Study N-200 November 19, 1999

Memorandum 99-78

Mandamus to Review Agency Action (Staff Draft Recommendation)

After considering responses to its tentative recommendation, *Mandamus to Review Agency Action: Selected Issues (June 1999)*, the Commission provisionally decided to recommend two changes to the law governing judicial review of agency action:

> (1) Superior court venue for mandamus to review state agency action should include Sacramento County.
>
> (2) A state agency should be required to give the parties to an adjudication notice of either the last calendar day on which judicial review of the adjudicative decision may be sought, or of the statutes that govern the period in which judicial review may be sought.

This memorandum presents a staff draft recommendation for the Commission's review (attached). After reviewing the attached staff draft, and considering the issues discussed below, the Commission should decide whether to make the staff draft recommendation its final recommendation. Except as otherwise indicated, all statutory references in this memorandum are to the Code of Civil Procedure.

SUPERIOR COURT VENUE TO REVIEW STATE AGENCY ACTION

Under existing law, the proper county for trial in a proceeding to review a state agency action is the county in which the cause of action arose. This could be a problem where a cause of action arises in a county where the superior court judges have relatively little experience with administrative law matters. Allowing a petitioner to choose Sacramento County as an alternative venue would avoid this problem, because the superior court judges in Sacramento County have considerable experience with administrative law. The Commission has recommended that Sacramento County should be an additional permissible venue in judicial review of state agency actions. Two issues relating to the recommendation are discussed below.

Agency Opposition

The basic purpose of the attached recommendation is to implement those elements of the Commission's prior recommendation on *Judicial Review of Agency Action* (27 Cal.

L. Revision Comm'n Reports 1 (1997)) that are clear improvements in the law and are likely to receive broad support. These uncontroversial proposals could then be included in a committee bill or other omnibus legislation, with little commitment of Commission resources.

However, it is not clear that the proposed change in venue law would receive broad support. We have repeatedly heard from the Department of Motor Vehicles (DMV) that allowing Sacramento as an alternative venue in reviewing state agency action would give an unfair advantage to petitioners by allowing them to "forum shop." If other agencies share DMV's view on the matter, then the proposed change may be too controversial for inclusion in a committee bill. **The Commission should consider whether the venue proposal should be included in the final recommendation.**

Application of Section 401

Section 401 provides, in part:

> Whenever it is provided by any law of this State that an action or proceeding against the State or a department, institution, board, commission, bureau, officer or other agency thereof shall or may be commenced in, tried in, or removed to the County of Sacramento, the same may be commenced and tried in any city or city and county of this State in which the Attorney General has an office.

Thus, if the proposed law provides that an action for judicial review of state agency action may be commenced in Sacramento County, then the action could also be commenced in any county in which the Attorney General has an office.

The Commission has decided that the proposed addition of Sacramento county as permissible venue to review state agency action should not also authorize commencement of a proceeding in any county in which the Attorney General has an office. The following language was added to make this clear:

> In addition to any other county authorized by law, Sacramento County is a proper county for commencement of proceedings in superior court under this chapter to review state agency action, and venue shall not be affected by the provisions of Section 401.

The Consumers Union believes that the proposed language would have an undesirable effect: it would prevent operation of Section 401 in cases where venue is proper in Sacramento County pursuant to an *existing* provision of law. For example, under existing law, venue is proper in Sacramento County in reviewing state agency action in cases where the cause of action arises in Sacramento County. See § 393(1)(b).

Thus, pursuant to Section 401, venue in such a case is also proper in any county in which the Attorney General has an office. The draft language was not intended to prevent application of Section 401 where venue is proper in Sacramento County pursuant to an existing provision of law. **The staff recommends that the proposed language be redrafted as follows:**

> 1098. (a) In addition to any other county authorized by law, Sacramento County is a proper county for commencement of proceedings in superior court under this chapter to review state agency action.
>
> (b) Venue under this section shall not be affected by Section 401. Nothing in this section limits the application of Section 401 where venue in Sacramento County is authorized by law other than this section.
>
> **Comment.** …
>
> In general, when any law provides that a proceeding may be commenced in Sacramento County, the proceeding may also be commenced in any county in which the Attorney General has an office. See Section 401. However, Section 401 does not apply where a proceeding may be commenced in Sacramento County pursuant to this section. Section 401 may apply where a proceeding may be commenced in Sacramento County pursuant to a provision of law other than this section. For example, Section 401 may apply where a proceeding may be commenced in Sacramento County pursuant to Section 393(1)(b).

NOTICE OF LAST DAY TO REVIEW STATE AGENCY ADJUDICATION

The Commission has decided that an agency should be required to provide the parties to an administrative adjudication with notice regarding the applicable limitations period for seeking judicial review of the agency's decision. This requirement could be satisfied by providing notice of the last day on which review can be sought or of the statutes that govern the limitations period. Judicial review of decisions made pursuant to the California Environmental Quality Act (CEQA) would be exempt from the notice requirement. The merits of that exemption are discussed below.

