

First Supplement to Memorandum 97-5

1997 Legislative Program: SB 68 (Kopp) — quasi-public entity hearings

A number of persons have expressed concern that the application of SB 68 — the quasi-public entity hearing bill — is not clear. This concern comes not only from private entities that could be affected, but also from Judiciary Committee personnel.

The staff thinks we can do better in clarifying the application of the provision. We suggest the following language. We have shown this language to some of the persons who have been concerned, who believe it would be a significant improvement.

~~11410.60. (a) This chapter applies to a decision by a private entity if all of the following conditions are met:~~

~~(1) The entity is~~ As used in this section, “quasi-public entity” means an entity, other than a public entity, whether characterized by statute as a public corporation or public instrumentality or otherwise, expressly created by statute for the purpose of administration of a state function.

~~(2) Under (b) This chapter applies to an adjudicative proceeding conducted by a quasi-public entity if all of the following conditions are satisfied:~~

~~(1) A statute vests the power of decision in the quasi-public entity.~~

~~(2) A statute or the federal or state Constitution or a federal or state statute, requires an evidentiary hearing for determination of facts is required for formulation and issuance of the decision. Nothing in this section is intended to create an evidentiary hearing requirement that is not otherwise statutorily or constitutionally imposed.~~

~~(b) Notwithstanding subdivision (a), this chapter does not apply to a decision by a private entity if the decision is~~ (3) The decision is not otherwise subject to administrative review in an adjudicative proceeding to which this chapter applies.

~~(c) For the purpose of application of this chapter to a decision by a private quasi-public entity that meets the conditions specified in subdivision (a), unless the provision or context requires otherwise, the following terms have the following meanings:~~

(1) "Agency," as defined in Section 11405.30, also includes the ~~private quasi-public~~ entity.

(2) "Regulation" means includes a rule promulgated by the ~~private quasi-public~~ entity.

(d) (3) Article 8 (commencing with Section 11435.05), requiring language assistance in an adjudicative proceeding, applies to a ~~private quasi-public~~ entity ~~that meets the conditions specified in subdivision (a) to the same extent as a state agency under Section 11018.~~

Comment. Section 11410.60 applies this chapter to adjudicative decisions of quasi-public entities. ~~It is limited to decisions for which an evidentiary hearing by the quasi-public entity is statutorily or constitutionally required. A typical decision of this type might involve resolution of an assessment protest or a hearing on a claim that has been denied (provided the statute or constitution requires a hearing for a decision of that type). Cf. Section 11405.50 ("decision" is action of specific application that determines legal right or other legal interest of particular person). This chapter does not apply to legislative actions such as an election or negotiation and adoption of a health and welfare benefits plan, pension trust, or collective bargaining agreement by an industry or labor organization.~~

This section does not apply to a ~~private~~ an entity unless the entity was expressly created by statute for the purpose of administering a state function. Thus the statute governs hearings ~~of~~ required to be held by a statutory entity such as the Winegrowers of California Commission (Food & Agric. Code § 74061) or the Escrow Agents' Fidelity Corporation (Fin. Code § 17311). But the statute does not govern hearings of a private entity such as a licensed health care provider (Health & Safety Code § 1200 et seq.), a labor organization, or a board of trustees established pursuant to statute under an interindemnity, reciprocal, or interinsurance contract between members of a cooperative corporation (Ins. Code § 1280.7).

This section does not apply to the State Bar, including proceedings of the State Bar Court. See Bus. & Prof. Code § 6001.

The intent of this section is to provide fair hearing rules where a statute or the Constitution requires a hearing. This section is not intended to create any new hearing requirements. Thus, for example, this section does not apply to a decision of the Travel Consumer Restitution Corporation where the statute requires that the claim be decided on the written record, "with no hearing to be held." Bus. & Prof. Code § 17550.47.

Although subdivision (b) makes this chapter inapplicable to a quasi-public entity decision if the decision is otherwise reviewable in a proceeding governed by this chapter, the quasi-public entity may voluntarily adopt the procedural protections provided in this

chapter. *Cf.* Section 11410.40 (election to apply administrative adjudication provisions).

Respectfully submitted,

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