In the case of local agency action, the county or counties of jurisdiction of the agency.

(3) If the proceeding involves a private hospital board as respondent, the proper county for judicial review is determined under Title 4 (commencing with Section 392) of Part 2.

(b) A proceeding under this chapter may be transferred on the grounds and in the manner provided for transfer of a civil action under Title 4 (commencing with Section 392) of Part 2.

Comment. Subdivision (a)(1) of Section 1123.520 continues prior law for judicial review of state agency action, with the addition of Sacramento County. See Code Civ. Proc. § 393(1)(b); California Administrative Mandamus § 8.16, at 269 (Cal. Cont. Ed. Bar, 2d ed. 1989); *Duval v. Contractors State License Bd.*, 125 Cal. App. 2d 532, 271 P.2d 194 (1954). Subdivision (a)(2) is new, but is probably not a substantive change, since the cause of action is likely to arise in the county of the local agency's jurisdiction.

Under subdivision (b), a case filed in the wrong county should not be dismissed, but should be transferred to the proper county.

1 The venue rules of Section 1123.520 are subject to a conflicting or inconsistent statute
2 applicable to a particular entity (Section 1121.110), such as Bus. & Prof., Code § 2019
3 (venue for proceedings against the Medical Board of California).

4 Article 6. Review Procedure

5 § 1123.610. Petition for review

6 1123.610. (a) A person seeking judicial review of agency action may initiate
7 judicial review by filing a petition for review with the court.

8 (b) The petition shall name as respondent only the agency whose action is at
9 issue, and not individual employees of the agency.

10 (c) The petitioner shall cause a copy of the petition for review to be served on
11 the other parties in the same manner as service of a summons in a civil action.

12 **Comment.** Subdivision (a) of Section 1123.610 supersedes the first sentence of former
13 Section 11523 of the Government Code. Subdivision (b) continues existing practice. See
14 California Administrative Mandamus §§ 8.48, 9.17, 9.23, at 298-99, 320, 326 (Cal. Cont. Ed.
15 Bar 1989). Since the petition for review serves the purpose of the alternative writ of
16 mandamus or notice of motion under prior law, a summons is not required. See California
17 Administrative Mandamus, *supra*, §§ 9.8, 9.21, at 315, 324.

18 Subdivision (b) codifies existing practice. See California Administrative Mandamus §§ 6.1-
19 6.3, at 225-27 (Cal. Cont. Ed. Bar 2d ed. 1989). As used in subdivision (b), “agency”
20 includes the agency head. Section 1121.230.

21 § 1123.620. Applicability of rules of practice for civil actions

22 1123.620. (a) Except as otherwise provided in this title or by rules of court
23 adopted by the Judicial Council not inconsistent with this title, Part 2
24 (commencing with Section 307) applies to proceedings under this title.

25 (b) A party may obtain discovery in a proceeding under this title only of the
26 following:

27 (1) Matters reasonably calculated to lead to the discovery of evidence
28 admissible under Section 1123.760.

29 (2) Matters in possession of the agency for the purpose of determining the
30 accuracy of the affidavit of the agency official who compiled the administrative
31 record for judicial review.

32 **Comment.** Subdivision (a) of Section 1123.620 continues the effect of Section 1109 in
33 proceedings under this title. Subdivision (b)(1) codifies *City of Fairfield v. Superior Court*, 14
34 Cal. 3d 768, 774-75, 537 P.2d 375, 122 Cal. Rptr. 543 (1975). The affidavit referred to in
35 subdivision (b)(2) is provided for in Section 1123.720.

36 § 1123.630. Contents of petition for review

37 1123.630. The petition for review shall state all of the following:

38 (a) The name of the petitioner.

39 (b) The address and telephone number of the petitioner or, if the petitioner is
40 represented by an attorney, of the petitioner’s attorney.

41 (c) The name and mailing address of the agency whose action is at issue.

(d) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action.

(e) Identification of persons who were parties in any adjudicative proceedings that led to the agency action.

(f) Facts to demonstrate that the petitioner is entitled to judicial review.

(g) The reasons why relief should be granted.

(h) A request for relief, specifying the type and extent of relief requested.

Comment. Section 1123.630 is drawn from 1981 Model State APA Section 5-109.

§ 1123.640. Notice to parties of period for filing petition for review

1123.640. In an adjudicative proceeding, the agency shall in the decision or otherwise notify the parties of the period for filing a petition for review.

Comment. Section 1123.640 is drawn from and generalizes former Code of Civil Procedure Section 1094.6(f). See also Unemp. Ins. Code § 410; Veh. Code § 14401(b).

§ 1123.650. Time for filing petition for review in adjudication of state agency and formal adjudication of local agency

1123.650. (a) The petition for review of a decision of a state agency in an adjudicative proceeding, and of a decision of any agency in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, shall be filed not later than 30 days after the decision is effective or after the notice required by Section 1123.640 is given, whichever is later.

(b) For the purpose of this section:

(1) A decision in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is effective at the time provided in Section 11519 of the Government Code.

(2) A decision of a state agency in an adjudicative proceeding other than under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is effective 30 days after it is delivered or mailed to the person to which the decision is directed, unless any of the following conditions exist:

(A) A reconsideration is ordered within that time pursuant to express statute or regulation.

(B) The agency orders that the decision is effective sooner.

(C) A stay of execution is granted.

(c) The time for filing the petition for review is extended for a party during any period when the party is seeking reconsideration of the decision pursuant to express statute or regulation.

(d) In no case shall a petition for review of a decision of a state agency in an adjudicative proceeding, or of a decision of any agency in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, be filed later than one hundred eighty days after the decision is effective.

1 **Comment.** Section 1123.650 provides a limitation period for initiating judicial review of
2 agency adjudicative decisions. See Section 1121.250 (“decision” defined). This preserves
3 the distinction in existing law between limitation of judicial review of quasi-legislative and
4 quasi-judicial agency actions. Other types of agency action may be subject to other or no
5 limitation periods, or to equitable doctrines such as laches.

6 Subdivision (a) supersedes the second sentence of former Government Code Section 11523
7 (30 days). It also unifies the review periods formerly found in various special statutes. See,
8 e.g., Code Civ. Proc. § 1094.6 (local agency adjudication other than school district); Gov’t
9 Code §§ 3542 (Public Employment Relations Board), 19630 (State Personnel Board), 65907
10 (local zoning appeals board); Lab. Code §§ 1160.8 (Agricultural Labor Relations Board),
11 5950 (Workers’ Compensation Appeals Board); Unemp. Ins. Code § 410 (Unemployment
12 Insurance Appeals Board); Veh. Code § 14401(a) (drivers’ license order); Welf. & Inst. Code
13 § 10962 (welfare decision of Department of Social Services).

14 Section 1123.650 does not override special limitations periods statutorily preserved for
15 policy reasons, such as the California Environmental Quality Act. Pub. Res. Code § 21167.

16 The time within which judicial review must be initiated under subdivision (a) begins to run
17 on the date the decision is effective. A decision under the formal hearing procedure of the
18 Administrative Procedure Act generally is effective 30 days after it becomes final, unless the
19 agency head makes it effective sooner or stays its effective date. See Gov’t Code § 11519.
20 Judicial review may only be had of a final decision. Section 1123.120 (finality).

21 Nothing in this section overrides standard restrictions on application of statutes of
22 limitations, such as estoppel to plead the statute (see, e.g., *Ginns v. Savage*, 61 Cal. 2d 520,
23 393 P.2d 689, 39 Cal. Rptr. 377 (1964)), correction of technical defects (see, e.g., *United*
24 *Farm Workers of America v. ALRB*, 37 Cal. 3d 912, 694 P.2d 138, 210 Cal. Rptr. 453
25 (1985)), computation of time (see Gov’t Code §§ 6800-6807), and application of due
26 process principles to notice of decision (see, e.g., *State Farm Fire & Casualty v. Workers’*
27 *Compensation Appeals Bd.*, 119 Cal. App. 3d 193, 173 Cal. Rptr. 778 (1981)).

28 Subdivision (c) extends the judicial review period to ensure that affected parties receive
29 notice of it.

30 **Staff Note.** *The Commission solicits comments on whether the one-year statute of limitations*
31 *in Welfare and Institutions Code Section 10962 should be preserved.*

32 **§ 1123.660. Time for filing petition for review in other adjudicative proceedings**

33 1123.660. (a) The petition for review of a decision in an adjudicative
34 proceeding, other than a decision governed by Section 1123.650, shall be filed
35 not later than 90 days after the decision is announced or after the notice required
36 by Section 1123.640 is given, whichever is later.

37 (b) The time for filing the petition for review is extended as to a party during
38 any period when the party is seeking reconsideration of the decision pursuant to
39 express statute, regulation, charter, or ordinance.

40 (c) In no case shall a petition for review of a decision in an adjudicative
41 proceeding, other than a decision governed by Section 1123.650, be filed later
42 than one hundred eighty days after the decision is announced or reconsideration
43 is rejected, whichever is later.

44 **Comment.** Section 1123.660 continues the 90-day limitations period for local agency
45 adjudication in former Section 1094.6(b).

1 **§ 1123.670. Stay of agency action**

2 1123.670. (a) The filing of a petition for review under this title does not of itself
3 stay or suspend the operation of any agency action.

4 (b) Subject to subdivision (g), on application of the petitioner, the reviewing
5 court may grant a stay of the agency action pending the judgment of the court if
6 it finds that all of the following conditions are satisfied:

7 (1) The petitioner is likely to prevail ultimately on the merits.

8 (2) Without a stay the petitioner will suffer irreparable injury.

9 (3) The grant of a stay to the petitioner will not cause substantial harm to
10 others.

11 (4) The grant of a stay to the petitioner will not substantially threaten the public
12 health, safety, or welfare.

13 (c) The application for a stay shall be accompanied by proof of service of a
14 copy of the application on the agency. Service shall be made in the same manner
15 as service of a summons in a civil action.

16 (d) The court may condition a stay on appropriate terms, including the giving of
17 security for the protection of third parties.

18 (e) If an appeal is taken from a denial of relief by the superior court, the agency
19 action shall not be further stayed except on order of the court to which the
20 appeal is taken. However, in cases where a stay is in effect at the time of filing the
21 notice of appeal, the stay is continued by operation of law for a period of 20 days
22 after the filing of the notice.

23 (f) If an appeal is taken from a granting of relief by the superior court, the
24 agency action is stayed pending the determination of the appeal unless the court
25 to which the appeal is taken orders otherwise. Notwithstanding Section 916, the
26 court to which the appeal is taken may direct that the appeal shall not stay the
27 granting of relief by the superior court.

28 (g) No stay may be granted to prevent or enjoin the state or an officer of the
29 state from collecting a tax.

30 **Comment.** Section 1123.670 is drawn from 1981 Model State APA Section 5-111, and
31 supersedes former Section 1094.5(g)-(h).

32 Subdivision (b)(1) generalizes the requirement of former Section 1094.5(h)(1) that a stay
33 may not be granted unless the petitioner is likely to prevail on the merits. The former
34 provision applied only to a decision of a licensed hospital or state agency made after a
35 hearing under the formal hearing provisions of the Administrative Procedure Act.

36 Subdivision (b)(1) requires more than a conclusion that a possible viable defense exists.
37 The court must make a preliminary assessment of the merits of the judicial review proceeding
38 and conclude that the petitioner is likely to obtain relief in that proceeding. *Medical Bd. of*
39 *California v. Superior Court*, 227 Cal. App. 3d 1458, 1461, 278 Cal. Rptr. 247 (1991); *Board*
40 *of Medical Quality Assurance v. Superior Court*, 114 Cal. App. 3d 272, 276, 170 Cal. Rptr.
41 468 (1980).

42 Subdivision (c) continues a portion of the second sentence and all of the third sentence of
43 former Section 1094.5(g), and a portion of the second sentence and all of the third sentence
44 of former Section 1094.5(h)(1).

1 Subdivision (d) codifies case law. See *Venice Canals Resident Home Owners Ass'n v.*
2 *Superior Court*, 72 Cal. App. 3d 675, 140 Cal. Rptr. 361 (1977) (stay conditioned on posting
3 bond).

4 Subdivision (e) continues the fourth and fifth sentences of former Section 1094.5(g) and
5 the first and second sentences of former Section 1094.5(h)(3).

6 The first sentence of subdivision (f) continues the sixth sentence of former Section
7 1094.5(g) and the third sentence of former Section 1094.5(h)(3). The second sentence of
8 subdivision (f) is drawn from Section 1110b, and replaces Section 1110b for judicial review
9 proceedings under this title.

10 Subdivision (g) recognizes that the California Constitution provides that no legal or
11 equitable process shall issue against the state or any officer of the state to prevent or enjoin
12 the collection of any tax. Cal. Const. Art. XIII, § 32.

13 A decision in an adjudicative proceeding under the Administrative Procedure Act may also
14 be stayed by the agency. Gov't Code § 11519(b).

15 § 1123.680. Type of relief

16 1123.680. (a) Except as provided in subdivision (c), the court may grant
17 appropriate relief justified by the general set of facts alleged in the petition for
18 review, whether mandatory, injunctive, or declaratory, preliminary or final,
19 temporary or permanent, equitable or legal. In granting relief, the court may order
20 agency action required by law, order agency exercise of discretion required by
21 law, set aside or modify agency action, enjoin or stay the effectiveness of agency
22 action, remand the matter for further proceedings, render a declaratory judgment,
23 or take any other action that is authorized and appropriate. The court may grant
24 necessary ancillary relief to redress the effects of official action wrongfully taken
25 or withheld.

26 (b) The court may award damages or compensation, subject to Division 3.6
27 (commencing with Section 810) of the Government Code, if applicable, and to
28 other express statute.

29 (c) In reviewing a decision in a proceeding under Chapter 5 (commencing with
30 Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the
31 court shall enter judgment either commanding the agency to set aside the
32 decision or denying relief. If the judgment commands that the decision be set
33 aside, the court may order reconsideration of the case in light of the court's
34 opinion and judgment and may order the agency to take further action that is
35 specially enjoined upon it by law.

36 (d) The court may award attorney's fees or witness fees only to the extent
37 expressly authorized by statute.

38 (e) If the court sets aside or modifies agency action or remands the matter for
39 further proceedings, the court may make any interlocutory order necessary to
40 preserve the interests of the parties and the public pending further proceedings or
41 agency action.

42 **Comment.** Section 1123.680 is drawn from 1981 Model State APA Section 5-117, and
43 supersedes former Section 1094.5(f). Section 1123.680 makes clear that the single form of
44 action established by Section 1123.610 encompasses any appropriate type of relief, with the
45 exceptions indicated.

Subdivision (b) continues the effect of Code of Civil Procedure Section 1095 permitting the court to award damages in an appropriate case. Under subdivision (a), the court may award damages or compensation subject to the Tort Claims Act “if applicable.” The claim presentation requirements of the Tort Claims Act do not apply, for example, to a claim against a local public entity for earned salary or wages. Gov’t Code § 905(c). See also *Snipes City of Bakersfield*, 145 Cal. App. 3d 861, 193 Cal. Rptr. 760 (1983) (claims requirements of Tort Claims Act do not apply to actions under Fair Employment and Housing Act); *O’Hagan v. Board of Zoning Adjustment*, 38 Cal. App. 3d 722, 729, 113 Cal. Rptr. 501, 506 (1974) (claim for damages for revocation of use permit subject to Tort Claims Act); *Loehr v. Ventura County Community College Dist.*, 147 Cal. App. 3d 1071, 1081, 195 Cal. Rptr. 576 (1983) (action primarily for money damages seeking extraordinary relief incidental to damages is subject to claims requirements of Tort Claims Act). Nothing in Section 1123.680 authorizes the court to interfere with a valid exercise of agency discretion or to direct an agency how to exercise its discretion. Section 1121.140.

For statutes authorizing an award of attorney’s fees, see Sections 1028.5, 1123.850. See also Gov’t Code §§ 68092.5 (expert witness fees), 68093 (mileage and fees in civil cases in superior court), 68096.1-68097.10 (witness fees of public officers and employees). *Cf.* Gov’t Code § 11450.40 (fees for witness appearing in APA proceeding pursuant to subpoena) (operative July 1, 1997).

§ 1123.690. Jury trial

1123.690. All proceedings shall be heard by the court sitting without a jury.

Comment. Section 1123.690 continues a portion of the first sentence of former Section 1094.5(a).

Article 7. Record for Judicial Review

§ 1123.710. Administrative record exclusive basis for judicial review

1123.710. Except as provided in Section 1123.760 or as otherwise provided by statute, the administrative record is the exclusive basis for judicial review of agency action.

Comment. Section 1123.710 codifies existing practice. See, e.g., *Beverly Hills Fed. Sav. & Loan Ass’n v. Superior Court*, 259 Cal. App. 2d 306, 324, 66 Cal. Rptr. 183, 192 (1968). For authority to augment the administrative record for judicial review, see Section 1123.760 (new evidence on judicial review).

§ 1123.720. Contents of administrative record

1123.720. (a) Except as provided in subdivision (b), the administrative record for judicial review of agency action consists of all of the following:

- (1) Any agency documents expressing the agency action.
- (2) Other documents identified by the agency as having been considered by it before its action and used as a basis for its action.
- (3) All material submitted to the agency in connection with the agency action.
- (4) A transcript of any hearing, if one was maintained, or minutes of the proceeding. In case of electronic reporting of proceedings, the transcript or a copy of the electronic reporting shall be part of the administrative record in accordance with the rules applicable to the record on appeal in judicial proceedings.

1 (5) Any other material described by statute as the administrative record for the
2 type of agency action at issue.

3 (6) A table of contents that identifies each item contained in the record and
4 includes an affidavit of the agency official who has compiled the administrative
5 record for judicial review specifying the date on which the record was closed and
6 that the record is complete.

7 (b) The administrative record for judicial review of rulemaking under Chapter
8 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the
9 Government Code is the file of the rulemaking proceeding prescribed by Section
10 11347.3 of the Government Code.

11 (c) By stipulation of all parties to judicial review proceedings, the administrative
12 record for judicial review may be shortened, summarized, or organized, or may be
13 an agreed or settled statement of the parties, in accordance with the rules
14 applicable to the record on appeal in judicial proceedings.