In the tentative recommendation, the notice requirement was implemented in two places: (1) in Section 1094.5, which provides the procedure for review of administrative adjudication by administrative mandamus; and (2) in the Administrative Procedure Act (APA) provisions governing judicial review of formal hearings. Implementation in both places would be redundant and would introduce troublesome inconsistencies. These problems are discussed below.

CEQA Exemption

Under the attached recommendation, the notice requirement does not apply to review of proceedings under CEQA. This exemption was added at a time when the proposed law would have required notice of the last day on which judicial review of an administrative decision may be sought. It was felt it would be difficult for agencies to determine the last day on which judicial review of a decision under CEQA could be sought, because different limitations periods apply to different types of challenges. See Pub. Res. Code § 21167 (statute of limitations for review of CEQA decisions). Now that the Commission has decided that agencies should be able to provide notice of the statute that governs the limitations period, rather than the calendar date on which the limitations period expires, this concern may no longer be relevant. **The Commission should consider whether the CEQA exemption still makes sense.**

Redundancy

Government Code Section 11523 provides that judicial review of a formal hearing "may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure." In other words, the APA incorporates Section 1094.5 by reference. Thus, it would seem to be sufficient to add the notice requirement provision to Section 1094.5, where it would apply to judicial review of any formal hearing, including those that are subject to the APA. To add the provision to the APA as well, would be redundant. However, it might be helpful if Section 11523 were to include a cross-reference to the notice requirement. This is the approach taken in the attached draft. See proposed amendment to Section 11523.

Inconsistency in Limitation Periods

Under the proposed law, delay in providing the required notice delays the running of the applicable limitations period for seeking judicial review, except that the limitations period cannot be delayed more than 180 days. This is implemented in inconsistent ways in Section 1094.5 and Government Code Section 11523. Under Section 1094.5, the limitations period would not *commence to run* later than 180 days after the event that would ordinarily have caused the limitations period to begin running. Under Section 11523, a party may not *file for review* later than 180 days after the relevant event. Thus, under Section 1094.5, the maximum limitations period for review of a formal hearing would be 210 days (180 days to commencement of the 30 day limitation period). Under Section 11523, the period for review of the same proceeding could not exceed 180 days.

The language in Section 11523 limiting the period for filing for review to a maximum of 180 days after the last day for reconsideration would also be inconsistent with existing language in Section 11523 extending the limitations period to 30 days after delivery of the record of the proceeding, where a timely request for the record has been made. The provision extending the limitations period until after delivery of the record is not subject to a 180-day maximum.

Recommendation

The staff recommends that the proposed changes to Government Code Sections 11518.3 and 11523 be deleted. They are redundant and introduce inconsistencies in the rules governing the limitations period. However, Section 11523 could be amended to include a cross-reference to Section 1094.5. This is the approach taken in the attached staff draft.

Respectfully submitted,

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Staff Counsel

#N-200

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

RECOMMENDATION

Mandamus to Review Agency Action: Selected Issues

November 1999

California Law Revision Commission
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SUMMARY OF RECOMMENDATION

In 1997 the Law Revision Commission recommended comprehensive legislation to simplify the law governing judicial review of agency action. The legislation was not enacted. The Commission now identifies two discrete elements of the earlier recommendation that may be appropriate for separate enactment. These are:

(1) Expand superior court venue for mandamus to review state agency action to permit commencement of proceedings in Sacramento County.

(2) Require a state agency to give the parties to an adjudication by the agency notice of either (i) the calendar date of the last day for judicial review or (ii) the statutes governing the time within which judicial review must be sought.

This recommendation was prepared pursuant to Resolution Chapter 81 of the Statutes of 1999.

MANDAMUS TO REVIEW AGENCY ACTION: SELECTED ISSUES

In 1997, the Law Revision Commission recommended a comprehensive revision of the law governing judicial review of agency action.[1] The legislative proposal resulting from that recommendation was not enacted.[2] Nonetheless, the Commission believes that two of the reforms in that proposed legislation would be clear improvements in the law and would receive broad support.

Venue to Review State Agency Action

Under existing law, venue in a proceeding to review a state agency action is in the superior court of the county where the cause of action arose.[3] This can be a problem where the cause of action arises in a county where the superior court judges have little experience with administrative law matters.[4]

Venue in Sacramento County does not present this problem. Because most state agencies have their headquarters in Sacramento, superior court judges in Sacramento County have significant expertise in administrative law matters. The Commission recommends that Sacramento County be added as a county in which a mandamus proceeding to review state agency action may be commenced.[5] Ordinarily, when a statute provides that a proceeding against the State may be commenced in Sacramento, the proceeding may also be commenced in any county in which the Attorney General has an office.[6] The proposed law would only extend venue to Sacramento, not to any county in which the Attorney General has an office.

