

**Introduced by Senator Kopp**February 21, 1995

---

---

An act to amend Sections 4160, 10175.2, and 23083 of the Business and Professions Code, to amend Section 232 of, and to add Section 92001 to, the Education Code, to amend Sections 3541.3, 3563, 11018, 11370, 11370.3, 11370.5, 11500, 11501, 11502, 11505, 11506, 11507.6, 11507.7, 11508, 11509, 11511, 11511.5, 11512, 11513, 11517, 11518, 11519, 11520, 11523, 11524, 11526, and 11529 of, to amend the heading of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of, to add Sections 11340.4, 11507.2, 11507.3, 11511.7, 11518.5, and 17533 to, to add article headings immediately preceding Sections 11370 and 11371 of, to add Article 3 (commencing with Section 11380) to Chapter 4 of, and to add Chapter 4.5 (commencing with Section 11400) to, Part 1 of Division 3 of Title 2 of, and to repeal Sections 11501.5, 11502.1, 11510, 11513.5, 11525, and 11530 of, the Government Code, to amend Sections 443.37, 1551.5, 11834.37, 18949.6, 25149, 32154, and 40843 of the Health and Safety Code, to amend Sections 5811 and 6603 of, and to add Section 1144.5 to, the Labor Code, to add Section 105 to the Military and Veterans Code, to add Section 3066 to the Penal Code, to add Section 25513.3 to the Public Resources Code, to amend Section 1701 of the Public Utilities Code, to amend Section 1636 of the Revenue and Taxation Code, to amend Section 14112 of the Vehicle Code, and to amend Section 11350.6 of, and to add Sections 1778 and 3158 to, the Welfare and Institutions Code, relating to administrative procedure.



LEGISLATIVE COUNSEL'S DIGEST

SB 523, as introduced, Kopp. Administrative procedure.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication and rulemaking proceedings of state agencies.

This bill would revise the procedures for administrative adjudications by expanding the hearing procedure options available to state agencies and by including additional due process and public policy requirements, as specified.

This bill would also make various technical, nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4160 of the Business and  
2 Professions Code is amended to read:

3 4160. (a) The California Hazardous Substances Act,  
4 Chapter 13 (commencing with Section 28740) of Division  
5 21 of the Health and Safety Code, applies to pharmacies  
6 and pharmacists and any other person or place subject to  
7 the jurisdiction of the board.

8 (b) The board may enforce that act when necessary  
9 for the protection of the health and safety of the public if  
10 prior regulatory notice is given in accordance with the  
11 *rulemaking provisions of the* Administrative Procedure  
12 Act (Chapter 3.5 (commencing with Section 11340);  
13 ~~Chapter 4 (commencing with Section 11370), and~~  
14 ~~Chapter 5 (commencing with Section 11500) of Part 1 of~~  
15 Division 3 of Title 2 of the Government Code, ~~as~~  
16 ~~amended~~) Code). Board enforcement shall focus on  
17 those hazardous substances which relate significantly to  
18 or overlap the practice of pharmacy.

19 (c) "Poison," as used elsewhere in this chapter, shall  
20 reference a category of hazardous substances defined in  
21 Section 28743 of the Health and Safety Code which the  
22 board may by regulation make more specific.

23 SEC. 2. Section 10175.2 of the Business and  
24 Professions Code is amended to read:



1 10175.2. (a) If the Real Estate Commissioner  
2 determines that the public interest and public welfare  
3 will be adequately served by permitting a real estate  
4 licensee to pay a monetary penalty to the department in  
5 lieu of an actual license suspension, the commissioner  
6 may, on the petition of the licensee, stay the execution of  
7 all or some part of the suspension on the condition that  
8 the licensee pay a monetary penalty and the further  
9 condition that the licensee incur no other cause for  
10 disciplinary action within a period of time specified by the  
11 commissioner.

12 (b) The commissioner may exercise the discretion  
13 granted to him under subdivision (a) either with respect  
14 to a suspension ordered by a decision after a contested  
15 hearing on an accusation against the licensee or by  
16 stipulation with the licensee after the filing of an  
17 accusation, but prior to the rendering of a decision based  
18 upon the accusation. In either case, the terms and  
19 conditions of the disciplinary action against the licensee  
20 shall be made part of a formal decision of the  
21 commissioner which satisfies the requirements of Section  
22 ~~41518~~ 11425.50 of the Government Code.

23 (c) If a licensee fails to pay the monetary penalty in  
24 accordance with the terms and conditions of the decision  
25 of the commissioner, the commissioner may, without a  
26 hearing, order the immediate execution of all or any part  
27 of the stayed suspension in which event the licensee shall  
28 not be entitled to any repayment nor credit, prorated or  
29 otherwise, for money paid to the department under the  
30 terms of the decision.

31 (d) The amount of the monetary penalty payable  
32 under this section shall not exceed two hundred fifty  
33 dollars (\$250) for each day of suspension stayed nor a total  
34 of ten thousand dollars (\$10,000) per decision regardless  
35 of the number of days of suspension stayed under the  
36 decision.