15 (d) If an explanation of reasons for the agency action is not otherwise included
16 in the administrative record, the court may require the agency to add to the
17 administrative record for judicial review a brief explanation of the reasons for the
18 agency action to the extent necessary for proper judicial review.

19 **Comment.** Section 1123.720 is drawn from 1981 Model State APA Section 5-115(a), (d),
20 (f), (g). For authority to augment the administrative record for judicial review, see Section
21 1123.760 (new evidence on judicial review). The administrative record for judicial review is
22 related but not necessarily identical to the record of agency proceedings that is prepared and
23 maintained by the agency. The administrative record for judicial review specified in this
24 section is subject to the provisions of this section on shortening, summarizing, or organizing
25 the record, or stipulation to an agreed or settled statement of the parties. Subdivision (c). See
26 Cal. Ct. R. 4-12 (record on appeal).

27 Subdivision (a) supersedes the seventh sentence of former Government Code Section
28 11523 (judicial review of formal adjudicative proceedings under Administrative Procedure
29 Act). In the case of an adjudicative proceeding, the record will include the final decision and
30 all notices and orders issued by the agency (subdivision (a)(1)), any proposed decision by an
31 administrative law judge (subdivision (a)(2)), the pleadings, the exhibits admitted or rejected,
32 and the written evidence and any other papers in the case (subdivision (a)(3)), and a transcript
33 of all proceedings (subdivision (a)(4)).

34 Treatment of the record in the case of electronic reporting of proceedings in subdivision
35 (a)(4) is derived from Rule 980.5 of the California Rules of Court (electronic recording as
36 official record of proceedings).

37 The requirement of a table of contents in subdivision (a)(6) is drawn from Government
38 Code Section 11347.3 (rulemaking). The affidavit requirement may be satisfied by a
39 declaration under penalty of perjury. Code Civ. Proc. § 2015.5.

40 Subdivision (d) supersedes the case law requirement of *Topanga Ass'n for a Scenic*
41 *Community v. County of Los Angeles*, 11 Cal. 3d 506, 522 P.2d 12, 113 Cal. Rptr. 836
42 (1974), that adjudicative decisions reviewed under former Section 1094.5 be explained, and
43 extends it to other agency action such as rulemaking and discretionary action. The court
44 should not require an explanation of the agency action if it is not necessary for proper
45 judicial review, for example if the explanation is obvious. A decision in an adjudicative
46 proceeding under the Administrative Procedure Act must include a statement of the factual
47 and legal basis for the decision. Gov't Code § 11425.50 (decision) (operative July 1, 1997).

48 If there is an issue of completeness of the administrative record, the court may permit
49 limited discovery of the agency file for the purpose of determining the accuracy of the

1 affidavit of completeness. See Section 1123.620. It should be noted that a party is not entitled
2 to discovery of material in the agency file that is privileged. See, e.g., Gov't Code § 6254
3 (exemptions from California Public Records Act). Moreover, the administrative record
4 reflects the actual documents that are the basis of the agency action. Except as provided in
5 subdivision (e), the agency cannot be ordered to prepare a document that does not exist, such
6 as a summary of an oral ex parte contact in a case where the contact is permissible and no
7 other documentation requirement exists. If judicial review reveals that the agency action is not
8 supported by the record, the court may grant appropriate relief, including setting aside,
9 modifying, enjoining, or staying the agency action, or remanding for further proceedings.
10 Section 1123.680.

11 **§ 1123.730. Preparation of record**

12 1123.730. (a) On request of the petitioner for the administrative record for
13 judicial review of agency action:

14 (1) If the agency action is a decision in an adjudicative proceeding required to
15 be conducted by an administrative law judge employed by the Office of
16 Administrative Hearings, the administrative record shall be prepared by the Office
17 of Administrative Hearings.

18 (2) If the agency action is other than that described in paragraph (1), the
19 administrative record shall be prepared by the agency.

20 (b) Except as otherwise provided by statute, the administrative record shall be
21 delivered to the petitioner as follows:

22 (1) Within 30 days after the request in an adjudicative proceeding involving an
23 evidentiary hearing of 10 days or less.

24 (2) Within 60 days after the request in a nonadjudicative proceeding, or in an
25 adjudicative proceeding involving an evidentiary hearing of more than 10 days.

26 (c) The time limits provided in subdivision (b) may be extended by the court for
27 good cause shown.

28 **Comment.** Section 1123.730 supersedes the fourth sentence of former Government Code
29 Section 11523 and the first sentence of subdivision (c) of former Code of Civil Procedure
30 Section 1094.6. Under former Section 11523, in judicial review of proceedings under the
31 Administrative Procedure Act, the record was to be prepared either by the Office of
32 Administrative Hearings or by the agency. However, in practice the record was prepared by
33 the Office of Administrative Hearings, consistent with subdivision (a)(1).

34 Although Section 1123.730 requires the Office of Administrative Hearings or the agency
35 to prepare the record, the burden is on the petitioner attacking the administrative decision to
36 show entitlement to judicial relief, so it is petitioner's responsibility to make the administrative
37 record available to the court. *Foster v. Civil Service Comm'n*, 142 Cal. App. 3d 444, 453, 190
38 Cal. Rptr. 893, 899 (1983). However, this does not authorize use of an unofficial record for
39 judicial review.

40 The introductory clause of subdivision (b) recognizes that some statutes prescribe the time
41 to prepare the record in particular proceedings. See, e.g., Gov't Code § 3564 (10-day limit
42 for Public Employment Relations Board).

43 **§ 1123.750. Disposal of administrative record**

44 1123.750. Any administrative record received for filing by the clerk of the court
45 may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

46 **Comment.** Section 1123.750 continues former Section 1094.5(i) without change.

1 **§ 1123.760. New evidence on judicial review**

2 1123.760. (a) If the court finds that there is relevant evidence that, in the
3 exercise of reasonable diligence, could not have been produced or that was
4 improperly excluded in the agency proceedings, it may enter judgment remanding
5 the case for reconsideration in the light of that evidence. Except as provided in
6 this section, the court shall not admit the evidence on judicial review without
7 remanding the case.

8 (b) The court may receive evidence described in subdivision (a) without
9 remanding the case in any of the following circumstances:

10 (1) The evidence relates to the validity of the agency action and is needed to
11 decide (i) improper constitution as a decision making body, or grounds for
12 disqualification, of those taking the agency action, or (ii) unlawfulness of
13 procedure or of decision making process.

14 (2) The agency action is a decision in an adjudicative proceeding and the
15 standard of review by the court is the independent judgment of the court.

16 (c) Whether or not the evidence is described in subdivision (a), the court may
17 receive evidence in addition to that contained in the administrative record for
18 judicial review without remanding the case if no hearing was held by the agency,
19 and the court finds that (i) remand to the agency would be unlikely to result in a
20 better record for review and (ii) the interests of economy and efficiency would be
21 served by receiving the evidence itself. This subdivision does not apply to judicial
22 review of rulemaking.

23 (d) If jurisdiction for judicial review is in the Supreme Court or court of appeal
24 and the court is to receive evidence pursuant to this section, the court shall
25 appoint a referee, master, or trial court judge for this purpose, having due regard
26 for the convenience of the parties.

27 **Comment.** Subdivision (a) of Section 1123.760 supersedes former Section 1094.5(e),
28 which permitted the court to admit evidence without remanding the case in cases in which the
29 court was authorized by law to exercise its independent judgment on the evidence. Under this
30 section and Section 1123.710, the court is limited to evidence in the administrative record
31 except under subdivision (b).

32 The provision in subdivision (a) permitting new evidence that could not in the exercise of
33 reasonable diligence have been produced in the administrative proceeding should be
34 narrowly construed — such evidence is admissible only in rare instances. See *Western States*
35 *Petroleum Ass’n v. Superior Court*, 9 Cal. 4th 559, 578, 888 P.2d 1268, 38 Cal. Rptr. 2d 139,
36 149 (1995).

37 Subdivision (b)(1) is drawn from 1981 Model State APA Section 5-114(a)(1)-(2). It
38 permits the court to receive evidence, subject to a number of conditions. First, evidence may
39 be received only if it is likely to contribute to the court’s determination of the validity of
40 agency action under one or more of the standards set forth in Sections 1123.410-1123.460.
41 Second, it identifies some specific issues that may be addressed, if necessary, by new evidence.
42 Since subdivision (b)(1) permits the court to receive disputed evidence only if needed to
43 decide disputed “issues,” this provision is applicable only with regard to “issues” that are
44 properly before the court. See Section 1123.350 on limitation of new issues.

45 Subdivision (b)(2) applies to judicial review of agency interpretation of law or application
46 of law to facts (mixed questions of law and fact). See Section 1123.420. Admission of
47 evidence by the court under this provision is discretionary with the court.

As used in subdivision (c), “hearing” includes both informal and formal hearings. Subdivision (d) is drawn from 1981 Model State APA Section 5-104(c), alternative B. Statutes that provide for judicial review in the court of appeal or Supreme Court are: Bus. & Prof. Code § 23090 (Alcoholic Beverage Control Appeals Board and Department of Alcoholic Beverage Control); Gov’t Code §§ 3520(c), 3542(c), 3564(c) (Public Employment Relations Board); Lab. Code §§ 1160.8 (Agricultural Labor Relations Board), 5950 (Workers’ Compensation Appeals Board); Pub. Res. Code § 25531 (California Energy Conservation and Development Commission); Pub. Util. Code § 1756 (Public Utilities Commission).

Section 1123.760 deals only with admissibility of new evidence on issues involved in the agency proceeding. It does not limit evidence on issues unique to judicial review, such as petitioner’s standing or capacity, or affirmative defenses such as laches for unreasonable delay in seeking judicial review. For standing rules, see Sections 1123.210-1123.240.

Article 8. Costs and Fees

§ 1123.810. Fee for transcript and preparation and certification of record

1123.810. The agency preparing the administrative record for judicial review shall charge the petitioner the fee provided in Section 69950 of the Government Code for the transcript, if any, and the reasonable cost of preparation of other portions of the record and certification of the record.

Comment. Section 1123.810 continues the substance of a portion of the fourth sentence of former Section 11523 of the Government Code, the third sentence of subdivision (a) of former Code of Civil Procedure Section 1094.5, and the second sentence of subdivision (c) of former Code of Civil Procedure Section 1094.6.

§ 1123.820. Recovery of costs of suit

1123.820. Except as otherwise provided by rules of court adopted by the Judicial Council, the prevailing party is entitled to recover the following costs of suit borne by the party:

- (a) The cost of preparing the transcript, if any.
- (b) The cost of compiling and certifying the record.
- (c) Any filing fee.
- (d) Fees for service of documents on the other party.

Comment. Section 1123.820 supersedes the sixth sentence of subdivision (a) of former Section 1094.5, and the fifth and tenth sentences of former Section 11523 of the Government Code. Section 1123.820 generalizes these provisions to apply to all proceedings for judicial review of agency action. See also Bus. & Prof. Code § 125.3 (recovery of costs of investigation and enforcement in a disciplinary proceeding by a board in the Department of Consumer Affairs or the Osteopathic Medical Board).

§ 1123.830. No renewal or reinstatement of license on failure to pay costs

1123.830. No license of a petitioner for judicial review of a decision in an adjudicative proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall be renewed or reinstated if the petitioner fails to pay all of the costs required under Section 1123.820.

1 **Comment.** Section 1123.830 continues the substance of a portion of the sixth sentence of
2 former Section 11523 of the Government Code.

3 **§ 1123.840. Proceedings in forma pauperis**

4 1123.840. Notwithstanding any other provision of this article, if the petitioner
5 has proceeded pursuant to Section 68511.3 of the Government Code and the
6 Rules of Court implementing that section and if the transcript is necessary to a
7 proper review of the administrative proceedings, the cost of preparing the
8 transcript shall be borne by the agency.

9 **Comment.** Section 1123.840 continues the substance of the fourth sentence of subdivision
10 (a) of former Section 1094.5 (proceedings in forma pauperis), and generalizes it to apply to
11 all proceedings for judicial review of agency action.

12 **§ 1123.850. Attorney fees in action to review administrative proceeding**

13 1123.850. (a) If it is shown that a decision, award, finding, or other
14 determination in an administrative proceeding under any provision of state law
15 was the result of arbitrary or capricious action or conduct by an agency or officer
16 in an official capacity, the petitioner if the petitioner prevails on judicial review
17 may collect reasonable attorney's fees, computed at one hundred dollars (\$100)
18 per hour, but not to exceed seven thousand five hundred dollars (\$7,500), where
19 the petitioner is personally obligated to pay the fees, from the agency, in addition
20 to any other relief granted or other costs awarded.

21 (b) This section is ancillary only, and does not create a new cause of action.

22 (c) Refusal by an agency or officer to admit liability pursuant to a contract of
23 insurance is not arbitrary or capricious action or conduct within the meaning of
24 this section.

25 (d) This section does not apply to judicial review of actions of the State Board
26 of Control.

27 **Comment.** Section 1123.850 continues former Government Code Section 800.

1 SELECTED CONFORMING REVISIONS

2 MEDICAL BOARD OF CALIFORNIA

3 **Bus. & Prof. Code § 2337 (amended). (Second of two, operative 1/1/96, repealed 1/1/99)**
4 **Judicial review**

5 2337. Notwithstanding any other provision of law, review of final decisions of
6 an administrative law judge of the Medical Quality Hearing Panel, or the Division
7 of Medical Quality or the Board of Podiatric Medicine in the event a review is
8 ordered pursuant to Section 2335, shall be by writ of mandamus pursuant to
9 Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the
10 Code of Civil Procedure before a district court of appeal. The court of appeal shall
11 exercise its independent judgment in review of the proceedings below, and,
12 where the court finds that there is relevant evidence that, in the exercise of
13 reasonable diligence, could not have been produced, or that was improperly
14 excluded at the hearing, it may admit the evidence without remanding the case.

15 The Judicial Council may adopt rules to allocate these cases to a particular
16 panel or panels within each district for consistent and efficient consideration.
17 Review shall be entitled to calendar priority, and the hearing shall be set no later
18 than 180 days from the filing of the action.

19 This section shall become operative on January 1, 1996, and shall be repealed as
20 of January 1, 1999, unless a later enacted statute, which is enacted before January
21 1, 1999, deletes or extends that date.

22 **Comment.** Section 2337 is amended to make judicial review under this section subject to
23 the provisions for judicial review in the Code of Civil Procedure. The former second sentence
24 of Section 2337 is superseded by Code of Civil Procedure Sections 1123.410-1123.460 and
25 1123.760.

26 ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

27 **Bus. & Prof. Code § 23090 (amended). Jurisdiction**

28 23090. Any person affected by a final order of the board, including the
29 department, may, ~~within the time limit specified in this section, apply to petition~~
30 the Supreme Court or to the court of appeal for the appellate district in which the
31 proceeding arose, for a writ of judicial review of such the final order. The
32 application for writ of review shall be made within 30 days after filing of the final
33 order of the board.

34 **Comment.** Section 23090 is amended to change the application for a writ of review to a
35 petition for judicial review, consistent with Code of Civil Procedure Section 1123.610, and to
36 delete the 30-day time limit formerly prescribed in this section. Under Code of Civil
37 Procedure Section 1123.650, the petition for review must be filed not later than 30 days after
38 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
39 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
40 11519.

Bus. & Prof. Code § 23090.1 (repealed). Writ of review

~~23090.1. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the board to certify the whole record of the department in the case to the court within the time specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the whole record of the department as certified to by the board.~~

Comment. Section 23090.1 is repealed because it is superseded by the judicial review provisions of the Code of Civil Procedure. See Section 23090.4. The provision in the first sentence for the return of the writ of review is superseded by Code of Civil Procedure Section 1123.620 (applicability of rules of practice for civil actions). The provision in the first sentence for the record of the department is superseded by Code of Civil Procedure Section 1123.720 (contents of administrative record). The second sentence is superseded by Code of Civil Procedure Sections 1123.710 (administrative record exclusive basis for judicial review) and 1123.760 (new evidence on judicial review).

Bus. & Prof. Code § 23090.2 (repealed). Scope of review

~~23090.2. The review by the court shall not extend further than to determine, based on the whole record of the department as certified by the board, whether:~~

- ~~(a) The department has proceeded without or in excess of its jurisdiction.~~
- ~~(b) The department has proceeded in the manner required by law.~~
- ~~(c) The decision of the department is supported by the findings.~~
- ~~(d) The findings in the department's decision are supported by substantial evidence in the light of the whole record.~~
- ~~(e) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the department.~~

~~Nothing in this article shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.~~

Comment. Subdivisions (a) through (d) of former Section 23090.2 are superseded by Code of Civil Procedure Sections 1123.410-1123.450 and 1123.160. Subdivision (e) is superseded by Code of Civil Procedure Section 1123.750. The last sentence is superseded by Code of Civil Procedure Sections 1123.420 (interpretation or application of law), 1123.430 (fact-finding), 1123.710 (administrative record exclusive basis for judicial review), and 1123.760 (new evidence on judicial review). Nothing in the Code of Civil Procedure or in this article permits the court to hold a trial de novo.

Bus. & Prof. Code § 23090.3 (amended). Right to appear in judicial review proceeding

~~23090.3. The findings and conclusions of the department on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the department. The parties to a judicial review proceeding are the board, the department, and each party to the action or proceeding before the board shall have the right to appear in the review proceeding. Following the hearing, the court shall enter judgment either affirming or reversing the decision of the department, or the court may remand the case for further proceedings before or reconsideration by the department whose interest is adverse to the person seeking judicial review.~~

1 **Comment.** Section 23090.3 is largely superseded by the judicial review provisions of the
2 Code of Civil Procedure. See Section 23090.4. The first sentence is superseded by Code of
3 Civil Procedure Section 1123.430 (review of agency fact-finding). The second sentence is
4 superseded by Code of Civil Procedure Section 1123.420 (interpretation or application of
5 law). The fourth sentence is superseded by Code of Civil Procedure Section 1123.680 (type
6 of relief).