Notice of Last Day to Review State Agency Adjudication

In some adjudicative decisions, an agency must notify the parties of the time within which judicial review may be sought,[7] or of the statutes that govern the

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1. See *Judicial Review of Agency Action*, 27 Cal. L. Revision Comm'n Reports 1 (1997).

2. Senate Bill 209, 1997-98 legislative session.

3. See Code Civ. Proc. § 393(1)(b) (venue in action against public officer for official act), 1109 (regular venue rules apply in mandamus proceeding). See also California Administrative Mandamus § 8.16, at 269-70 (Cal. Cont. Ed. Bar, 2d ed. 1989). Note that Section 393(1)(b) only applies to review of an affirmative action of a public official and does not apply where mandamus is sought to compel official action. See State Comm'n in Lunacy v. Welch, 154 Cal. 775, 99 P. 181 (1908).

4. See Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus*, 27 Cal. L. Revision Comm'n Reports 403, 434-35 (1997).

5. See proposed Code Civ. Proc. § 1098. Under this proposal, Sacramento County would be a proper venue for commencement of proceedings but not necessarily for a change of venue. Otherwise, an agency could obtain an advantage over a mandamus petitioner in a remote part of the state by requiring the petitioner to litigate in Sacramento County.

6. Code Civ. Proc. § 401. The Attorney General has offices in Fresno, Los Angeles, Oakland, Sacramento, San Diego, and San Francisco.

7. See, e.g., Bus. & Prof. Code § 10471.5 (when denying claim, Real Estate Commissioner must inform claimant that judicial review must be sought within six months).

time within which review may be sought.[8] Other agencies are simply required to inform a party that judicial review is available, without indicating the time in which review may be sought.[9] Notice of the time in which review may be sought can be helpful, particularly where a party is not represented by counsel.

The Commission recommends a general notice provision that would require an agency to give notice to the parties in an adjudicative proceeding that is subject to review by administrative mandamus of the calendar date of the last day for judicial review of the agency's decision or of the statutes governing the time for judicial review.[10] Running of the applicable limitations period would de delayed until the notice is given, up to a maximum of 180 days after the date that would otherwise be applicable.[11]

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8. See, e.g., Code Civ. Proc. § 1094.6(f) (in local agency adjudicative decision, party must be notified that Section 1094.6 governs time in which judicial review may be sought).

9. See, e.g., Veh. Code § 14401 (person whose driving privilege is affected by decision shall be notified of right to judicial review).

10. See proposed Code Civ. Proc. § 1094.5(k).

11. See proposed Code Civ. Proc. § 1094.5(*l*). For formal proceedings under the Administrative Procedure Act (APA), the limitations period is provided by Government Code Section 11523 (later of 30 days after last day on which reconsideration can be ordered or 30 days after record is delivered). For state agency adjudications not conducted under the formal hearing provisions of the APA, the limitations periods are provided by statutes applicable to the particular agency. See, e.g., Code Civ. Proc. § 706.075 (within 90 days after determination regarding withholding order for taxes); Food & Agric. Code §§ 59234.5 (within 30 days after notice of filing of deficiency determination); Gov't Code §§ 3542 (within 30 days after final order of Public Employment Relations Board), 19630 (within one year after cause of action relating to civil service law arose); Lab. Code §§ 1160.8 (within 30 days after decision of Agricultural Labor Relations Board), 5950 (within 45 days after decision of Workers' Compensation Appeals Board); Welf. & Inst. Code §10962 (within one year after notice of decision of Department of Social Services). Because of the complexity of the applicable limitations period, proceedings under the California Environmental Quality Act (Pub. Res. Code §§ 21000-21177) would be expressly exempted from the notice requirement.

PROPOSED LEGISLATION

Code Civ. Proc. § 1094.5 (amended). Administrative mandamus

SECTION. 1. Section 1094.5 of the Code of Civil Procedure is amended to read:

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

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

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

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code or governing bodies of municipal hospitals formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of the Government Code, abuse of discretion is established if the court determines that the findings are not supported by

substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

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

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

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h)(1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or

any state agency made after a hearing required by statute to be conducted under the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits. The application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

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

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

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

(j) Effective January 1, 1996, this subdivision shall apply to state employees in State Bargaining Unit 5. Effective June 1, 1998, this subdivision shall apply to state employees in State Bargaining Unit 16. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1, 19576.2, or 19576.5 of the Government Code.