37 (e) Any monetary penalty received by the  
38 department pursuant to this section shall be credited to  
39 the Recovery Account of the Real Estate Fund.



1 SEC. 3. Section 23083 of the Business and Professions  
2 Code is amended to read:

3 23083. (a) The board shall determine the appeal  
4 upon the record of the department and upon any briefs  
5 which may be filed by the parties. If any party to the  
6 appeal requests the right to appear before the board, the  
7 board shall fix a time and place for argument. The board  
8 shall not receive any evidence other than that contained  
9 in the record of the proceedings of the department.

10 (b) *The administrative adjudication provisions of the*  
11 *Administrative Procedure Act (Chapter 4.5*  
12 *(commencing with Section 11400) and Chapter 5*  
13 *(commencing with Section 11500) of Part 1 of Division 3*  
14 *of Title 2 of the Government Code) do not apply to the*  
15 *determination.*

16 SEC. 4. Section 232 of the Education Code is amended  
17 to read:

18 232. The State Board of Education, the Board of  
19 Governors of the California Community Colleges, and  
20 the Trustees of the California State University shall issue  
21 regulations pursuant to Chapter 3.5 (commencing with  
22 Section 11340) ~~and Chapter 5 (commencing with Section~~  
23 ~~11500)~~ of *Part 1* of Division 3 of Title 2 of the Government  
24 Code, commonly referred to as *the rulemaking provisions*  
25 *of the Administrative Procedure Act*, to implement ~~the~~  
26 ~~provisions of this chapter.~~

27 The Regents of the University of California may issue  
28 regulations to implement ~~the provisions of this chapter.~~  
29 If the Regents of the University of California choose to  
30 issue regulations it may issue them pursuant to Chapter  
31 3.5 (commencing with Section 11340) ~~and Chapter 5~~  
32 ~~(commencing with Section 11500)~~ of *Part 1* of Division 3  
33 of Title 2 of the Government Code, commonly referred  
34 to as *the rulemaking provisions of the Administrative*  
35 *Procedure Act.*

36 SEC. 5. Section 92001 is added to the Education Code,  
37 to read:

38 92001. The administrative adjudication provisions of  
39 the Administrative Procedure Act (Chapter 4.5  
40 (commencing with Section 11400) and Chapter 5



1 (commencing with Section 11500) of Part 1 of Division 3  
2 of Title 2 of the Government Code) do not apply to a  
3 hearing conducted by the University of California.

4 SEC. 6. Section 3541.3 of the Government Code is  
5 amended to read:

6 3541.3. The board shall have all of the following  
7 powers and duties:

8 (a) To determine in disputed cases, or otherwise  
9 approve, appropriate units.

10 (b) To determine in disputed cases whether a  
11 particular item is within or without the scope of  
12 representation.

13 (c) To arrange for and supervise representation  
14 elections which shall be conducted by means of secret  
15 ballot elections, and certify the results of the elections.

16 (d) To establish lists of persons broadly representative  
17 of the public and qualified by experience to be available  
18 to serve as mediators, arbitrators, or factfinders. In no  
19 case shall these lists include persons who are on the staff  
20 of the board.

21 (e) To establish by regulation appropriate procedures  
22 for review of proposals to change unit determinations.

23 (f) Within its discretion, to conduct studies relating to  
24 employer-employee relations, including the collection,  
25 analysis, and making available of data relating to wages,  
26 benefits, and employment practices in public and private  
27 employment, and, when it appears necessary in its  
28 judgment to the accomplishment of the purposes of this  
29 chapter, recommend legislation. The board shall report  
30 to the Legislature by October 15 of each year on its  
31 activities during the immediately preceding fiscal year.  
32 The board may enter into contracts to develop and  
33 maintain research and training programs designed to  
34 assist public employers and employee organizations in  
35 the discharge of their mutual responsibilities under this  
36 chapter.

37 (g) To adopt, pursuant to Chapter 3.5 (commencing  
38 with Section 11340) of Part 1 of Division 3 of Title 2, rules  
39 and regulations to carry out the provisions and effectuate  
40 the purposes and policies of this chapter.



1 (h) To hold hearings, subpoena witnesses, administer  
2 oaths, take the testimony or deposition of any person, and,  
3 in connection therewith, to issue subpoenas duces tecum  
4 to require the production and examination of any  
5 employer's or employee organization's records, books, or  
6 papers relating to any matter within its jurisdiction. *The*  
7 *administrative adjudication provisions of the*  
8 *Administrative Procedure Act (Chapter 4.5*  
9 *(commencing with Section 11400) and Chapter 5*  
10 *(commencing with Section 11500) of Part 1 of Division 3*  
11 *of Title 2) do not apply to a hearing by the board under*  
12 *this chapter, except that Chapter 4.5 (commencing with*  
13 *Section 11400) applies to a hearing to determine an unfair*  
14 *practice charge.*

15 (i) To investigate unfair practice charges or alleged  
16 violations of this chapter, and take ~~such~~ any action and  
17 make ~~such~~ any determinations in respect of these charges  
18 or alleged violations as the board deems necessary to  
19 effectuate the policies of this chapter.