7 **Bus. & Prof. Code § 23090.4 (amended). Judicial review**

8 23090.4. ~~The provisions of the Code of Civil Procedure relating to writs of~~
9 ~~review shall, insofar as applicable, apply to proceedings in the courts as provided~~
10 ~~by this article. A copy of every pleading filed pursuant to this article shall be~~
11 ~~served on the board, the department, and on each party who entered an~~
12 ~~appearance before the board. Judicial review shall be under Title 2 (commencing~~
13 ~~with Section 1120) of Part 3 of the Code of Civil Procedure.~~

14 **Comment.** Section 23090.4 is amended to delete the first sentence, and to replace it with a
15 reference to the judicial review provisions of the Code of Civil Procedure. Special provisions
16 of this article prevail over general provisions of the Code of Civil Procedure governing
17 judicial review. See Bus. & Prof. Code § 1121.110 (conflicting or inconsistent statute
18 controls). Copies of pleadings in judicial review proceedings must be served on the parties.
19 See Code Civ. Proc. §§ 1123.610 (petition for review), 1123.620 (applicability of rules of
20 practice for civil actions).

21 **Bus. & Prof. Code § 23090.5 (amended). Courts having jurisdiction**

22 23090.5. No court of this state, except the Supreme Court and the courts of
23 appeal to the extent specified in this article, shall have jurisdiction to review,
24 affirm, reverse, correct, or annul any order, rule, or decision of the department or to
25 suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or
26 interfere with the department in the performance of its duties, ~~but a writ of~~
27 ~~mandate shall lie from the Supreme Court or the courts of appeal in any proper~~
28 ~~case.~~

29 **Comment.** Section 23090.5 is amended to delete the former reference to a writ of mandate.
30 The writ of mandate has been replaced by a petition for review. See Section 23090.4; Code
31 Civ. Proc. § 1123.610 (petition for review). *But cf.* Code Civ. Proc. § 1123.510(b) (original
32 jurisdiction of Supreme Court or courts of appeal under California Constitution).

33 **Bus. & Prof. Code § 23090.6 (repealed). Stay of order**

34 23090.6. ~~The filing of a petition for, or the pendency of, a writ of review shall~~
35 ~~not of itself stay or suspend the operation of any order, rule, or decision of the~~
36 ~~department, but the court before which the petition is filed may stay or suspend,~~
37 ~~in whole or in part, the operation of the order, rule, or decision of the department~~
38 ~~subject to review, upon the terms and conditions which it by order directs.~~

39 **Comment.** Former Section 23090.6 is superseded by Code of Civil Procedure Section
40 1123.670 (stays). See Section 23090.4.

1 **Bus. & Prof. Code § 23090.7 (amended). Effectiveness of order**

2 23097.7. ~~No~~ Except for the purpose of Section 1123.650 of the Code of Civil
3 Procedure, no decision of the department which has been appealed to the board
4 and no final order of the board shall become effective during the period in which
5 application a petition for review may be made for a writ of review, as provided by
6 Section 23090.

7 **Comment.** Section 23090.7 is amended to add the “except” clause, without which the time
8 to file a petition for review would never expire. Section 23090.7 is also amended to recognize
9 that judicial review under the Code of Civil Procedure has been substituted for a writ of review
10 under this article. See Section 23090.4.

11 **TAXPAYER ACTIONS**

12 **Code Civ. Proc. § 526a (amended). Taxpayer actions**

13 526a. ~~An action to obtain a judgment, restraining and preventing any (a) A~~
14 proceeding for judicial review of agency action to restrain or prevent illegal
15 expenditure of, waste of, or injury to the estate, funds, or other property of a
16 county, town, city or city and county of the state, may be maintained against any
17 officer thereof, or any agent, or other person, acting in its behalf, ~~either by a~~
18 ~~citizen resident therein, or by a corporation, who is assessed for and is liable to~~
19 ~~pay, or, within one year before the commencement of the action, has paid, a tax~~
20 ~~therein.~~ under Title 2 (commencing with Section 1120) of Part 3.

21 (b) This section does not affect any right of action in favor of a county, city,
22 town, or city and county, or any public officer; provided that no injunction shall
23 be granted restraining the offering for sale, sale, or issuance of any municipal
24 bonds for public improvements or public utilities.

25 (c) ~~An action~~ A proceeding brought pursuant to this section to enjoin a public
26 improvement project shall take special precedence over all civil matters on the
27 calendar of the court except those matters to which equal precedence on the
28 calendar is granted by law.

29 **Comment.** Section 526a is amended to conform to judicial review provisions. See Sections
30 1120-1123.760. Under the judicial review provisions, the petitioner must show agency action
31 is invalid on a ground specified in Sections 1123.410-1123.460. See Section 1123.160.

32 **WRIT OF MANDATE**

33 **Code Civ. Proc. § 1085 (amended). Courts which may issue writ of mandate; parties to**
34 **whom issued; purpose**

35 1085. It (a) Subject to subdivision (b), a writ of mandate may be issued by any
36 court, except a municipal ~~or~~ justice court, to any inferior tribunal, corporation,
37 board, or person, to compel the performance of an act which the law specially
38 enjoins, as a duty resulting from an office, trust, or station; or to compel the
39 admission of a party to the use and enjoyment of a right or office to which ~~he~~ the

1 party is entitled, and from which ~~he~~ the party is unlawfully precluded by ~~such~~ the
2 inferior tribunal, corporation, board or person.

3 (b) Judicial review of agency action to which Title 2 (commencing with Section
4 1120) applies shall be under that title, and not this chapter.

5 **Comment.** Section 1085 is amended to add subdivision (b) and to make other technical
6 revisions. The former reference to a justice court is deleted, because justice courts have been
7 abolished. See Cal. Const. Art. VI, § 1.

8 **Code Civ. Proc. § 1085.5 (repealed). Review of action of Director of Food and**
9 **Agriculture**

10 ~~1085.5. Notwithstanding this chapter, in any action or proceeding to attack,~~
11 ~~review, set aside, void, or annul the activity of the Director of Food and~~
12 ~~Agriculture under Division 4 (commencing with Section 5001) or Division 5~~
13 ~~(commencing with Section 9101) of the Food and Agricultural Code, the~~
14 ~~procedure for issuance of a writ of mandate shall be in accordance with Chapter~~
15 ~~1.5 (commencing with Section 5051) of Part 1 of Division 4 of that code.~~

16 **Comment.** Section 1085.5 is repealed as obsolete, since Sections 5051-5064 of the Food
17 and Agricultural Code have been repealed.

18 **Code Civ. Proc. § 1094.5 (repealed). Administrative mandamus**

19 ~~1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity~~
20 ~~of any final administrative order or decision made as the result of a proceeding in~~
21 ~~which by law a hearing is required to be given, evidence is required to be taken,~~
22 ~~and discretion in the determination of facts is vested in the inferior tribunal,~~
23 ~~corporation, board, or officer, the case shall be heard by the court sitting without~~
24 ~~a jury. All or part of the record of the proceedings before the inferior tribunal,~~
25 ~~corporation, board, or officer may be filed with the petition, may be filed with~~
26 ~~respondent's points and authorities, or may be ordered to be filed by the court.~~
27 ~~Except when otherwise prescribed by statute, the cost of preparing the record~~
28 ~~shall be borne by the petitioner. Where the petitioner has proceeded pursuant to~~
29 ~~Section 68511.3 of the Government Code and the Rules of Court implementing~~
30 ~~that section and where the transcript is necessary to a proper review of the~~
31 ~~administrative proceedings, the cost of preparing the transcript shall be borne by~~
32 ~~the respondent. Where the party seeking the writ has proceeded pursuant to~~
33 ~~Section 1088.5, the administrative record shall be filed as expeditiously as~~
34 ~~possible, and may be filed with the petition, or by the respondent after payment of~~
35 ~~the costs by the petitioner, where required, or as otherwise directed by the court.~~
36 ~~If the expense of preparing all or any part of the record has been borne by the~~
37 ~~prevailing party, the expense shall be taxable as costs.~~

38 ~~(b) The inquiry in such a case shall extend to the questions whether the~~
39 ~~respondent has proceeded without, or in excess of jurisdiction; whether there was~~
40 ~~a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of~~
41 ~~discretion is established if the respondent has not proceeded in the manner~~

1 required by law, the order or decision is not supported by the findings, or the
2 findings are not supported by the evidence.

3 (c) Where it is claimed that the findings are not supported by the evidence, in
4 cases in which the court is authorized by law to exercise its independent
5 judgment on the evidence, abuse of discretion is established if the court
6 determines that the findings are not supported by the weight of the evidence. In
7 all other cases, abuse of discretion is established if the court determines that the
8 findings are not supported by substantial evidence in the light of the whole
9 record.

10 (d) Notwithstanding subdivision (c), in cases arising from private hospital
11 boards or boards of directors of districts organized pursuant to The Local
12 Hospital District Law, Division 23 (commencing with Section 32000) of the
13 Health and Safety Code or governing bodies of municipal hospitals formed
14 pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing
15 with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government
16 Code, abuse of discretion is established if the court determines that the findings
17 are not supported by substantial evidence in the light of the whole record.
18 However, in all cases in which the petition alleges discriminatory actions
19 prohibited by Section 1316 of the Health and Safety Code, and the plaintiff
20 makes a preliminary showing of substantial evidence in support of that allegation,
21 the court shall exercise its independent judgment on the evidence and abuse of
22 discretion shall be established if the court determines that the findings are not
23 supported by the weight of the evidence.

24 (e) Where the court finds that there is relevant evidence which, in the exercise
25 of reasonable diligence, could not have been produced or which was improperly
26 excluded at the hearing before respondent, it may enter judgment as provided in
27 subdivision (f) remanding the case to be reconsidered in the light of that
28 evidence; or, in cases in which the court is authorized by law to exercise its
29 independent judgment on the evidence, the court may admit the evidence at the
30 hearing on the writ without remanding the case.

31 (f) The court shall enter judgment either commanding respondent to set aside
32 the order or decision, or denying the writ. Where the judgment commands that
33 the order or decision be set aside, it may order the reconsideration of the case in
34 the light of the court's opinion and judgment and may order respondent to take
35 such further action as is specially enjoined upon it by law, but the judgment shall
36 not limit or control in any way the discretion legally vested in the respondent.

37 (g) Except as provided in subdivision (h), the court in which proceedings under
38 this section are instituted may stay the operation of the administrative order or
39 decision pending the judgment of the court, or until the filing of a notice of
40 appeal from the judgment or until the expiration of the time for filing the notice,
41 whichever occurs first. However, no such stay shall be imposed or continued if
42 the court is satisfied that it is against the public interest; provided that the
43 application for the stay shall be accompanied by proof of service of a copy of the

1 application on the respondent. Service shall be made in the manner provided by
2 Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with
3 Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ,
4 the order or decision of the agency shall not be stayed except upon the order of
5 the court to which the appeal is taken. However, in cases where a stay is in effect
6 at the time of filing the notice of appeal, the stay shall be continued by operation
7 of law for a period of 20 days from the filing of the notice. If an appeal is taken
8 from the granting of the writ, the order or decision of the agency is stayed
9 pending the determination of the appeal unless the court to which the appeal is
10 taken shall otherwise order. Where any final administrative order or decision is
11 the subject of proceedings under this section, if the petition shall have been filed
12 while the penalty imposed is in full force and effect, the determination shall not be
13 considered to have become moot in cases where the penalty imposed by the
14 administrative agency has been completed or complied with during the pendency
15 of the proceedings.

16 (h) (1) The court in which proceedings under this section are instituted may stay
17 the operation of the administrative order or decision of any licensed hospital or
18 any state agency made after a hearing required by statute to be conducted under
19 the provisions of the Administrative Procedure Act, as set forth in Chapter 5
20 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
21 Government Code, conducted by the agency itself or an administrative law judge
22 on the staff of the Office of Administrative Hearings pending the judgment of the
23 court, or until the filing of a notice of appeal from the judgment or until the
24 expiration of the time for filing the notice, whichever occurs first. However, the
25 stay shall not be imposed or continued unless the court is satisfied that the public
26 interest will not suffer and that the licensed hospital or agency is unlikely to
27 prevail ultimately on the merits; and provided further that the application for the
28 stay shall be accompanied by proof of service of a copy of the application on the
29 respondent. Service shall be made in the manner provided by Title 5 (commencing
30 with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title
31 14 of Part 2.

32 (2) The standard set forth in this subdivision for obtaining a stay shall apply to
33 any administrative order or decision of an agency which issues licenses pursuant
34 to Division 2 (commencing with Section 500) of the Business and Professions
35 Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative
36 Act. With respect to orders or decisions of other state agencies, the standard in
37 this subdivision shall apply only when the agency has adopted the proposed
38 decision of the administrative law judge in its entirety or has adopted the
39 proposed decision but reduced the proposed penalty pursuant to subdivision (b)
40 of Section 11517 of the Government Code; otherwise the standard in subdivision
41 (g) shall apply.

42 (3) If an appeal is taken from a denial of the writ, the order or decision of the
43 hospital or agency shall not be stayed except upon the order of the court to

1 which the appeal is taken. However, in cases where a stay is in effect at the time
2 of filing the notice of appeal, the stay shall be continued by operation of law for a
3 period of 20 days from the filing of the notice. If an appeal is taken from the
4 granting of the writ, the order or decision of the hospital or agency is stayed
5 pending the determination of the appeal unless the court to which the appeal is
6 taken shall otherwise order. Where any final administrative order or decision is
7 the subject of proceedings under this section, if the petition shall have been filed
8 while the penalty imposed is in full force and effect, the determination shall not be
9 considered to have become moot in cases where the penalty imposed by the
10 administrative agency has been completed or complied with during the pendency
11 of the proceedings.

12 (i) Any administrative record received for filing by the clerk of the court may be
13 disposed of as provided in Sections 1952, 1952.2, and 1952.3.

14 **Comment.** The portion of the first sentence of subdivision (a) of former Section 1094.5
15 relating to finality is superseded by Section 1123.120 (finality). The portion of the first
16 sentence of former subdivision (a) relating to trial by jury is superseded by Section
17 1123.690. The second sentence of former subdivision (a) is superseded by Section
18 1123.615(a) (Judicial Council rules of pleading and practice). See also Sections 1123.730(c)
19 (delivery of record) and 1123.740 (disposal of record). The third sentence of former
20 subdivision (a) is superseded by Section 1123.810 (fee for preparing record). The fourth
21 sentence of former subdivision (a) is continued in substance in Section 1123.840
22 (proceedings in forma pauperis). The fifth sentence of former subdivision (a) is superseded
23 by Section 1123.615(a) (Judicial Council rules of pleading and practice). The sixth sentence
24 of former subdivision (a) is superseded by Section 1123.820.

25 The provision of subdivision (b) relating to review of whether the respondent has
26 proceeded without or in excess of jurisdiction is superseded by Section 1123.420 (review of
27 agency interpretation or application of law). The provision relating to whether there has been
28 a fair trial is superseded by Section 1123.460 (review of agency procedure). The provision
29 relating to whether there has been a prejudicial abuse of discretion is superseded by Section
30 1123.450 (review of agency exercise of discretion). The provision relating to proceeding in
31 the manner required by law is superseded by Section 1123.460 (review of agency
32 procedure). The provision relating to an order or decision not supported by findings or
33 findings not supported by evidence is superseded by Section 1123.430 (review of agency fact
34 finding).

35 Subdivision (c) is superseded by Section 1123.430 (review of agency fact finding).

36 Subdivision (d) is superseded by Sections 1120(g) (title applies to decision of private
37 hospital board in adjudicative proceeding) and 1123.420-1123.450 (standards of review).

38 Subdivision (e) is superseded by Section 1123.760 (new evidence on judicial review).

39 The first through sixth sentences of subdivision (g), and the first, second, and third
40 sentences of subdivision (h)(3), are superseded by Section 1123.670 (stay). The seventh
41 sentence of subdivision (g) and the fourth sentence of subdivision (h)(3) are continued in
42 Section 1123.150 (proceeding not moot because penalty completed).

43 Subdivision (i) is continued without change in Section 1123.740 (disposal of administrative
44 record).

45 **Staff Note.** Conforming revisions to the many statutes that refer to Code of Civil Procedure
46 Section 1094.5 will be set out in a separate document.

1 **Code Civ. Proc. § 1094.6 (repealed). Review of local agency decision**

2 ~~1094.6. (a) Judicial review of any decision of a local agency, other than school~~
3 ~~district, as the term local agency is defined in Section 54951 of the Government~~
4 ~~Code, or of any commission, board, officer or agent thereof, may be had pursuant~~
5 ~~to Section 1094.5 of this code only if the petition for writ of mandate pursuant to~~
6 ~~such section is filed within the time limits specified in this section.~~

7 ~~(b) Any such petition shall be filed not later than the 90th day following the~~
8 ~~date on which the decision becomes final. If there is no provision for~~
9 ~~reconsideration of the decision, or for a written decision or written findings~~
10 ~~supporting the decision, in any applicable provision of any statute, charter, or rule,~~
11 ~~for the purposes of this section, the decision is final on the date it is announced. If~~
12 ~~the decision is not announced at the close of the hearing, the date, time, and place~~
13 ~~of the announcement of the decision shall be announced at the hearing. If there is~~
14 ~~a provision for reconsideration, the decision is final for purposes of this section~~
15 ~~upon the expiration of the period during which such reconsideration can be~~
16 ~~sought; provided, that if reconsideration is sought pursuant to any such provision~~
17 ~~the decision is final for the purposes of this section on the date that~~
18 ~~reconsideration is rejected. If there is a provision for a written decision or written~~
19 ~~findings, the decision is final for purposes of this section upon the date it is mailed~~
20 ~~by first-class mail, postage prepaid, including a copy of the affidavit or certificate~~
21 ~~of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not~~
22 ~~apply to extend the time, following deposit in the mail of the decision or findings,~~
23 ~~within which a petition shall be filed.~~

24 ~~(c) The complete record of the proceedings shall be prepared by the local~~
25 ~~agency or its commission, board, officer, or agent which made the decision and~~
26 ~~shall be delivered to the petitioner within 190 days after he has filed a written~~
27 ~~request therefor. The local agency may recover from the petitioner its actual costs~~
28 ~~for transcribing or otherwise preparing the record. Such record shall include the~~
29 ~~transcript of the proceedings, all pleadings, all notices and orders, any proposed~~
30 ~~decision by a hearing officer, the final decision, all admitted exhibits, all rejected~~
31 ~~exhibits in the possession of the local agency or its commission, board, officer, or~~
32 ~~agent, all written evidence, and any other papers in the case.~~

33 ~~(d) If the petitioner files a request for the record as specified in subdivision (c)~~
34 ~~within 10 days after the date the decision becomes final as provided in~~
35 ~~subdivision (b), the time within which a petition pursuant to Section 1094.5 may~~
36 ~~be filed shall be extended to not later than the 30th day following the date on~~
37 ~~which the record is either personally delivered or mailed to the petitioner or his~~
38 ~~attorney of record, if he has one.~~

39 ~~(e) As used in this section, decision means a decision subject to review pursuant~~
40 ~~to Section 1094.5, suspending, demoting, or dismissing an officer or employee,~~
41 ~~revoking, or denying an application for a permit, license, or other entitlement, or~~
42 ~~denying an application for any retirement benefit or allowance.~~

1 ~~(f) In making a final decision as defined in subdivision (e), the local agency shall~~
2 ~~provide notice to the party that the time within which judicial review must be~~
3 ~~sought is governed by this section.~~

4 ~~As used in this subdivision, “party” means an officer or employee who has~~
5 ~~been suspended, demoted or dismissed; a person whose permit, license, or other~~
6 ~~entitlement has been revoked or suspended, or whose application for a permit,~~
7 ~~license, or other entitlement has been denied; or a person whose application for a~~
8 ~~retirement benefit or allowance has been denied.~~

9 ~~(g) This section shall prevail over any conflicting provision in any otherwise~~
10 ~~applicable law relating to the subject matter, unless the conflicting provision is a~~
11 ~~state or federal law which provides a shorter statute of limitations, in which case~~
12 ~~the shorter statute of limitations shall apply.~~

13 **Comment.** Subdivision (a) and the first sentence of subdivision (b) of former Section
14 1094.6 is superseded by Sections 1121.230 (“agency” defined), 1121.255 (“local agency”
15 defined), 1123.630 (time for filing petition for review), 1123.120 (finality), and 1123.140
16 (exception to finality requirement). The second, fourth, and fifth sentences of subdivision (b)
17 are superseded by Section 1123.120. The third sentence of subdivision (b) is continued in
18 Government Code Section 54962(b).