(k) In a proceeding subject to review under this section, the agency shall, in the order or decision or otherwise, give notice to the parties of either (i) the last date to file a petition with a court for review under this section or (ii) the statutes governing the time within which review must be sought under this section. This subdivision does not apply to review of proceedings under the California Environmental Quality Act.

(*l*) The limitations period for commencing a proceeding under this section begins to run from the later of the following:

(1) The date or event otherwise provided by law.

(2) The date the notice required under subdivision (k) is delivered, served, or mailed, but in no case later than 180 days after the date or event otherwise provided by law.

Comment. Subdivision (k) is added to Section 1094.5 to require notice to the parties of the time for review by administrative mandamus. Note that this requirement does not apply to a decision under the California Environmental Quality Act (Pub. Res. Code §§ 21000-21177).

Subdivision (*l*) provides that the limitations period for commencing a proceeding under this section does not begin to run until the notice required under subdivision (k) is given (but no later than 180 days after the date or event that would ordinarily begin the limitations period) Statutes providing limitations periods that may be extended by this section include the following: Bus. & Prof. Code §§ 4875.6, 7071.11, 10471.5, 12015.3, 19463; Code Civ. Proc. § 706.075; Educ. Code § 94323; Fin. Code § 8055; Food & Agric. Code §§ 5311, 11512.5, 12999.4, 12999.5, 21051.3, 24007, 46007, 47025, 59234.5, 60016, 61899, 62665; Gov't Code §§ 3452, 8670.68, 8670.69.6, 11523, 19630, 19815.8, 31725, 54740.6, 66641.7; Health & Safety Code §§ 1793.15, 18024.4, 25398.10, 25514.6, 40864, 42316, 44011.6, 108900, 110915, 111855, 111940, 112615, 116700, 121270, 123340; Ins. Code §§ 791.18, 1065.4, 1780.63, 12414.19; Lab. Code § 1160.8, 1964, 5950; Pub. Res. Code §§ 2774.2, 2774.4, 3333, 25534.2, 25901, 29602, 29603, 29772, 30801, 30802, 41721.5, 42854, 50000; Pub. Util. Code §§ 13575.7, 21675.2; Unemp. Ins. Code § 410, 1243; Veh. Code §§ 3058, 3068, 13559, 14401; Water Code §§ 1126, 6357.4, 6461, 13330; Water Code Appendix § 65-4.8; Welf. & Inst. Code §§ 10962, 11468.5, 11468.6, 14105.405, 14171, 19709.

Code Civ. Proc. § 1098 (added). Venue in Sacramento County

SEC. 2. Section 1098 is added to the Code of Civil Procedure to read:

1098. (a) In addition to any other county authorized by law, Sacramento County is a proper county for commencement of proceedings in superior court under this chapter to review state agency action.

(b) Venue under this section shall not be affected by Section 401. Nothing in this section limits the application of Section 401 where venue in Sacramento County is authorized by law other than this section.

Comment. Section 1098 is new. It authorizes Sacramento County as an additional county for commencement of administrative or traditional mandamus proceedings in superior court under this chapter to review state agency action. The general rule is that venue in a proceeding to review state agency action is proper in the county where the cause of action arose. See Sections 393(1)(b) (venue in action challenging official act of public officer), 1109 (general rules of civil practice apply to proceedings under this title). See, e.g., Duval v. Contractors State License Bd., 125 Cal. App. 2d 532, 271 P.2d 194 (1954) (venue in administrative mandamus is county where cause of action arose, pursuant to Section 393(1)(b)).

In general, when any law provides that a proceeding may be commenced in Sacramento County, the proceeding may also be commenced in any county in which the Attorney General has an office. See Section 401. However, Section 401 does not apply where a proceeding may be commenced in Sacramento County pursuant to this section. Section 401 may apply where a proceeding may be commenced in Sacramento County pursuant to a provision of law other than this section. For example, Section 401 may apply where a proceeding may be commenced in Sacramento County pursuant to Section 393(1)(b).

This section only provides for commencement of proceedings in Sacramento County. Whether Sacramento County would be a proper county for transfer of proceedings pursuant to a change of venue is determined by law other than this section.

Gov't Code § 11523 (amended). Judicial review

SEC. 3. Section 11523 of the Government Code is amended to read:

11523. (a) Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency.

(b) Except as otherwise provided in this section, the petition shall be filed within 30 days after the last day on which reconsideration can be ordered.

(c) The right to petition shall not be affected by the failure to seek reconsideration before the agency.

(d) On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

(e) In a proceeding under this chapter, the agency shall notify the parties of the time for filing a petition for judicial review of the agency's decision, to the extent required by Section 1094.5 of the Code of Civil Procedure.

Comment. Section 11523 is amended to refer to the requirement that an agency provide notice to the parties to an adjudication of the time for filing for judicial review of the agency's decision. See Code Civ. Proc.§ 1094.5(k) & (*l*).