

## Memorandum 98-26

### Environment Code: Division 2 (General Provisions)

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<p><b>Note:</b> The proposed Environment Code is intended to reorganize and continue existing environmental statutory law without substantive change.</p>
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This memorandum discusses an issue first raised in relation to Division 2 of the proposed Environment Code — the effect of reorganizing environmental statutes that were added or affected by the Governor's Reorganization Plan, No. 1, of 1991.

#### **Background**

As discussed in Memorandums 98-20 and 98-22, a number of provisions that will be continued in the proposed Environment Code were created or amended by operation of the Governor's Reorganization Plan, No. 1, of 1991. Because a bill to codify the effect of that reorganization plan was never enacted, enactment of these provisions in the Environment Code will have the effect of codifying many of them for the first time. This codification would have no effect on the legal status of the reorganization plan, which operates regardless of whether it has been codified. See Gov't Code § 12081 (amendment of statutes to reflect changes made by plan).

#### **Political Opposition**

The California District Attorneys Association has pointed out that codification of provisions affected by the Governor's Reorganization Plan may be politically untenable. It appears that there has been significant dissatisfaction in the Legislature with the result of the reorganization plan, and the staff has been informed that some legislators would object to any legislation that implicitly endorses the reorganization plan. Codification could be interpreted as such an endorsement.

The staff has also learned that many of the causes of dissatisfaction may be addressed in the next legislative session. If so, then we can simply wait to see how the Legislature resolves its concerns and then codify the results. To this end, **the staff recommends pulling Part 1 (Environmental Agencies) of Division 2 (General) from the proposed Environment Code (as well as any related conforming revisions), and reserving that part for future use.** Part 1 contains the

great majority of the provisions affected by the Governor's Reorganization Plan, and constitutes about one third of the contents of Division 2. For an illustration of how the reservation of Part 1 would affect the composition of Division 2, see the Exhibit to this memorandum.

### **Scattered Sections**

Unfortunately, there are several sections affected by the Governor's Reorganization Plan that are not included in Part 1. These sections are problematic because they are more fully integrated with other environmental provisions. For example, Health and Safety Code Section 39606 was changed by the Governor's Reorganization Plan as follows:

39606. The state board shall:

(a) Based upon similar meteorological and geographic conditions and consideration for political boundary lines whenever practicable, divide the state into air basins to fulfill the purposes of this division.

(b) Adopt standards of ambient air quality for each air basin in consideration of the public health, safety, and welfare, including, but not limited to, health, illness, irritation to the senses, aesthetic value, interference with visibility, and effects on the economy. These standards may vary from one air basin to another. Standards relating to health effects shall be based upon the recommendations of the State Department of Health Services Office of Environmental Health Hazard Assessment.

Section 39606 governs the division of the state into air basins, a fundamental step in the administration of the state's air resources. Five other sections in the Air Resources division refer to Section 39606. See Health & Safety Code §§ 39012, 39606.1, 41500, 41804.5, 41865. Removing this section from the proposed Environment Code would leave a gap in the scheme governing the regulation of air quality. For other examples, in the Air Resources Division, of sections affected by the Governor's Reorganization Plan, see Health and Safety Code Sections 39511 (chair of State Air Resources Board), 39668 (air monitoring report), 41982 (toxic waste incineration permit), 41983 (toxic waste incineration permit), 42315 (waste-burning permit), 44343 (air toxics emission inventories), and 44361 (health risk assessments).

Because these sections are difficult to separate from the law surrounding them, it probably makes sense to include them in the draft of the proposed Environment Code, despite the fact that this will codify the effect of the Governor's Reorganization Plan as it relates to these sections. Hopefully, the

political opposition that attaches to endorsing the broad sweep of the Governor's Reorganization Plan would attach less strongly, if at all, to codifying these relatively minor effects of the Governor's Reorganization Plan.

Respectfully submitted,

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Staff Counsel

## Exhibit

This exhibit sets out the organization of Division 2 of the proposed Environment Code. Italicized portions would not be included if Part 1 is reserved as recommended in Memorandum 98-26.

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