19 The first sentence of subdivision (c) is superseded by Section 1123.730 (preparation of the
20 record). The second sentence of subdivision (c) is superseded by Section 1123.810 (fee for
21 preparing record). The third sentence of subdivision (c) is superseded by Code of Civil
22 Procedure Section 1123.720.

23 Subdivision (d) is superseded by Section 1123.630 (time for filing petition for review).
24 Under Section 1123.630, the time for filing the petition for review is not dependent on
25 receipt of the record, which normally will take place after the petition is filed.

26 Subdivision (e) is superseded by Section 1121.250 (“decision” defined). See also Gov’t
27 Code § 54962(a).

28 Subdivision (f) is continued in Sections 1123.630 (time for filing petition for review of
29 decision in adjudicative proceeding) and 1121.260 (“party” defined). Subdivision (g) is not
30 continued.

31 COMMISSION ON PROFESSIONAL COMPETENCE

32 **Educ. Code § 44945 (amended). Judicial review**

33 44945. The decision of the Commission on Professional Competence may, on
34 petition of either the governing board or the employee, be reviewed by a court of
35 competent jurisdiction ~~in the same manner as a decision made by a hearing officer~~
36 ~~under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title~~
37 ~~2 of the Government Code. The court, on review, shall exercise its independent~~
38 ~~judgment on the evidence under Title 2 (commencing with Section 1120) of Part~~
39 ~~3 of the Code of Civil Procedure.~~ The proceeding shall be set for hearing at the
40 earliest possible date and shall take precedence over all other cases, except older
41 matters of the same character and matters to which special precedence is given by
42 law.

43 **Comment.** Section 44945 is amended to make judicial review under this section subject to
44 the provisions for judicial review in the Code of Civil Procedure. The former second sentence

1 of Section 44945 is superseded by the standards of review in Code of Civil Procedure
2 Sections 1123.410-1123.460.

3 BOARD OF GOVERNORS OF CALIFORNIA COMMUNITY
4 COLLEGES

5 **Educ. Code § 87682 (amended). Judicial review**

6 87682. The decision of the arbitrator or administrative law judge, as the case
7 may be, may, on petition of either the governing board or the employee, be
8 reviewed by a court of competent jurisdiction ~~in the same manner as a decision~~
9 ~~made by an administrative law judge under Chapter 5 (commencing with Section~~
10 ~~11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on~~
11 ~~review, shall exercise its independent judgment on the evidence. under Title 2~~
12 ~~(commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The~~
13 proceeding shall be set for hearing at the earliest possible date and shall take
14 precedence over all other cases, except older matters of the same character and
15 matters to which special precedence is given by law.

16 **Comment.** Section 87682 is amended to make judicial review under this section subject to
17 the provisions for judicial review in the Code of Civil Procedure. The former second sentence
18 of Section 87682 is superseded by the standards of review in Code of Civil Procedure
19 Sections 1123.410-1123.460.

20 COSTS IN CIVIL ACTIONS RESULTING FROM ADMINISTRATIVE
21 PROCEEDINGS

22 **Gov't Code § 800 (repealed). Costs in action to review administrative proceeding**

23 800. ~~In any civil action to appeal or review the award, finding, or other~~
24 ~~determination of any administrative proceeding under this code or under any~~
25 ~~other provision of state law, except actions resulting from actions of the State~~
26 ~~Board of Control, where it is shown that the award, finding, or other~~
27 ~~determination of the proceeding was the result of arbitrary or capricious action or~~
28 ~~conduct by a public entity or an officer thereof in his or her official capacity, the~~
29 ~~complainant if he or she prevails in the civil action may collect reasonable~~
30 ~~attorney's fees, computed at one hundred dollars (\$100) per hour, but not to~~
31 ~~exceed seven thousand five hundred dollars (\$7,500), where he or she is~~
32 ~~personally obligated to pay the fees, from the public entity, in addition to any~~
33 ~~other relief granted or other costs awarded.~~

34 ~~This section is ancillary only, and shall not be construed to create a new cause~~
35 ~~of action.~~

36 ~~Refusal by a public entity or officer thereof to admit liability pursuant to a~~
37 ~~contract of insurance shall not be considered arbitrary or capricious action or~~
38 ~~conduct within the meaning of this section.~~

39 **Comment.** Former Section 800 is continued in Code of Civil Procedure Section 1123.850.

Staff Note. Conforming revisions to the statutes that refer to Government Code Section 800 will be set out in a separate document.

PUBLIC EMPLOYMENT RELATIONS BOARD

Gov't Code § 3520 (amended). Judicial review of unit determination or unfair practice case

3520. (a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from review of the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such review of the decision or order.

(c) ~~Such~~ The petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such the petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such the time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such any temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. ~~The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive.~~ The provisions of Title 1 (commencing with Section 1067) Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from judicial review of a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the appellate district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court

1 shall enforce such the order by writ of mandamus appropriate process. The court
2 shall not review the merits of the order.

3 **Comment.** Section 3520 is amended to make judicial review of the Public Employment
4 Relations Board subject to the provisions for judicial review in the Code of Civil Procedure,
5 except as provided in this section. The board is exempt from the provision in the Code of
6 Civil Procedure governing standard of review of questions of application of law to facts and
7 of pure questions of law, so existing case law will continue to apply to the board. See Code
8 Civ. Proc. § 1123.420(c) & Comment.

9 The former second sentence of subdivision (c) which required the petition to be filed within
10 30 days after issuance of the board's final order, order denying reconsideration, or order
11 joining in the request for judicial review, is superseded by Code of Civil Procedure Section
12 1123.650. Under that section, the petition for review must be filed not later than 30 days after
13 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
14 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
15 11519.

16 **Gov't Code § 3542 (amended). Review of unit determination**

17 3542. (a) No employer or employee organization shall have the right to judicial
18 review of a unit determination except: (1) when the board in response to a
19 petition from an employer or employee organization, agrees that the case is one of
20 special importance and joins in the request for such review; or (2) when the issue
21 is raised as a defense to an unfair practice complaint. A board order directing an
22 election shall not be stayed pending judicial review.

23 Upon receipt of a board order joining in the request for judicial review, a party
24 to the case may petition for a writ of extraordinary relief from judicial review of
25 the unit determination decision or order.

26 (b) Any charging party, respondent, or intervenor aggrieved by a final decision
27 or order of the board in an unfair practice case, except a decision of the board not
28 to issue a complaint in such a case, may petition for a writ of extraordinary relief
29 from such judicial review of the decision or order.

30 (c) ~~Such~~ The petition shall be filed in the district court of appeal in the appellate
31 district where the unit determination or unfair practice dispute occurred. ~~The~~
32 ~~petition shall be filed within 30 days after issuance of the board's final order,~~
33 ~~order denying reconsideration, or order joining in the request for judicial review,~~
34 ~~as applicable.~~ Upon the filing of such the petition, the court shall cause notice to
35 be served upon the board and thereupon shall have jurisdiction of the
36 proceeding. The board shall file in the court the record of the proceeding, certified
37 by the board, within 10 days after the clerk's notice unless ~~such the~~ time is
38 extended by the court for good cause shown. The court shall have jurisdiction to
39 grant to the board such any temporary relief or restraining order it deems just and
40 proper and in like manner to make and enter a decree enforcing, modifying, or
41 setting aside the order of the board. ~~The findings of the board with respect to~~
42 ~~questions of fact, including ultimate facts, if supported by substantial evidence on~~
43 ~~the record considered as a whole, are conclusive.~~ The provisions of Title 1
44 ~~(commencing with Section 1067)~~ Title 2 (commencing with Section 1120) of Part

1 3 of the Code of Civil Procedure relating to writs shall, except where specifically
2 superseded herein, apply to proceedings pursuant to this section.

3 (d) If the time to petition for ~~extraordinary relief from~~ judicial review of a board
4 decision has expired, the board may seek enforcement of any final decision or
5 order in a ~~district~~ court of appeal or a superior court in the appellate district where
6 the unit determination or unfair practice case occurred. The board shall respond
7 within 10 days to any inquiry from a party to the action as to why the board has
8 not sought court enforcement of the final decision or order. If the response does
9 not indicate that there has been compliance with the board's final decision or
10 order, the board shall seek enforcement of the final decision or order upon the
11 request of the party. The board shall file in the court the record of the proceeding,
12 certified by the board, and appropriate evidence disclosing the failure to comply
13 with the decision or order. If, after hearing, the court determines that the order
14 was issued pursuant to procedures established by the board and that the person
15 or entity refuses to comply with the order, the court shall enforce ~~such~~ the order
16 by ~~writ of mandamus~~ appropriate process. The court shall not review the merits of
17 the order.

18 **Comment.** Section 3542 is amended to make judicial review of the Public Employment
19 Relations Board subject to the provisions for judicial review in the Code of Civil Procedure,
20 except as provided in this section. Special provisions of this section prevail over general
21 provisions of the Code of Civil Procedure governing judicial review. See Code of Civil
22 Procedure Section 1121.110 (conflicting or inconsistent statute controls). The board is
23 exempt from the provision in the Code of Civil Procedure governing standard of review of
24 questions of application of law to facts and of pure questions of law, so existing case law will
25 continue to apply to the board. See Code Civ. Proc. § 1123.420(c) & Comment.

26 The former second sentence of subdivision (c) which required the petition to be filed within
27 30 days after issuance of the board's final order, order denying reconsideration, or order
28 joining in the request for judicial review, is superseded by Code of Civil Procedure Section
29 1123.650. Under that section, the petition for review must be filed not later than 30 days after
30 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
31 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
32 11519.

33 **Gov't Code § 3564 (amended). Judicial review of unit determination or unfair practice**
34 **case**

35 3564. (a) No employer or employee organization shall have the right to judicial
36 review of a unit determination except: (1) when the board in response to a
37 petition from an employer or employee organization, agrees that the case is one of
38 special importance and joins in the request for such review; or (2) when the issue
39 is raised as a defense to an unfair practice complaint. A board order directing an
40 election shall not be stayed pending judicial review.

41 Upon receipt of a board order joining in the request for judicial review, a party
42 to the case may petition for ~~a writ of extraordinary relief from~~ judicial review of
43 the unit determination decision or order.

44 (b) Any charging party, respondent, or intervenor aggrieved by a final decision
45 or order of the board in an unfair practice case, except a decision of the board not

1 to issue a complaint in such a case, may petition for a writ of extraordinary relief
2 from such judicial review of the decision or order.

3 (c) ~~Such~~ The petition shall be filed in the district court of appeal in the appellate
4 district where the unit determination or unfair practice dispute occurred. The
5 petition shall be filed within 30 days after issuance of the board's final order,
6 order denying reconsideration, or order joining in the request for judicial review,
7 as applicable. Upon the filing of such the petition, the court shall cause notice to
8 be served upon the board and thereupon shall have jurisdiction of the
9 proceeding. The board shall file in the court the record of the proceeding, certified
10 by the board, within 10 days after the clerk's notice unless such the time is
11 extended by the court for good cause shown. The court shall have jurisdiction to
12 grant to the board such any temporary relief or restraining order it deems just and
13 proper and in like manner to make and enter a decree enforcing, modifying, or
14 setting aside the order of the board. ~~The findings of the board with respect to~~
15 ~~questions of fact, including ultimate facts, if supported by substantial evidence on~~
16 ~~the record considered as a whole, are conclusive.~~ The provisions of Title 1
17 ~~(commencing with Section 1067)~~ Title 2 (commencing with Section 1120) of Part
18 3 of the Code of Civil Procedure relating to writs shall, except where specifically
19 superseded herein, apply to proceedings pursuant to this section.

20 (d) If the time to petition for extraordinary relief from judicial review of a board
21 decision has expired, the board may seek enforcement of any final decision or
22 order in a district court of appeal or a superior court in the appellate district where
23 the unit determination or unfair practice case occurred. If, after hearing, the court
24 determines that the order was issued pursuant to procedures established by the
25 board and that the person or entity refuses to comply with the order, the court
26 shall enforce such the order by writ of mandamus appropriate process. The court
27 shall not review the merits of the order.

28 **Comment.** Section 3564 is amended to make judicial review of the Public Employment
29 Relations Board subject to the provisions for judicial review in the Code of Civil Procedure.
30 The board is exempt from the provision in the Code of Civil Procedure governing standard of
31 review of questions of application of law to facts and of pure questions of law, so existing case
32 law will continue to apply to the board. See Code Civ. Proc. § 1123.420(c) & Comment.

33 The former second sentence of subdivision (c) which required the petition to be filed within
34 30 days after issuance of the board's final order, order denying reconsideration, or order
35 joining in the request for judicial review, is superseded by Code of Civil Procedure Section
36 1123.650. Under that section, the petition for review must be filed not later than 30 days after
37 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
38 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
39 11519.

40 ADMINISTRATIVE PROCEDURE ACT — RULEMAKING

41 Gov't Code § 11350 (amended). Judicial declaration on validity of regulation

42 11350. (a) Any interested person may obtain a judicial declaration as to the
43 validity of any regulation ~~by bringing an action for declaratory relief in the~~

1 superior court in accordance with under Title 2 (commencing with Section 1120)
2 of Part 3 of the Code of Civil Procedure. The right to a judicial determination shall
3 not be affected either by the failure to petition or to seek reconsideration of a
4 petition filed pursuant to Section 11347.1 before the agency promulgating the
5 regulations. The regulation may be declared to be invalid for a substantial failure
6 to comply with this chapter, or, in the case of an emergency regulation or order to
7 repeal, upon the ground that the facts recited in the statement do not constitute
8 an emergency within the provisions of Section 11346.1.

9 (b) In addition to any other ground that may exist, a regulation may be declared
10 invalid if either of the following exists:

11 (1) The agency's determination that the regulation is reasonably necessary to
12 effectuate the purpose of the statute, court decision, or other provision of law that
13 is being implemented, interpreted, or made specific by the regulation is not
14 supported by substantial evidence.

15 (2) The agency declaration pursuant to paragraph (8) of subdivision (a) of
16 Section 11346.5 is in conflict with substantial evidence in the record.

17 For purposes of this section, the record shall be deemed to consist of all material
18 maintained in the file of the rulemaking proceeding as defined in Section 11347.3.

19 (c) The approval of a regulation by the office or the Governor's overruling of a
20 decision of the office disapproving a regulation shall not be considered by a court
21 in any action for declaratory relief brought with respect to a proceeding for
22 judicial review of a regulation.

23 **Comment.** Section 11350 is amended to recognize that judicial review of agency
24 regulations is now accomplished under Title 2 of Part 3 of the Code of Civil Procedure. The
25 former second sentence of subdivision (a) is continued in Code of Civil Procedure Section
26 1123.330. The former second sentence of subdivision (b)(2) is continued in Code of Civil
27 Procedure Section 1123.720(b).

28 ADMINISTRATIVE PROCEDURE ACT — ADJUDICATION

29 Gov't Code § 11523 (repealed). Judicial review

30 11523. Judicial review may be had by filing a petition for a writ of mandate in
31 accordance with the provisions of the Code of Civil Procedure, subject, however,
32 to the statutes relating to the particular agency. Except as otherwise provided in
33 this section, the petition shall be filed within 30 days after the last day on which
34 reconsideration can be ordered. The right to petition shall not be affected by the
35 failure to seek reconsideration before the agency. On request of the petitioner for
36 a record of the proceedings, the complete record of the proceedings, or the parts
37 thereof as are designated by the petitioner in the request, shall be prepared by the
38 Office of Administrative Hearings or the agency and shall be delivered to
39 petitioner, within 30 days after the request, which time shall be extended for good
40 cause shown, upon the payment of the fee specified in Section 69950 for the
41 transcript, the cost of preparation of other portions of the record and for
42 certification thereof. Thereafter, the remaining balance of any costs or charges for

1 the preparation of the record shall be assessed against the petitioner whenever
2 the agency prevails on judicial review following trial of the cause. These costs or
3 charges constitute a debt of the petitioner which is collectible by the agency in
4 the same manner as in the case of an obligation under a contract, and no license
5 shall be renewed or reinstated where the petitioner has failed to pay all of these
6 costs or charges. The complete record includes the pleadings, all notices and
7 orders issued by the agency, any proposed decision by an administrative law
8 judge, the final decision, a transcript of all proceedings, the exhibits admitted or
9 rejected, the written evidence and any other papers in the case. Where petitioner,
10 within 10 days after the last day on which reconsideration can be ordered,
11 requests the agency to prepare all or any part of the record the time within which
12 a petition may be filed shall be extended until 30 days after its delivery to him or
13 her. The agency may file with the court the original of any document in the
14 record in lieu of a copy thereof. In the event that the petitioner prevails in
15 overturning the administrative decision following judicial review, the agency shall
16 reimburse the petitioner for all costs of transcript preparation, compilation of the
17 record, and certification.

18 **Comment.** The first sentence of former Section 11523, as amended by 1995 Cal. Stat. ch.
19 938, is continued in Code of Civil Procedure Sections 1120 (application of title) and
20 1121.110 (conflicting or inconsistent statute controls).

21 The second sentence is superseded by Code of Civil Procedure Section 1123.630 (time for
22 filing petition for review of decision in adjudicative proceeding).

23 The third sentence is restated in Code of Civil Procedure Section 1123.320 (administrative
24 review of final decision).

25 The first portion of the fourth sentence is continued in Code of Civil Procedure Section
26 1123.730 (preparation of record). The last portion of the fourth sentence is continued in
27 substance in Code of Civil Procedure Section 1123.810 (fee for preparing record).

28 The fifth sentence is superseded by Code of Civil Procedure Section 1123.820.

29 The first portion of the sixth sentence is omitted as unnecessary, since under Section
30 11243.735(b) the cost of the record is recoverable by the prevailing party, and under general
31 rules of civil procedure costs of suit are included in the judgment. See Code Civ. Proc. §
32 1034(a); Cal. Ct. R. 870(b)(4). The last portion of the sixth sentence is continued in Code of
33 Civil Procedure Section 1123.830.

34 The seventh sentence is superseded by Code of Civil Procedure Section 1123.720 (contents
35 of administrative record).

36 The eighth sentence is superseded by Code of Civil Procedure Section 1123.650 (time for
37 filing petition for review of decision in adjudicative proceeding).

38 The ninth sentence is continued in substance in Code of Civil Procedure Section 1123.620
39 (applicability of rules of practice for civil actions) and Evidence Code Section 1511
40 (duplicate and original of a writing generally admissible to same extent).

41 The tenth sentence is continued in substance in Code of Civil Procedure Section 1123.820.

42 **Gov't Code § 11524 (amended). Continuances; grant time; good cause; denial; notice**
43 **review**

44 11524. (a) The agency may grant continuances. When an administrative law
45 judge of the Office of Administrative Hearings has been assigned to the hearing,
46 no continuance may be granted except by him or her or by the presiding judge of

1 the appropriate regional office of the Office of Administrative Hearings, for good
2 cause shown.

3 (b) When seeking a continuance, a party shall apply for the continuance within
4 10 working days following the time the party discovered or reasonably should
5 have discovered the event or occurrence which establishes the good cause for
6 the continuance. A continuance may be granted for good cause after the 10
7 working days have lapsed if the party seeking the continuance is not responsible
8 for and has made a good faith effort to prevent the condition or event
9 establishing the good cause.

10 ~~(c) In the event that an application for a continuance by a party is denied by an~~
11 ~~administrative law judge of the Office of Administrative Hearings, and the party~~
12 ~~seeks judicial review thereof, the party shall, within 10 working days of the denial,~~
13 ~~make application for appropriate judicial relief in the superior court or be barred~~
14 ~~from judicial review thereof as a matter of jurisdiction. A party applying for~~
15 ~~judicial relief from the denial shall give notice to the agency and other parties.~~
16 ~~Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be~~
17 ~~either oral at the time of the denial of application for a continuance or written at~~
18 ~~the same time application is made in court for judicial relief. This subdivision does~~
19 ~~not apply to the Department of Alcoholic Beverage Control.~~

20 **Comment.** Section 11524 is amended to delete the provision for immediate review of
21 denial of a continuance. Standard principles of finality and exhaustion of administrative
22 remedies apply to this and other preliminary decisions in adjudicative proceeding. See, e.g.,
23 Code Civ. Proc. § 1123.310 (exhaustion required).

24 STATE PERSONNEL BOARD

25 **Gov't Code § 19630 (amended). When action barred; compensation after cause arose;**
26 **cause of action after final decision of board**

27 19630. (a) No action or proceeding shall be brought by any person having or
28 claiming to have a cause of action or complaint or ground for issuance of any
29 complaint or legal remedy for wrongs or grievances based on or related to any
30 civil service law in this state, or the administration thereof, unless that action or
31 proceeding is commenced and served within one year after the cause of action or
32 complaint or ground for issuance of any writ or legal remedy first arose. The
33 person shall not be compensated for the time subsequent to the date when the
34 cause or ground arose unless that action or proceeding is filed and served within
35 90 days after the cause or ground arose. Where an appeal is taken from a decision
36 of the board, the cause of action does not arise until the final decision of the
37 board.

38 (b) Notwithstanding subdivision (a), judicial review of a decision of the board in
39 an adjudicative proceeding is subject to the time limits specified in Section
40 1123.650 of the Code of Civil Procedure.

(c) This section shall not be applicable to any action or proceeding for the collection of salary or wage, the amount of which is not disputed by the state agency owing that salary or wage.

Comment. Section 19630 is amended to add subdivision (b) to make clear that judicial review of an adjudicative proceeding of the State Personnel Board is subject to the time limits in the judicial review provisions in the Code of Civil Procedure.

LOCAL AGENCIES

Gov't Code § 54962 (added). Decision; record of proceedings

54962. (a) This section applies to a decision of a local agency, other than a school district, suspending, demoting, or dismissing an officer or employee, revoking or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(b) If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing.

(c) Judicial review of the decision shall be under Title 2 (commencing with 1120) of Part 3 of the Code of Civil Procedure.

Comment. Subdivision (a) of Section 54962 continues subdivision (e) of former Code of Civil Procedure Section 1094.6. Subdivision (b) continues the third sentence of subdivision (b) of former Code of Civil Procedure Section 1094.6. Subdivision (c) is new.

ZONING ADMINISTRATION

Gov't Code § 65907 (amended). Time for attacking administrative determination

65907. (a) ~~Except as otherwise provided by ordinance, any action or proceeding to attack, review, set aside, void, or annul~~ A proceeding for judicial review of any decision of matters listed in Sections 65901 and 65903, or concerning of any of the proceedings, acts, or determinations taken, done, or made prior to such the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, shall not be maintained by any person unless the action or proceeding is commenced within 90 days and the legislative body is served within 120 days after the date of the decision. Thereafter, shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. After the time provided in Section 1123.650 of the Code of Civil Procedure has expired, all persons are barred from any such action or a proceeding for judicial review or any defense of invalidity or unreasonableness of that decision or of these proceedings, acts, or determinations. All actions A proceeding for judicial review brought pursuant to this section shall be given preference over all other civil matters before the court, except probate, eminent domain, and forcible entry and unlawful detainer proceedings.

(b) Notwithstanding Section 65803, this section shall apply to charter cities.

1 ~~(c) The amendments to subdivision (a) shall apply to decisions made pursuant to~~
2 ~~this division on or after January 1, 1984.~~

3 **Comment.** Subdivision (a) of Section 65907 is amended to make proceedings to which it
4 applies subject to the judicial review provisions in the Code of Civil Procedure. Subdivision
5 (c) is deleted as no longer necessary.

6 AGRICULTURAL LABOR RELATIONS BOARD

7 **Lab. Code § 1160.8 (amended). Review of final order of board; procedure**

8 1160.8. Any person aggrieved by the final order of the board granting or
9 denying in whole or in part the relief sought may obtain a review of such the
10 order in the court of appeal having jurisdiction over the county wherein the
11 unfair labor practice in question was alleged to have been engaged in, or wherein
12 such the person resides or transacts business, ~~by filing in such court a written~~
13 ~~petition requesting that the order of the board be modified or set aside. Such~~
14 ~~petition shall be filed with the court within 30 days from the date of the issuance~~
15 ~~of the board's order under Title 2 (commencing with Section 1120) of Part 3 of~~
16 ~~the Code of Civil Procedure. Upon the filing of such the petition for review, the~~
17 court shall cause notice to be served upon the board and thereupon shall have
18 jurisdiction of the proceeding. The board shall file in the court the record of the
19 proceeding, certified by the board within 10 days after the clerk's notice unless
20 such the time is extended by the court for good cause shown. The court shall
21 have jurisdiction to grant to the board such any temporary relief or restraining
22 order it deems just and proper and in like manner to make and enter a decree
23 enforcing, modifying and enforcing as so modified, or setting aside in whole or in
24 part, the order of the board. ~~The findings of the board with respect to questions of~~
25 ~~fact if supported by substantial evidence on the record considered as a whole~~
26 ~~shall in like manner be conclusive.~~

27 An order directing an election shall not be stayed pending review, but such the
28 order may be reviewed as provided in Section 1158.

29 If the time for review of the board order has lapsed, and the person has not
30 voluntarily complied with the board's order, the board may apply to the superior
31 court in any county in which the unfair labor practice occurred or wherein such
32 the person resides or transacts business for enforcement of its order. If after
33 hearing, the court determines that the order was issued pursuant to procedures
34 established by the board and that the person refuses to comply with the order, the
35 court shall enforce such the order by writ of injunction or other proper process.
36 The court shall not review the merits of the order.

37 **Comment.** Section 1160.8 is amended to make proceedings to which it applies subject to
38 the judicial review provisions in the Code of Civil Procedure.

39 The former second sentence of Section 1160.8 which required the petition to be filed
40 within 30 days from the date of issuance of the board's order is superseded by Code of Civil
41 Procedure Section 1123.650. Under that section, the petition for review must be filed not later
42 than 30 days after the decision is effective. A decision is effective 30 days after it is delivered

or mailed to the respondent, unless the agency orders that it shall become effective sooner.
Gov't Code § 11519.

WORKERS' COMPENSATION APPEALS BOARD

Lab. Code § 5950 (amended). Judicial review

5950. Any person affected by an order, decision, or award of the appeals board may, ~~within the time limit specified in this section, apply to petition the Supreme Court or to the court of appeal for the appellate district in which he the person resides, for a writ of judicial review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration.~~

Comment. Section 5950 is amended to delete the second sentence specifying the time limit for judicial review. Under Code of Civil Procedure Section 1123.650, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.650((b)(2).

Lab. Code § 5951 (repealed). Writ of review

~~5951. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board as certified to by it.~~

Comment. Section 5951 is repealed because it is superseded by the judicial review provisions of the Code of Civil Procedure. See Section 5954. The provision in the first sentence for the return of the writ of review is superseded by Code of Civil Procedure Section 1123.620. The provision in the first sentence for the record of the department is superseded by Code of Civil Procedure Section 1123.720. The second sentence is superseded by Code of Civil Procedure Sections 1123.710 (administrative record exclusive basis for judicial review) and 1123.760 (new evidence on judicial review).

Lab. Code § 5952 (repealed). Scope of review

~~5952. The review by the court shall not be extended further than to determine, based upon the entire record which shall be certified by the appeals board, whether:~~

- ~~(a) The appeals board acted without or in excess of its powers.~~
- ~~(b) The order, decision, or award was procured by fraud.~~
- ~~(c) The order, decision, or award was unreasonable.~~
- ~~(d) The order, decision, or award was not supported by substantial evidence.~~

(e) If findings of fact are made, such findings of fact support the order, decision, or award under review.

Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

Comment. Subdivisions (a) through (d) of former Section 5952 are superseded by Code of Civil Procedure Sections 1123.410-1123.460. See also Code Civ. Proc. § 1123.160 (condition of relief).

Subdivision (e) is superseded by Code of Civil Procedure Section 1123.750. The last sentence is superseded by Code of Civil Procedure Sections 1123.420 (interpretation or application of law) and 1123.710 (new evidence). Nothing in the Code of Civil Procedure provisions or in this article permits the court to hold a trial de novo.

Lab. Code § 5953 (amended). Right to appear in judicial review proceeding

5953. The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board. The parties to a judicial review proceeding are the appeals board and each party to the action or proceeding before the appeals board shall have the right to appear in the review proceeding. Upon the hearing, the court shall enter judgment either affirming or annulling the order, decision, or award, or the court may remand the case for further proceedings before the appeals board whose interest is adverse to the petitioner for judicial review.

Comment. Section 5953 is largely superseded by the judicial review provisions of the Code of Civil Procedure. See Section 5954. The first sentence is superseded by Code of Civil Procedure Section 1123.430. The second sentence is superseded by Code of Civil Procedure Section 1123.420. The fourth sentence is superseded by Code of Civil Procedure Section 1123.680.

Lab. Code § 5954 (amended). Judicial review

5954. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings in the courts under the provisions of this article. A copy of every pleading filed pursuant to the terms of this article shall be served on the appeals board and upon every party who entered an appearance in the action before the appeals board and whose interest therein is adverse to the party filing such pleading. Judicial review shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

Comment. Section 5954 is amended to replace the former provisions with a reference to the judicial review provisions of the Code of Civil Procedure. Special provisions of this article prevail over general provisions of the Code of Civil Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls). Copies of pleadings in judicial review proceedings must be served on the parties. See Code Civ. Proc. §§ 1123.610 (petition for review), 1123.620 (applicability of rules of practice for civil actions).

Lab. Code § 5955 (amended). Courts having jurisdiction; mandate

5955. No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul

any order, rule, decision, or award of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties ~~but a writ of mandate shall lie from the Supreme Court or a court of appeal in all proper cases.~~

Comment. Section 5955 is amended to delete the former reference to a writ of mandate. The writ of mandate has been replaced by a petition for review. See Section 5954; Code Civ. Proc. § 1123.610 (petition for review). See also Code Civ. Proc. § 1123.510(b) (original writ jurisdiction of Supreme Court and courts of appeal not affected).

Lab. Code § 5956 (repealed). Stay of order

~~5956. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, decision, or award of the appeals board, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, decision, or award of the appeals board subject to review, upon the terms and conditions which it by order directs, except as provided in Article 3 of this chapter.~~

Comment. Former Section 5956 is superseded by Code of Civil Procedure Section 1123.670 (stays). The stay provisions of the Code of Civil Procedure are subject to Article 3 (commencing with Section 6000) (undertaking on stay order). See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute prevails).

Lab. Code § 6000 (amended). Undertaking on stay order

6000. The operation of any order, decision, or award of the appeals board under the provisions of this division or any judgment entered thereon, shall not at any time be stayed by the court to which petition is made for a writ of judicial review, unless an undertaking is executed on the part of the petitioner.

Comment. Section 6000 is amended reflect replacement of the writ of review by the judicial review procedure in Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The stay provisions of Code of Civil Procedure Section 1123.670 are subject to this article. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute prevails).

CALIFORNIA ENERGY COMMISSION

Pub. Res. Code § 25531 (amended). Judicial review

25531. (a) The decisions of the commission on any application of any electric utility for certification of a site and related facility are subject to judicial review in the same manner as the decisions of the Public Utilities Commission on the application for a Certificate of Public Convenience and Necessity for the same site and related facility.

(b) ~~No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and~~

1 conclusions of the commission on questions of fact are final and are not subject to
2 review, except as provided in this article. These questions of fact shall include
3 ultimate facts and the findings and conclusions of the commission. A report
4 prepared by, or an approval of, the commission pursuant to Section 25510, 25514,
5 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a
6 decision of the commission subject to judicial review.

7 (c) Subject to the right of judicial review of decisions of the commission, no
8 court in this state has jurisdiction to hear or determine any case or controversy
9 concerning any matter which was, or could have been, determined in a
10 proceeding before the commission, or to stop or delay the construction or
11 operation of any thermal powerplant except to enforce compliance with the
12 provisions of a decision of the commission.

13 (d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

14 (1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a
15 condition of certification of any site and related facility, that the applicant acquire
16 development rights, that requirement conclusively establishes the matters referred
17 to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any
18 eminent domain proceeding brought by the applicant to acquire the development
19 rights.

20 (2) If the commission certifies any site and related facility, that certification
21 conclusively establishes the matters referred to in Sections 1240.030 and
22 1240.220 of the Code of Civil Procedure in any eminent domain proceeding
23 brought to acquire the site and related facility.

24 (e) No decision of the commission pursuant to Section 25516, 25522, or 25523
25 shall be found to mandate a specific supply plan for any utility as prohibited by
26 Section 25323.

27 **Comment.** Subdivision (b) of Section 25531 is amended to delete first four sentences
28 which are superseded by Code of Civil Procedure Sections 1123.710 (administrative record
29 exclusive basis for review), 1123.420 (standard of review of questions of law), and 1123.430
30 (standard of review of fact-finding). The provisions for judicial review in the Code of Civil
31 Procedure apply to proceedings of the Energy Commission under subdivision (a), which
32 incorporates provisions for judicial review of decisions of the Public Utilities Commission.
33 See Pub. Util. Code § 1756.

34 *Staff Note.* The Law Revision Commission has not made a final decision on judicial review
35 of proceedings of the Energy Commission. This will depend on what action the Legislature
36 takes on Senate Bill 1322.

37 PUBLIC UTILITIES COMMISSION

38 **Pub. Util. Code § 1756 (amended). Review of commission decisions**

39 1756. (a) Within 30 days after the commission issues its decision denying the
40 application for a rehearing, or, if the application was granted, then within 30 days
41 after the commission issues its decision on rehearing, the applicant may apply to
42 the Supreme Court of this state for a writ of certiorari or judicial review for the

1 purpose of having the lawfulness of the original order or decision or of the order
2 or decision on rehearing inquired into and determined. The writ shall be made
3 returnable at a time and place then or thereafter specified by court order and shall
4 direct the commission to certify its record in the case to the court within the time
5 therein specified. For purposes of this article, the date upon which the commission
6 issues its decision denying rehearing, or issues its decision on rehearing, is the
7 date when the commission mails the decision to the parties to the action or
8 proceeding.

9 (b) Judicial review of decisions of the commission shall be under Title 2
10 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

11 **Comment.** Section 1756 is amended to add subdivision (b) to make judicial review of
12 decisions of the Public Utilities Commission subject to general provisions in the Code of Civil
13 Procedure for review of agency action. The former second sentence of Section 1756 is
14 superseded by Code of Civil Procedure Sections 1123.620 (applicability of rules of practice
15 for civil actions) and 1123.730 (time to prepare record).

16 Conflicting or inconsistent provisions of this article prevail over the provisions in the Code
17 of Civil Procedure for review of agency action. See Code Civ. Proc. § 1121.110.

18 *Staff Note.* The Law Revision Commission has not made a final decision on judicial review
19 of proceedings of the Public Utilities Commission. This will depend on what action the
20 Legislature takes on Senate Bill 1322.

21 **Pub. Util. Code § 1757 (repealed). New evidence; finality**

22 ~~1757. No new or additional evidence may be introduced in the Supreme Court,~~
23 ~~but the cause shall be heard on the record of the commission as certified to by it.~~
24 ~~The review shall not be extended further than to determine whether the~~
25 ~~commission has regularly pursued its authority, including a determination of~~
26 ~~whether the order or decision under review violates any right of the petitioner~~
27 ~~under the Constitution of the United States or of this State.~~

28 ~~The findings and conclusions of the commission on questions of fact shall be~~
29 ~~final and not be subject to review except as provided in this article. Such~~
30 ~~questions of fact shall include ultimate facts and the findings and conclusions of~~
31 ~~the commission on reasonableness and discrimination.~~

32 **Comment.** Former Section 1757 is superseded by Section 1756. New or additional
33 evidence may be considered by the Supreme Court to the limited extent provided by Code of
34 Civil Procedure Section 1123.760 (new evidence generally admissible only if it could not
35 with reasonable diligence have been produced at the hearing or was improperly excluded).

36 **Pub. Util. Code § 1758 (repealed). Parties; judgment; procedure**

37 ~~1758. The commission and each party to the action or proceeding before the~~
38 ~~commission may appear in the review proceeding. Upon the hearing the Supreme~~
39 ~~Court shall enter judgment either affirming or setting aside the order or decision~~
40 ~~of the commission. The provisions of the Code of Civil Procedure relating to writs~~
41 ~~of review shall, so far as applicable and not in conflict with the provisions of this~~
42 ~~part, apply to proceedings instituted in the Supreme Court under the provisions~~
43 ~~of this article.~~

1 **Comment.** Former Section 1758 is superseded by Section 1756 (judicial review is under
2 Code of Civil Procedure Sections 1120-1123.850).

3 **Pub. Util. Code § 1760 (repealed). Independent judgment**

4 ~~1760. In any proceeding wherein the validity of any order or decision is~~
5 ~~challenged on the ground that it violates any right of petitioner under the~~
6 ~~Constitution of the United States, the Supreme Court shall exercise an~~
7 ~~independent judgment on the law and the facts, and the findings or conclusions~~
8 ~~of the commission material to the determination of the constitutional question~~
9 ~~shall not be final.~~

10 **Comment.** Former Section 1760 is superseded by Section 1756 (judicial review is under
11 Code of Civil Procedure Sections 1120-1123.850).

12 UNEMPLOYMENT INSURANCE APPEALS BOARD

13 **Unemp. Ins. Code § 410 (amended). Finality of decisions; judicial review**

14 410. A decision of the appeals board is final, except for such action as that may
15 be taken by a judicial tribunal as permitted or required by law.

16 A decision of the appeals board is binding on the director with respect to the
17 parties involved in the particular appeal.

18 The director shall have the right to seek judicial review from an appeals board
19 decision irrespective of whether or not he or she appeared or participated in the
20 appeal to the administrative law judge or to the appeals board.

21 Notwithstanding any other provision of law, the right of the director, or of any
22 other party except as provided by Sections 1241, 1243, and 5313, to seek judicial
23 review from an appeals board decision shall be exercised ~~not later than six~~
24 ~~months after the date of the decision of the appeals board~~ within the period
25 provided in Section 1123.650 of the Code of Civil Procedure or not later than 30
26 days after the date on which the decision of the appeals board is designated as a
27 precedent decision, whichever is later.

28 The appeals board shall attach to all of its decisions where a request for review
29 may be taken, an explanation of the party's right to seek such review.

30 **Comment.** Section 410 is amended to make the time limit to seek judicial review subject to
31 the general time limits for judicial review under the judicial review provisions of the Code of
32 Civil Procedure. Special provisions of this section prevail over general provisions of the Code
33 of Civil Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or
34 inconsistent statute controls).

35 DEPARTMENT OF MOTOR VEHICLES

36 **Veh. Code § 13559 (amended). Petition for review**

37 ~~13559. (a) Notwithstanding Section 14400 or 14401, within 30 days of the~~
38 ~~issuance of the notice of determination of the department sustaining an order of~~
39 ~~suspension or revocation of the person's privilege to operate a motor vehicle~~

1 after the hearing pursuant to Section 13558, the person may file a petition for
2 review of the order in the court of competent jurisdiction in the person's county
3 of residence. The filing of a petition for judicial review shall not stay the order of
4 suspension or revocation. The review shall be on the record of the hearing and
5 the court shall not consider other evidence. If the court finds that the department
6 exceeded its constitutional or statutory authority, made an erroneous
7 interpretation of the law, acted in an arbitrary and capricious manner, or made a
8 determination which is not supported by the evidence in the record, the court
9 may order the department to rescind the order of suspension or revocation and
10 return, or reissue a new license to, the person.

11 (b) A finding by the court after a review pursuant to this section of an order of
12 suspension or revocation of a person's privilege to operate a motor vehicle shall
13 have no collateral estoppel effect on a subsequent criminal prosecution and does
14 not preclude relitigation of those same facts in the criminal proceeding.

15 **Comment.** Former subdivision (a) of Section 13559 is deleted. Judicial review of an order
16 of suspension or revocation of a person's privilege to operate a motor vehicle is subject to
17 Code of Civil Procedure Sections 1120-1123.760. See Code Civ. Proc. § 1120 (application of
18 title).

19 **Veh. Code § 14401 (amended). Statute of limitations on review**

20 14401. (a) Any action brought in a court of competent jurisdiction to review
21 any order of the department refusing, canceling, placing on probation,
22 suspending, or revoking the privilege of a person to operate a motor vehicle shall
23 be commenced within 90 days from the date the order is noticed.

24 (b) Upon final completion of all administrative appeals, the person whose
25 driving privilege was refused, canceled, placed on probation, suspended, or
26 revoked shall be given written notice by the department of his or her right to a
27 review by a court pursuant to subdivision (a) under Title 2 (commencing with
28 Section 1120) of Part 3 of the Code of Civil Procedure.

29 **Comment.** Former subdivision (a) of Section 14401 is deleted. Judicial review of orders of
30 the Department of Motor Vehicles is subject to subject to Code of Civil Procedure Sections
31 1120-1123.760. See Code Civ. Proc. § 1120 (application of title). The time to file a petition
32 for judicial review is prescribed in Code of Civil Procedure Section 1123.650.

33 **DEPARTMENT OF SOCIAL SERVICES**

34 **Welf. & Inst. Code § 10962 (amended). Judicial review**

35 10962. The applicant or recipient or the affected county, within one year after
36 receiving notice of the director's final decision, may file a petition with the
37 superior court, for review under the provisions of Section 1094.5 Title 2
38 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,
39 praying for a review of the entire proceedings in the matter, upon questions of
40 law involved in the case. Such . The review, if granted, shall be the exclusive
41 remedy available to the applicant or recipient or county for review of the

1 director's decision. The director shall be the sole respondent in such the
2 proceedings. Immediately upon being served the director shall serve a copy of the
3 petition on the other party entitled to judicial review and such that party shall
4 have the right to intervene in the proceedings.

5 No filing fee shall be required for the filing of a petition for review pursuant to
6 this section. ~~Any such petition to the superior court~~ The proceeding for judicial
7 review shall be entitled to a preference in setting a date for hearing ~~on the~~
8 ~~petition~~. No bond shall be required in the case of any petition for review, nor in
9 any appeal ~~therefrom~~ from the decision of the superior court. The applicant or
10 recipient shall be entitled to reasonable attorney's fees and costs, if ~~he obtains a~~
11 ~~decision in his favor~~ the applicant or recipient obtains a favorable decision.

12 **Comment.** Section 10962 is amended to make judicial review of a welfare decision of the
13 Department of Social Services subject to the judicial review provisions in the Code of Civil
14 Procedure. Judicial review is in the superior court. Code Civ. Proc. § 1123.510. The time to
15 file a petition for judicial review is prescribed in Code of Civil Procedure Section 1123.650.
16 The scope of review is prescribed in Code of Civil Procedure Sections 1123.410-1123.460.
17 See also Code Civ. Proc. § 1123.160 (condition of relief).

18 Special provisions of this section prevail over general provisions of the Code of Civil
19 Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or
20 inconsistent statute controls).

21 **Staff Note.** *The Commission solicits comments on whether the one-year statute of limitations*
22 *in Section 10962 should be preserved.*

23 BILL PROVISIONS

24 **Uncodified (added). Severability**

25 SEC. _____. The provisions of this act are severable. If any provision of this act or
26 its application is held invalid, that invalidity shall not affect other provisions or
27 applications that can be given effect without the invalid provision or application.

28 **Uncodified (added). Operative date; application to pending proceedings**

29 SEC. _____. (a) Except as provided in this section, this act becomes operative on
30 January 1, 1999.

31 (b) This act does not apply to a proceeding for judicial review of agency action
32 pending on the operative date, and the applicable law in effect continues to apply
33 to the proceeding.

34 (c) On and after January 1, 1998, the Judicial Council may adopt any rules of
35 court necessary so that this act may become operative on January 1, 1999.

1 ~~(f) In making a final decision as defined in subdivision (e), the local agency shall~~
2 ~~provide notice to the party that the time within which judicial review must be~~
3 ~~sought is governed by this section.~~

4 ~~As used in this subdivision, “party” means an officer or employee who has~~
5 ~~been suspended, demoted or dismissed; a person whose permit, license, or other~~
6 ~~entitlement has been revoked or suspended, or whose application for a permit,~~
7 ~~license, or other entitlement has been denied; or a person whose application for a~~
8 ~~retirement benefit or allowance has been denied.~~

9 ~~(g) This section shall prevail over any conflicting provision in any otherwise~~
10 ~~applicable law relating to the subject matter, unless the conflicting provision is a~~
11 ~~state or federal law which provides a shorter statute of limitations, in which case~~
12 ~~the shorter statute of limitations shall apply.~~

13 **Comment.** Subdivision (a) and the first sentence of subdivision (b) of former Section
14 1094.6 is superseded by Sections 1121.230 (“agency” defined), 1121.255 (“local agency”
15 defined), 1123.630 (time for filing petition for review), 1123.120 (finality), and 1123.140
16 (exception to finality requirement). The second, fourth, and fifth sentences of subdivision (b)
17 are superseded by Section 1123.120. The third sentence of subdivision (b) is continued in
18 Government Code Section 54962(b).

19 The first sentence of subdivision (c) is superseded by Section 1123.730 (preparation of the
20 record). The second sentence of subdivision (c) is superseded by Section 1123.810 (fee for
21 preparing record). The third sentence of subdivision (c) is superseded by Code of Civil
22 Procedure Section 1123.720.

23 Subdivision (d) is superseded by Section 1123.630 (time for filing petition for review).
24 Under Section 1123.630, the time for filing the petition for review is not dependent on
25 receipt of the record, which normally will take place after the petition is filed.

26 Subdivision (e) is superseded by Section 1121.250 (“decision” defined). See also Gov’t
27 Code § 54962(a).

28 Subdivision (f) is continued in Sections 1123.630 (time for filing petition for review of
29 decision in adjudicative proceeding) and 1121.260 (“party” defined). Subdivision (g) is not
30 continued.

31 COMMISSION ON PROFESSIONAL COMPETENCE

32 **Educ. Code § 44945 (amended). Judicial review**

33 44945. The decision of the Commission on Professional Competence may, on
34 petition of either the governing board or the employee, be reviewed by a court of
35 competent jurisdiction ~~in the same manner as a decision made by a hearing officer~~
36 ~~under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title~~
37 ~~2 of the Government Code. The court, on review, shall exercise its independent~~
38 ~~judgment on the evidence under Title 2 (commencing with Section 1120) of Part~~
39 ~~3 of the Code of Civil Procedure.~~ The proceeding shall be set for hearing at the
40 earliest possible date and shall take precedence over all other cases, except older
41 matters of the same character and matters to which special precedence is given by
42 law.

43 **Comment.** Section 44945 is amended to make judicial review under this section subject to
44 the provisions for judicial review in the Code of Civil Procedure. The former second sentence

1 of Section 44945 is superseded by the standards of review in Code of Civil Procedure
2 Sections 1123.410-1123.460.

3 BOARD OF GOVERNORS OF CALIFORNIA COMMUNITY
4 COLLEGES

5 **Educ. Code § 87682 (amended). Judicial review**

6 87682. The decision of the arbitrator or administrative law judge, as the case
7 may be, may, on petition of either the governing board or the employee, be
8 reviewed by a court of competent jurisdiction ~~in the same manner as a decision~~
9 ~~made by an administrative law judge under Chapter 5 (commencing with Section~~
10 ~~11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on~~
11 ~~review, shall exercise its independent judgment on the evidence. under Title 2~~
12 ~~(commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The~~
13 proceeding shall be set for hearing at the earliest possible date and shall take
14 precedence over all other cases, except older matters of the same character and
15 matters to which special precedence is given by law.

16 **Comment.** Section 87682 is amended to make judicial review under this section subject to
17 the provisions for judicial review in the Code of Civil Procedure. The former second sentence
18 of Section 87682 is superseded by the standards of review in Code of Civil Procedure
19 Sections 1123.410-1123.460.

20 COSTS IN CIVIL ACTIONS RESULTING FROM ADMINISTRATIVE
21 PROCEEDINGS

22 **Gov't Code § 800 (repealed). Costs in action to review administrative proceeding**

23 800. ~~In any civil action to appeal or review the award, finding, or other~~
24 ~~determination of any administrative proceeding under this code or under any~~
25 ~~other provision of state law, except actions resulting from actions of the State~~
26 ~~Board of Control, where it is shown that the award, finding, or other~~
27 ~~determination of the proceeding was the result of arbitrary or capricious action or~~
28 ~~conduct by a public entity or an officer thereof in his or her official capacity, the~~
29 ~~complainant if he or she prevails in the civil action may collect reasonable~~
30 ~~attorney's fees, computed at one hundred dollars (\$100) per hour, but not to~~
31 ~~exceed seven thousand five hundred dollars (\$7,500), where he or she is~~
32 ~~personally obligated to pay the fees, from the public entity, in addition to any~~
33 ~~other relief granted or other costs awarded.~~

34 ~~This section is ancillary only, and shall not be construed to create a new cause~~
35 ~~of action.~~

36 ~~Refusal by a public entity or officer thereof to admit liability pursuant to a~~
37 ~~contract of insurance shall not be considered arbitrary or capricious action or~~
38 ~~conduct within the meaning of this section.~~

39 **Comment.** Former Section 800 is continued in Code of Civil Procedure Section 1123.850.

Staff Note. Conforming revisions to the statutes that refer to Government Code Section 800 will be set out in a separate document.

PUBLIC EMPLOYMENT RELATIONS BOARD

Gov't Code § 3520 (amended). Judicial review of unit determination or unfair practice case

3520. (a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from review of the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such review of the decision or order.

(c) ~~Such~~ The petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such the petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such the time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such any temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. ~~The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive.~~ The provisions of Title 1 (commencing with Section 1067) Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from judicial review of a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the appellate district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court

1 shall enforce such the order by writ of mandamus appropriate process. The court
2 shall not review the merits of the order.

3 **Comment.** Section 3520 is amended to make judicial review of the Public Employment
4 Relations Board subject to the provisions for judicial review in the Code of Civil Procedure,
5 except as provided in this section. The board is exempt from the provision in the Code of
6 Civil Procedure governing standard of review of questions of application of law to facts and
7 of pure questions of law, so existing case law will continue to apply to the board. See Code
8 Civ. Proc. § 1123.420(c) & Comment.

9 The former second sentence of subdivision (c) which required the petition to be filed within
10 30 days after issuance of the board's final order, order denying reconsideration, or order
11 joining in the request for judicial review, is superseded by Code of Civil Procedure Section
12 1123.650. Under that section, the petition for review must be filed not later than 30 days after
13 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
14 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
15 11519.

16 **Gov't Code § 3542 (amended). Review of unit determination**

17 3542. (a) No employer or employee organization shall have the right to judicial
18 review of a unit determination except: (1) when the board in response to a
19 petition from an employer or employee organization, agrees that the case is one of
20 special importance and joins in the request for such review; or (2) when the issue
21 is raised as a defense to an unfair practice complaint. A board order directing an
22 election shall not be stayed pending judicial review.

23 Upon receipt of a board order joining in the request for judicial review, a party
24 to the case may petition for a writ of extraordinary relief from judicial review of
25 the unit determination decision or order.

26 (b) Any charging party, respondent, or intervenor aggrieved by a final decision
27 or order of the board in an unfair practice case, except a decision of the board not
28 to issue a complaint in such a case, may petition for a writ of extraordinary relief
29 from such judicial review of the decision or order.

30 (c) ~~Such~~ The petition shall be filed in the district court of appeal in the appellate
31 district where the unit determination or unfair practice dispute occurred. ~~The~~
32 ~~petition shall be filed within 30 days after issuance of the board's final order,~~
33 ~~order denying reconsideration, or order joining in the request for judicial review,~~
34 ~~as applicable.~~ Upon the filing of such the petition, the court shall cause notice to
35 be served upon the board and thereupon shall have jurisdiction of the
36 proceeding. The board shall file in the court the record of the proceeding, certified
37 by the board, within 10 days after the clerk's notice unless ~~such the~~ time is
38 extended by the court for good cause shown. The court shall have jurisdiction to
39 grant to the board such any temporary relief or restraining order it deems just and
40 proper and in like manner to make and enter a decree enforcing, modifying, or
41 setting aside the order of the board. ~~The findings of the board with respect to~~
42 ~~questions of fact, including ultimate facts, if supported by substantial evidence on~~
43 ~~the record considered as a whole, are conclusive.~~ The provisions of Title 1
44 ~~(commencing with Section 1067)~~ Title 2 (commencing with Section 1120) of Part

1 3 of the Code of Civil Procedure relating to writs shall, except where specifically
2 superseded herein, apply to proceedings pursuant to this section.

3 (d) If the time to petition for ~~extraordinary relief from~~ judicial review of a board
4 decision has expired, the board may seek enforcement of any final decision or
5 order in a ~~district~~ court of appeal or a superior court in the appellate district where
6 the unit determination or unfair practice case occurred. The board shall respond
7 within 10 days to any inquiry from a party to the action as to why the board has
8 not sought court enforcement of the final decision or order. If the response does
9 not indicate that there has been compliance with the board's final decision or
10 order, the board shall seek enforcement of the final decision or order upon the
11 request of the party. The board shall file in the court the record of the proceeding,
12 certified by the board, and appropriate evidence disclosing the failure to comply
13 with the decision or order. If, after hearing, the court determines that the order
14 was issued pursuant to procedures established by the board and that the person
15 or entity refuses to comply with the order, the court shall enforce ~~such~~ the order
16 by ~~writ of mandamus~~ appropriate process. The court shall not review the merits of
17 the order.

18 **Comment.** Section 3542 is amended to make judicial review of the Public Employment
19 Relations Board subject to the provisions for judicial review in the Code of Civil Procedure,
20 except as provided in this section. Special provisions of this section prevail over general
21 provisions of the Code of Civil Procedure governing judicial review. See Code of Civil
22 Procedure Section 1121.110 (conflicting or inconsistent statute controls). The board is
23 exempt from the provision in the Code of Civil Procedure governing standard of review of
24 questions of application of law to facts and of pure questions of law, so existing case law will
25 continue to apply to the board. See Code Civ. Proc. § 1123.420(c) & Comment.

26 The former second sentence of subdivision (c) which required the petition to be filed within
27 30 days after issuance of the board's final order, order denying reconsideration, or order
28 joining in the request for judicial review, is superseded by Code of Civil Procedure Section
29 1123.650. Under that section, the petition for review must be filed not later than 30 days after
30 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
31 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
32 11519.

33 **Gov't Code § 3564 (amended). Judicial review of unit determination or unfair practice**
34 **case**

35 3564. (a) No employer or employee organization shall have the right to judicial
36 review of a unit determination except: (1) when the board in response to a
37 petition from an employer or employee organization, agrees that the case is one of
38 special importance and joins in the request for such review; or (2) when the issue
39 is raised as a defense to an unfair practice complaint. A board order directing an
40 election shall not be stayed pending judicial review.

41 Upon receipt of a board order joining in the request for judicial review, a party
42 to the case may petition for ~~a writ of extraordinary relief from~~ judicial review of
43 the unit determination decision or order.

44 (b) Any charging party, respondent, or intervenor aggrieved by a final decision
45 or order of the board in an unfair practice case, except a decision of the board not

1 to issue a complaint in such a case, may petition for a writ of extraordinary relief
2 from such judicial review of the decision or order.

3 (c) ~~Such~~ The petition shall be filed in the district court of appeal in the appellate
4 district where the unit determination or unfair practice dispute occurred. The
5 petition shall be filed within 30 days after issuance of the board's final order,
6 order denying reconsideration, or order joining in the request for judicial review,
7 as applicable. Upon the filing of such the petition, the court shall cause notice to
8 be served upon the board and thereupon shall have jurisdiction of the
9 proceeding. The board shall file in the court the record of the proceeding, certified
10 by the board, within 10 days after the clerk's notice unless such the time is
11 extended by the court for good cause shown. The court shall have jurisdiction to
12 grant to the board such any temporary relief or restraining order it deems just and
13 proper and in like manner to make and enter a decree enforcing, modifying, or
14 setting aside the order of the board. ~~The findings of the board with respect to~~
15 ~~questions of fact, including ultimate facts, if supported by substantial evidence on~~
16 ~~the record considered as a whole, are conclusive.~~ The provisions of Title 1
17 ~~(commencing with Section 1067)~~ Title 2 (commencing with Section 1120) of Part
18 3 of the Code of Civil Procedure relating to writs shall, except where specifically
19 superseded herein, apply to proceedings pursuant to this section.

20 (d) If the time to petition for extraordinary relief from judicial review of a board
21 decision has expired, the board may seek enforcement of any final decision or
22 order in a district court of appeal or a superior court in the appellate district where
23 the unit determination or unfair practice case occurred. If, after hearing, the court
24 determines that the order was issued pursuant to procedures established by the
25 board and that the person or entity refuses to comply with the order, the court
26 shall enforce such the order by writ of mandamus appropriate process. The court
27 shall not review the merits of the order.

28 **Comment.** Section 3564 is amended to make judicial review of the Public Employment
29 Relations Board subject to the provisions for judicial review in the Code of Civil Procedure.
30 The board is exempt from the provision in the Code of Civil Procedure governing standard of
31 review of questions of application of law to facts and of pure questions of law, so existing case
32 law will continue to apply to the board. See Code Civ. Proc. § 1123.420(c) & Comment.

33 The former second sentence of subdivision (c) which required the petition to be filed within
34 30 days after issuance of the board's final order, order denying reconsideration, or order
35 joining in the request for judicial review, is superseded by Code of Civil Procedure Section
36 1123.650. Under that section, the petition for review must be filed not later than 30 days after
37 the decision is effective. A decision is effective 30 days after it is delivered or mailed to the
38 respondent, unless the agency orders that it shall become effective sooner. Gov't Code §
39 11519.

40 ADMINISTRATIVE PROCEDURE ACT — RULEMAKING

41 Gov't Code § 11350 (amended). Judicial declaration on validity of regulation

42 11350. (a) Any interested person may obtain a judicial declaration as to the
43 validity of any regulation ~~by bringing an action for declaratory relief in the~~

1 superior court in accordance with under Title 2 (commencing with Section 1120)
2 of Part 3 of the Code of Civil Procedure. The right to a judicial determination shall
3 not be affected either by the failure to petition or to seek reconsideration of a
4 petition filed pursuant to Section 11347.1 before the agency promulgating the
5 regulations. The regulation may be declared to be invalid for a substantial failure
6 to comply with this chapter, or, in the case of an emergency regulation or order to
7 repeal, upon the ground that the facts recited in the statement do not constitute
8 an emergency within the provisions of Section 11346.1.

9 (b) In addition to any other ground that may exist, a regulation may be declared
10 invalid if either of the following exists:

11 (1) The agency's determination that the regulation is reasonably necessary to
12 effectuate the purpose of the statute, court decision, or other provision of law that
13 is being implemented, interpreted, or made specific by the regulation is not
14 supported by substantial evidence.

15 (2) The agency declaration pursuant to paragraph (8) of subdivision (a) of
16 Section 11346.5 is in conflict with substantial evidence in the record.

17 For purposes of this section, the record shall be deemed to consist of all material
18 maintained in the file of the rulemaking proceeding as defined in Section 11347.3.

19 (c) The approval of a regulation by the office or the Governor's overruling of a
20 decision of the office disapproving a regulation shall not be considered by a court
21 in any action for declaratory relief brought with respect to a proceeding for
22 judicial review of a regulation.

23 **Comment.** Section 11350 is amended to recognize that judicial review of agency
24 regulations is now accomplished under Title 2 of Part 3 of the Code of Civil Procedure. The
25 former second sentence of subdivision (a) is continued in Code of Civil Procedure Section
26 1123.330. The former second sentence of subdivision (b)(2) is continued in Code of Civil
27 Procedure Section 1123.720(b).

28 ADMINISTRATIVE PROCEDURE ACT — ADJUDICATION

29 Gov't Code § 11523 (repealed). Judicial review

30 11523. Judicial review may be had by filing a petition for a writ of mandate in
31 accordance with the provisions of the Code of Civil Procedure, subject, however,
32 to the statutes relating to the particular agency. Except as otherwise provided in
33 this section, the petition shall be filed within 30 days after the last day on which
34 reconsideration can be ordered. The right to petition shall not be affected by the
35 failure to seek reconsideration before the agency. On request of the petitioner for
36 a record of the proceedings, the complete record of the proceedings, or the parts
37 thereof as are designated by the petitioner in the request, shall be prepared by the
38 Office of Administrative Hearings or the agency and shall be delivered to
39 petitioner, within 30 days after the request, which time shall be extended for good
40 cause shown, upon the payment of the fee specified in Section 69950 for the
41 transcript, the cost of preparation of other portions of the record and for
42 certification thereof. Thereafter, the remaining balance of any costs or charges for

1 the preparation of the record shall be assessed against the petitioner whenever
2 the agency prevails on judicial review following trial of the cause. These costs or
3 charges constitute a debt of the petitioner which is collectible by the agency in
4 the same manner as in the case of an obligation under a contract, and no license
5 shall be renewed or reinstated where the petitioner has failed to pay all of these
6 costs or charges. The complete record includes the pleadings, all notices and
7 orders issued by the agency, any proposed decision by an administrative law
8 judge, the final decision, a transcript of all proceedings, the exhibits admitted or
9 rejected, the written evidence and any other papers in the case. Where petitioner,
10 within 10 days after the last day on which reconsideration can be ordered,
11 requests the agency to prepare all or any part of the record the time within which
12 a petition may be filed shall be extended until 30 days after its delivery to him or
13 her. The agency may file with the court the original of any document in the
14 record in lieu of a copy thereof. In the event that the petitioner prevails in
15 overturning the administrative decision following judicial review, the agency shall
16 reimburse the petitioner for all costs of transcript preparation, compilation of the
17 record, and certification.

18 **Comment.** The first sentence of former Section 11523, as amended by 1995 Cal. Stat. ch.
19 938, is continued in Code of Civil Procedure Sections 1120 (application of title) and
20 1121.110 (conflicting or inconsistent statute controls).

21 The second sentence is superseded by Code of Civil Procedure Section 1123.630 (time for
22 filing petition for review of decision in adjudicative proceeding).

23 The third sentence is restated in Code of Civil Procedure Section 1123.320 (administrative
24 review of final decision).

25 The first portion of the fourth sentence is continued in Code of Civil Procedure Section
26 1123.730 (preparation of record). The last portion of the fourth sentence is continued in
27 substance in Code of Civil Procedure Section 1123.810 (fee for preparing record).

28 The fifth sentence is superseded by Code of Civil Procedure Section 1123.820.

29 The first portion of the sixth sentence is omitted as unnecessary, since under Section
30 11243.735(b) the cost of the record is recoverable by the prevailing party, and under general
31 rules of civil procedure costs of suit are included in the judgment. See Code Civ. Proc. §
32 1034(a); Cal. Ct. R. 870(b)(4). The last portion of the sixth sentence is continued in Code of
33 Civil Procedure Section 1123.830.

34 The seventh sentence is superseded by Code of Civil Procedure Section 1123.720 (contents
35 of administrative record).

36 The eighth sentence is superseded by Code of Civil Procedure Section 1123.650 (time for
37 filing petition for review of decision in adjudicative proceeding).

38 The ninth sentence is continued in substance in Code of Civil Procedure Section 1123.620
39 (applicability of rules of practice for civil actions) and Evidence Code Section 1511
40 (duplicate and original of a writing generally admissible to same extent).

41 The tenth sentence is continued in substance in Code of Civil Procedure Section 1123.820.

42 **Gov't Code § 11524 (amended). Continuances; grant time; good cause; denial; notice**
43 **review**

44 11524. (a) The agency may grant continuances. When an administrative law
45 judge of the Office of Administrative Hearings has been assigned to the hearing,
46 no continuance may be granted except by him or her or by the presiding judge of

1 the appropriate regional office of the Office of Administrative Hearings, for good
2 cause shown.

3 (b) When seeking a continuance, a party shall apply for the continuance within
4 10 working days following the time the party discovered or reasonably should
5 have discovered the event or occurrence which establishes the good cause for
6 the continuance. A continuance may be granted for good cause after the 10
7 working days have lapsed if the party seeking the continuance is not responsible
8 for and has made a good faith effort to prevent the condition or event
9 establishing the good cause.

10 ~~(c) In the event that an application for a continuance by a party is denied by an~~
11 ~~administrative law judge of the Office of Administrative Hearings, and the party~~
12 ~~seeks judicial review thereof, the party shall, within 10 working days of the denial,~~
13 ~~make application for appropriate judicial relief in the superior court or be barred~~
14 ~~from judicial review thereof as a matter of jurisdiction. A party applying for~~
15 ~~judicial relief from the denial shall give notice to the agency and other parties.~~
16 ~~Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be~~
17 ~~either oral at the time of the denial of application for a continuance or written at~~
18 ~~the same time application is made in court for judicial relief. This subdivision does~~
19 ~~not apply to the Department of Alcoholic Beverage Control.~~

20 **Comment.** Section 11524 is amended to delete the provision for immediate review of
21 denial of a continuance. Standard principles of finality and exhaustion of administrative
22 remedies apply to this and other preliminary decisions in adjudicative proceeding. See, e.g.,
23 Code Civ. Proc. § 1123.310 (exhaustion required).

24 STATE PERSONNEL BOARD

25 **Gov't Code § 19630 (amended). When action barred; compensation after cause arose;**
26 **cause of action after final decision of board**

27 19630. (a) No action or proceeding shall be brought by any person having or
28 claiming to have a cause of action or complaint or ground for issuance of any
29 complaint or legal remedy for wrongs or grievances based on or related to any
30 civil service law in this state, or the administration thereof, unless that action or
31 proceeding is commenced and served within one year after the cause of action or
32 complaint or ground for issuance of any writ or legal remedy first arose. The
33 person shall not be compensated for the time subsequent to the date when the
34 cause or ground arose unless that action or proceeding is filed and served within
35 90 days after the cause or ground arose. Where an appeal is taken from a decision
36 of the board, the cause of action does not arise until the final decision of the
37 board.

38 (b) Notwithstanding subdivision (a), judicial review of a decision of the board in
39 an adjudicative proceeding is subject to the time limits specified in Section
40 1123.650 of the Code of Civil Procedure.

(c) This section shall not be applicable to any action or proceeding for the collection of salary or wage, the amount of which is not disputed by the state agency owing that salary or wage.

Comment. Section 19630 is amended to add subdivision (b) to make clear that judicial review of an adjudicative proceeding of the State Personnel Board is subject to the time limits in the judicial review provisions in the Code of Civil Procedure.

LOCAL AGENCIES

Gov't Code § 54962 (added). Decision; record of proceedings

54962. (a) This section applies to a decision of a local agency, other than a school district, suspending, demoting, or dismissing an officer or employee, revoking or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(b) If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing.

(c) Judicial review of the decision shall be under Title 2 (commencing with 1120) of Part 3 of the Code of Civil Procedure.

Comment. Subdivision (a) of Section 54962 continues subdivision (e) of former Code of Civil Procedure Section 1094.6. Subdivision (b) continues the third sentence of subdivision (b) of former Code of Civil Procedure Section 1094.6. Subdivision (c) is new.

ZONING ADMINISTRATION

Gov't Code § 65907 (amended). Time for attacking administrative determination

65907. (a) ~~Except as otherwise provided by ordinance, any action or proceeding to attack, review, set aside, void, or annul~~ A proceeding for judicial review of any decision of matters listed in Sections 65901 and 65903, or concerning of any of the proceedings, acts, or determinations taken, done, or made prior to such the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, shall not be maintained by any person unless the action or proceeding is commenced within 90 days and the legislative body is served within 120 days after the date of the decision. Thereafter, shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. After the time provided in Section 1123.650 of the Code of Civil Procedure has expired, all persons are barred from any such action or a proceeding for judicial review or any defense of invalidity or unreasonableness of that decision or of these proceedings, acts, or determinations. All actions A proceeding for judicial review brought pursuant to this section shall be given preference over all other civil matters before the court, except probate, eminent domain, and forcible entry and unlawful detainer proceedings.

(b) Notwithstanding Section 65803, this section shall apply to charter cities.

1 ~~(c) The amendments to subdivision (a) shall apply to decisions made pursuant to~~
2 ~~this division on or after January 1, 1984.~~

3 **Comment.** Subdivision (a) of Section 65907 is amended to make proceedings to which it
4 applies subject to the judicial review provisions in the Code of Civil Procedure. Subdivision
5 (c) is deleted as no longer necessary.

6 AGRICULTURAL LABOR RELATIONS BOARD

7 **Lab. Code § 1160.8 (amended). Review of final order of board; procedure**

8 1160.8. Any person aggrieved by the final order of the board granting or
9 denying in whole or in part the relief sought may obtain a review of such the
10 order in the court of appeal having jurisdiction over the county wherein the
11 unfair labor practice in question was alleged to have been engaged in, or wherein
12 such the person resides or transacts business, ~~by filing in such court a written~~
13 ~~petition requesting that the order of the board be modified or set aside. Such~~
14 ~~petition shall be filed with the court within 30 days from the date of the issuance~~
15 ~~of the board's order under Title 2 (commencing with Section 1120) of Part 3 of~~
16 ~~the Code of Civil Procedure. Upon the filing of such the petition for review, the~~
17 court shall cause notice to be served upon the board and thereupon shall have
18 jurisdiction of the proceeding. The board shall file in the court the record of the
19 proceeding, certified by the board within 10 days after the clerk's notice unless
20 such the time is extended by the court for good cause shown. The court shall
21 have jurisdiction to grant to the board such any temporary relief or restraining
22 order it deems just and proper and in like manner to make and enter a decree
23 enforcing, modifying and enforcing as so modified, or setting aside in whole or in
24 part, the order of the board. ~~The findings of the board with respect to questions of~~
25 ~~fact if supported by substantial evidence on the record considered as a whole~~
26 ~~shall in like manner be conclusive.~~

27 An order directing an election shall not be stayed pending review, but such the
28 order may be reviewed as provided in Section 1158.

29 If the time for review of the board order has lapsed, and the person has not
30 voluntarily complied with the board's order, the board may apply to the superior
31 court in any county in which the unfair labor practice occurred or wherein such
32 the person resides or transacts business for enforcement of its order. If after
33 hearing, the court determines that the order was issued pursuant to procedures
34 established by the board and that the person refuses to comply with the order, the
35 court shall enforce such the order by writ of injunction or other proper process.
36 The court shall not review the merits of the order.

37 **Comment.** Section 1160.8 is amended to make proceedings to which it applies subject to
38 the judicial review provisions in the Code of Civil Procedure.

39 The former second sentence of Section 1160.8 which required the petition to be filed
40 within 30 days from the date of issuance of the board's order is superseded by Code of Civil
41 Procedure Section 1123.650. Under that section, the petition for review must be filed not later
42 than 30 days after the decision is effective. A decision is effective 30 days after it is delivered

or mailed to the respondent, unless the agency orders that it shall become effective sooner.
Gov't Code § 11519.

WORKERS' COMPENSATION APPEALS BOARD

Lab. Code § 5950 (amended). Judicial review

5950. Any person affected by an order, decision, or award of the appeals board may, ~~within the time limit specified in this section, apply to petition the Supreme Court or to the court of appeal for the appellate district in which he the person resides, for a writ of judicial review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration.~~

Comment. Section 5950 is amended to delete the second sentence specifying the time limit for judicial review. Under Code of Civil Procedure Section 1123.650, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.650((b)(2).

Lab. Code § 5951 (repealed). Writ of review

~~5951. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board as certified to by it.~~

Comment. Section 5951 is repealed because it is superseded by the judicial review provisions of the Code of Civil Procedure. See Section 5954. The provision in the first sentence for the return of the writ of review is superseded by Code of Civil Procedure Section 1123.620. The provision in the first sentence for the record of the department is superseded by Code of Civil Procedure Section 1123.720. The second sentence is superseded by Code of Civil Procedure Sections 1123.710 (administrative record exclusive basis for judicial review) and 1123.760 (new evidence on judicial review).

Lab. Code § 5952 (repealed). Scope of review

~~5952. The review by the court shall not be extended further than to determine, based upon the entire record which shall be certified by the appeals board, whether:~~

- ~~(a) The appeals board acted without or in excess of its powers.~~
- ~~(b) The order, decision, or award was procured by fraud.~~
- ~~(c) The order, decision, or award was unreasonable.~~
- ~~(d) The order, decision, or award was not supported by substantial evidence.~~

(e) If findings of fact are made, such findings of fact support the order, decision, or award under review.

Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.

Comment. Subdivisions (a) through (d) of former Section 5952 are superseded by Code of Civil Procedure Sections 1123.410-1123.460. See also Code Civ. Proc. § 1123.160 (condition of relief).

Subdivision (e) is superseded by Code of Civil Procedure Section 1123.750. The last sentence is superseded by Code of Civil Procedure Sections 1123.420 (interpretation or application of law) and 1123.710 (new evidence). Nothing in the Code of Civil Procedure provisions or in this article permits the court to hold a trial de novo.

Lab. Code § 5953 (amended). Right to appear in judicial review proceeding

5953. The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board. The parties to a judicial review proceeding are the appeals board and each party to the action or proceeding before the appeals board shall have the right to appear in the review proceeding. Upon the hearing, the court shall enter judgment either affirming or annulling the order, decision, or award, or the court may remand the case for further proceedings before the appeals board whose interest is adverse to the petitioner for judicial review.

Comment. Section 5953 is largely superseded by the judicial review provisions of the Code of Civil Procedure. See Section 5954. The first sentence is superseded by Code of Civil Procedure Section 1123.430. The second sentence is superseded by Code of Civil Procedure Section 1123.420. The fourth sentence is superseded by Code of Civil Procedure Section 1123.680.

Lab. Code § 5954 (amended). Judicial review

5954. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings in the courts under the provisions of this article. A copy of every pleading filed pursuant to the terms of this article shall be served on the appeals board and upon every party who entered an appearance in the action before the appeals board and whose interest therein is adverse to the party filing such pleading. Judicial review shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

Comment. Section 5954 is amended to replace the former provisions with a reference to the judicial review provisions of the Code of Civil Procedure. Special provisions of this article prevail over general provisions of the Code of Civil Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls). Copies of pleadings in judicial review proceedings must be served on the parties. See Code Civ. Proc. §§ 1123.610 (petition for review), 1123.620 (applicability of rules of practice for civil actions).

Lab. Code § 5955 (amended). Courts having jurisdiction; mandate

5955. No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul

any order, rule, decision, or award of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties ~~but a writ of mandate shall lie from the Supreme Court or a court of appeal in all proper cases.~~

Comment. Section 5955 is amended to delete the former reference to a writ of mandate. The writ of mandate has been replaced by a petition for review. See Section 5954; Code Civ. Proc. § 1123.610 (petition for review). See also Code Civ. Proc. § 1123.510(b) (original writ jurisdiction of Supreme Court and courts of appeal not affected).

Lab. Code § 5956 (repealed). Stay of order

~~5956. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, decision, or award of the appeals board, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, decision, or award of the appeals board subject to review, upon the terms and conditions which it by order directs, except as provided in Article 3 of this chapter.~~

Comment. Former Section 5956 is superseded by Code of Civil Procedure Section 1123.670 (stays). The stay provisions of the Code of Civil Procedure are subject to Article 3 (commencing with Section 6000) (undertaking on stay order). See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute prevails).

Lab. Code § 6000 (amended). Undertaking on stay order

6000. The operation of any order, decision, or award of the appeals board under the provisions of this division or any judgment entered thereon, shall not at any time be stayed by the court to which petition is made for a writ of judicial review, unless an undertaking is executed on the part of the petitioner.

Comment. Section 6000 is amended reflect replacement of the writ of review by the judicial review procedure in Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The stay provisions of Code of Civil Procedure Section 1123.670 are subject to this article. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute prevails).

CALIFORNIA ENERGY COMMISSION

Pub. Res. Code § 25531 (amended). Judicial review

25531. (a) The decisions of the commission on any application of any electric utility for certification of a site and related facility are subject to judicial review in the same manner as the decisions of the Public Utilities Commission on the application for a Certificate of Public Convenience and Necessity for the same site and related facility.

(b) ~~No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and~~

1 conclusions of the commission on questions of fact are final and are not subject to
2 review, except as provided in this article. These questions of fact shall include
3 ultimate facts and the findings and conclusions of the commission. A report
4 prepared by, or an approval of, the commission pursuant to Section 25510, 25514,
5 25516, or 25516.5, or subdivision (b) of Section 25520.5, shall not constitute a
6 decision of the commission subject to judicial review.

7 (c) Subject to the right of judicial review of decisions of the commission, no
8 court in this state has jurisdiction to hear or determine any case or controversy
9 concerning any matter which was, or could have been, determined in a
10 proceeding before the commission, or to stop or delay the construction or
11 operation of any thermal powerplant except to enforce compliance with the
12 provisions of a decision of the commission.

13 (d) Notwithstanding Section 1250.370 of the Code of Civil Procedure:

14 (1) If the commission requires, pursuant to subdivision (a) of Section 25528, as a
15 condition of certification of any site and related facility, that the applicant acquire
16 development rights, that requirement conclusively establishes the matters referred
17 to in Sections 1240.030 and 1240.220 of the Code of Civil Procedure in any
18 eminent domain proceeding brought by the applicant to acquire the development
19 rights.

20 (2) If the commission certifies any site and related facility, that certification
21 conclusively establishes the matters referred to in Sections 1240.030 and
22 1240.220 of the Code of Civil Procedure in any eminent domain proceeding
23 brought to acquire the site and related facility.

24 (e) No decision of the commission pursuant to Section 25516, 25522, or 25523
25 shall be found to mandate a specific supply plan for any utility as prohibited by
26 Section 25323.

27 **Comment.** Subdivision (b) of Section 25531 is amended to delete first four sentences
28 which are superseded by Code of Civil Procedure Sections 1123.710 (administrative record
29 exclusive basis for review), 1123.420 (standard of review of questions of law), and 1123.430
30 (standard of review of fact-finding). The provisions for judicial review in the Code of Civil
31 Procedure apply to proceedings of the Energy Commission under subdivision (a), which
32 incorporates provisions for judicial review of decisions of the Public Utilities Commission.
33 See Pub. Util. Code § 1756.

34 *Staff Note.* The Law Revision Commission has not made a final decision on judicial review
35 of proceedings of the Energy Commission. This will depend on what action the Legislature
36 takes on Senate Bill 1322.

37 PUBLIC UTILITIES COMMISSION

38 **Pub. Util. Code § 1756 (amended). Review of commission decisions**

39 1756. (a) Within 30 days after the commission issues its decision denying the
40 application for a rehearing, or, if the application was granted, then within 30 days
41 after the commission issues its decision on rehearing, the applicant may apply to
42 the Supreme Court of this state for a writ of certiorari or judicial review for the

1 purpose of having the lawfulness of the original order or decision or of the order
2 or decision on rehearing inquired into and determined. The writ shall be made
3 returnable at a time and place then or thereafter specified by court order and shall
4 direct the commission to certify its record in the case to the court within the time
5 therein specified. For purposes of this article, the date upon which the commission
6 issues its decision denying rehearing, or issues its decision on rehearing, is the
7 date when the commission mails the decision to the parties to the action or
8 proceeding.

9 (b) Judicial review of decisions of the commission shall be under Title 2
10 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

11 **Comment.** Section 1756 is amended to add subdivision (b) to make judicial review of
12 decisions of the Public Utilities Commission subject to general provisions in the Code of Civil
13 Procedure for review of agency action. The former second sentence of Section 1756 is
14 superseded by Code of Civil Procedure Sections 1123.620 (applicability of rules of practice
15 for civil actions) and 1123.730 (time to prepare record).

16 Conflicting or inconsistent provisions of this article prevail over the provisions in the Code
17 of Civil Procedure for review of agency action. See Code Civ. Proc. § 1121.110.

18 *Staff Note.* The Law Revision Commission has not made a final decision on judicial review
19 of proceedings of the Public Utilities Commission. This will depend on what action the
20 Legislature takes on Senate Bill 1322.

21 **Pub. Util. Code § 1757 (repealed). New evidence; finality**

22 ~~1757. No new or additional evidence may be introduced in the Supreme Court,~~
23 ~~but the cause shall be heard on the record of the commission as certified to by it.~~
24 ~~The review shall not be extended further than to determine whether the~~
25 ~~commission has regularly pursued its authority, including a determination of~~
26 ~~whether the order or decision under review violates any right of the petitioner~~
27 ~~under the Constitution of the United States or of this State.~~

28 ~~The findings and conclusions of the commission on questions of fact shall be~~
29 ~~final and not be subject to review except as provided in this article. Such~~
30 ~~questions of fact shall include ultimate facts and the findings and conclusions of~~
31 ~~the commission on reasonableness and discrimination.~~

32 **Comment.** Former Section 1757 is superseded by Section 1756. New or additional
33 evidence may be considered by the Supreme Court to the limited extent provided by Code of
34 Civil Procedure Section 1123.760 (new evidence generally admissible only if it could not
35 with reasonable diligence have been produced at the hearing or was improperly excluded).

36 **Pub. Util. Code § 1758 (repealed). Parties; judgment; procedure**

37 ~~1758. The commission and each party to the action or proceeding before the~~
38 ~~commission may appear in the review proceeding. Upon the hearing the Supreme~~
39 ~~Court shall enter judgment either affirming or setting aside the order or decision~~
40 ~~of the commission. The provisions of the Code of Civil Procedure relating to writs~~
41 ~~of review shall, so far as applicable and not in conflict with the provisions of this~~
42 ~~part, apply to proceedings instituted in the Supreme Court under the provisions~~
43 ~~of this article.~~

1 **Comment.** Former Section 1758 is superseded by Section 1756 (judicial review is under
2 Code of Civil Procedure Sections 1120-1123.850).

3 **Pub. Util. Code § 1760 (repealed). Independent judgment**

4 ~~1760. In any proceeding wherein the validity of any order or decision is~~
5 ~~challenged on the ground that it violates any right of petitioner under the~~
6 ~~Constitution of the United States, the Supreme Court shall exercise an~~
7 ~~independent judgment on the law and the facts, and the findings or conclusions~~
8 ~~of the commission material to the determination of the constitutional question~~
9 ~~shall not be final.~~

10 **Comment.** Former Section 1760 is superseded by Section 1756 (judicial review is under
11 Code of Civil Procedure Sections 1120-1123.850).

12 UNEMPLOYMENT INSURANCE APPEALS BOARD

13 **Unemp. Ins. Code § 410 (amended). Finality of decisions; judicial review**

14 410. A decision of the appeals board is final, except for such action as that may
15 be taken by a judicial tribunal as permitted or required by law.

16 A decision of the appeals board is binding on the director with respect to the
17 parties involved in the particular appeal.

18 The director shall have the right to seek judicial review from an appeals board
19 decision irrespective of whether or not he or she appeared or participated in the
20 appeal to the administrative law judge or to the appeals board.

21 Notwithstanding any other provision of law, the right of the director, or of any
22 other party except as provided by Sections 1241, 1243, and 5313, to seek judicial
23 review from an appeals board decision shall be exercised ~~not later than six~~
24 ~~months after the date of the decision of the appeals board~~ within the period
25 provided in Section 1123.650 of the Code of Civil Procedure or not later than 30
26 days after the date on which the decision of the appeals board is designated as a
27 precedent decision, whichever is later.

28 The appeals board shall attach to all of its decisions where a request for review
29 may be taken, an explanation of the party's right to seek such review.

30 **Comment.** Section 410 is amended to make the time limit to seek judicial review subject to
31 the general time limits for judicial review under the judicial review provisions of the Code of
32 Civil Procedure. Special provisions of this section prevail over general provisions of the Code
33 of Civil Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or
34 inconsistent statute controls).

35 DEPARTMENT OF MOTOR VEHICLES

36 **Veh. Code § 13559 (amended). Petition for review**

37 ~~13559. (a) Notwithstanding Section 14400 or 14401, within 30 days of the~~
38 ~~issuance of the notice of determination of the department sustaining an order of~~
39 ~~suspension or revocation of the person's privilege to operate a motor vehicle~~

1 after the hearing pursuant to Section 13558, the person may file a petition for
2 review of the order in the court of competent jurisdiction in the person's county
3 of residence. The filing of a petition for judicial review shall not stay the order of
4 suspension or revocation. The review shall be on the record of the hearing and
5 the court shall not consider other evidence. If the court finds that the department
6 exceeded its constitutional or statutory authority, made an erroneous
7 interpretation of the law, acted in an arbitrary and capricious manner, or made a
8 determination which is not supported by the evidence in the record, the court
9 may order the department to rescind the order of suspension or revocation and
10 return, or reissue a new license to, the person.

11 (b) A finding by the court after a review pursuant to this section of an order of
12 suspension or revocation of a person's privilege to operate a motor vehicle shall
13 have no collateral estoppel effect on a subsequent criminal prosecution and does
14 not preclude relitigation of those same facts in the criminal proceeding.

15 **Comment.** Former subdivision (a) of Section 13559 is deleted. Judicial review of an order
16 of suspension or revocation of a person's privilege to operate a motor vehicle is subject to
17 Code of Civil Procedure Sections 1120-1123.760. See Code Civ. Proc. § 1120 (application of
18 title).

19 **Veh. Code § 14401 (amended). Statute of limitations on review**

20 14401. (a) Any action brought in a court of competent jurisdiction to review
21 any order of the department refusing, canceling, placing on probation,
22 suspending, or revoking the privilege of a person to operate a motor vehicle shall
23 be commenced within 90 days from the date the order is noticed.

24 (b) Upon final completion of all administrative appeals, the person whose
25 driving privilege was refused, canceled, placed on probation, suspended, or
26 revoked shall be given written notice by the department of his or her right to a
27 review by a court pursuant to subdivision (a) under Title 2 (commencing with
28 Section 1120) of Part 3 of the Code of Civil Procedure.

29 **Comment.** Former subdivision (a) of Section 14401 is deleted. Judicial review of orders of
30 the Department of Motor Vehicles is subject to subject to Code of Civil Procedure Sections
31 1120-1123.760. See Code Civ. Proc. § 1120 (application of title). The time to file a petition
32 for judicial review is prescribed in Code of Civil Procedure Section 1123.650.

33 **DEPARTMENT OF SOCIAL SERVICES**

34 **Welf. & Inst. Code § 10962 (amended). Judicial review**

35 10962. The applicant or recipient or the affected county, within one year after
36 receiving notice of the director's final decision, may file a petition with the
37 superior court, for review under the provisions of Section 1094.5 Title 2
38 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure,
39 praying for a review of the entire proceedings in the matter, upon questions of
40 law involved in the case. Such . The review, if granted, shall be the exclusive
41 remedy available to the applicant or recipient or county for review of the

1 director's decision. The director shall be the sole respondent in such the
2 proceedings. Immediately upon being served the director shall serve a copy of the
3 petition on the other party entitled to judicial review and such that party shall
4 have the right to intervene in the proceedings.

5 No filing fee shall be required for the filing of a petition for review pursuant to
6 this section. ~~Any such petition to the superior court~~ The proceeding for judicial
7 review shall be entitled to a preference in setting a date for hearing on the
8 petition. No bond shall be required in the case of any petition for review, nor in
9 any appeal therefrom from the decision of the superior court. The applicant or
10 recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a
11 decision in his favor the applicant or recipient obtains a favorable decision.

12 **Comment.** Section 10962 is amended to make judicial review of a welfare decision of the
13 Department of Social Services subject to the judicial review provisions in the Code of Civil
14 Procedure. Judicial review is in the superior court. Code Civ. Proc. § 1123.510. The time to
15 file a petition for judicial review is prescribed in Code of Civil Procedure Section 1123.650.
16 The scope of review is prescribed in Code of Civil Procedure Sections 1123.410-1123.460.
17 See also Code Civ. Proc. § 1123.160 (condition of relief).

18 Special provisions of this section prevail over general provisions of the Code of Civil
19 Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or
20 inconsistent statute controls).

21 **Staff Note.** The Commission solicits comments on whether the one-year statute of limitations
22 in Section 10962 should be preserved.

23 BILL PROVISIONS

24 **Uncodified (added). Severability**

25 SEC. _____. The provisions of this act are severable. If any provision of this act or
26 its application is held invalid, that invalidity shall not affect other provisions or
27 applications that can be given effect without the invalid provision or application.

28 **Uncodified (added). Operative date; application to pending proceedings**

29 SEC. _____. (a) Except as provided in this section, this act becomes operative on
30 January 1, 1999.

31 (b) This act does not apply to a proceeding for judicial review of agency action
32 pending on the operative date, and the applicable law in effect continues to apply
33 to the proceeding.

34 (c) On and after January 1, 1998, the Judicial Council may adopt any rules of
35 court necessary so that this act may become operative on January 1, 1999.