20 (j) To bring an action in a court of competent  
21 jurisdiction to enforce any of its orders, decisions, or  
22 rulings, or to enforce the refusal to obey a subpoena. Upon  
23 issuance of a complaint charging that any person has  
24 engaged in or is engaging in an unfair practice, the board  
25 may petition the court for appropriate temporary relief  
26 or restraining order.

27 (k) To delegate its powers to any member of the board  
28 or to any person appointed by the board for the  
29 performance of its functions, except that no fewer than  
30 two board members may participate in the  
31 determination of any ruling or decision on the merits of  
32 any dispute coming before it, and except that a decision  
33 to refuse to issue a complaint shall require the approval  
34 of two board members.

35 (l) To decide contested matters involving recognition,  
36 certification, or decertification of employee  
37 organizations.

38 (m) To consider and decide issues relating to rights,  
39 privileges, and duties of an employee organization in the  
40 event of a merger, amalgamation, or transfer of



1 jurisdiction between two or more employee  
2 organizations.

3 (n) To take ~~such~~ any other action as the board deems  
4 necessary to discharge its powers and duties and  
5 otherwise to effectuate the purposes of this chapter.

6 SEC. 7. Section 3563 of the Government Code is  
7 amended to read:

8 3563. This chapter shall be administered by the Public  
9 Employment Relations Board. In administering this  
10 chapter the board shall have all of the following rights,  
11 powers, duties and responsibilities:

12 (a) To determine in disputed cases, or otherwise  
13 approve, appropriate units.

14 (b) To determine in disputed cases whether a  
15 particular item is within or without the scope of  
16 representation.

17 (c) To arrange for and supervise representation  
18 elections which shall be conducted by means of secret  
19 ballot elections, and to certify the results of the elections.

20 (d) To establish lists of persons broadly representative  
21 of the public and qualified by experience to be available  
22 to serve as mediators, arbitrators, or factfinders. In no  
23 case shall ~~such~~ the lists include persons who are on the  
24 staff of the board.

25 (e) To establish by regulation appropriate procedures  
26 for review of proposals to change unit determinations.

27 (f) To adopt, pursuant to Chapter ~~4.5~~ 3.5  
28 (commencing with Section ~~11371~~ 11340) of Part 1 of  
29 Division 3 of Title 2, rules and regulations to carry out the  
30 provisions and effectuate the purposes and policies of this  
31 chapter.

32 (g) To hold hearings, subpoena witnesses, administer  
33 oaths, take the testimony or deposition of any person, and,  
34 in connection therewith, to issue subpoenas duces tecum  
35 to require the production and examination of any  
36 employer's or employee organization's records, books, or  
37 papers relating to any matter within its jurisdiction,  
38 except for those records, books, or papers confidential  
39 under statute. *The administrative adjudication provisions  
40 of the Administrative Procedure Act (Chapter 4.5*



1 (*commencing with Section 11400*) and Chapter 5  
2 (*commencing with Section 11500*) of Part 1 of Division 3  
3 of Title 2) do not apply to a hearing conducted by the  
4 board under this section, except that Chapter 4.5  
5 (*commencing with Section 11400*) applies to a hearing  
6 conducted to determine an unfair practice charge.

7 (h) To investigate unfair practice charges or alleged  
8 violations of this chapter, and to take ~~such~~ any action and  
9 make ~~such~~ any determinations in respect of such charges  
10 or alleged violations as the board deems necessary to  
11 effectuate the policies of this chapter.

12 (i) To bring an action in a court of competent  
13 jurisdiction to enforce any of its orders, decisions or  
14 rulings or to enforce the refusal to obey a subpoena. Upon  
15 issuance of a complaint charging that any person has  
16 engaged in or is engaging in an unfair practice, the board  
17 may petition the court for appropriate temporary relief  
18 or restraining order.

19 (j) To delegate its powers to any member of the board  
20 or to any person appointed by the board for the  
21 performance of its functions, except that no fewer than  
22 two board members may participate in the  
23 determination of any ruling or decision on the merits of  
24 any dispute coming before it and except that a decision  
25 to refuse to issue a complaint shall require the approval  
26 of two board members.

27 (k) To decide contested matters involving  
28 recognition, certification, or decertification of employee  
29 organizations.

30 (l) To consider and decide issues relating to rights,  
31 privileges, and duties of an employee organization in the  
32 event of a merger, amalgamation, or transfer of  
33 jurisdiction between two or more employee  
34 organizations.

35 (m) To take ~~such~~ any other action as the board deems  
36 necessary to discharge its powers and duties and  
37 otherwise to effectuate the purposes of this chapter.

38 SEC. 8. Section 11018 of the Government Code is  
39 amended to read:



1 11018. Every state agency which is authorized by any  
 2 law to conduct administrative hearings but is not subject  
 3 to Chapter 5 (commencing with Section 11500) shall  
 4 nonetheless comply with ~~subdivision (d) of Section 11513~~  
 5 *Sections 11435.20 and 11435.25* relative to the furnishing  
 6 of language assistance at ~~any such~~ *the* hearing.

7 SEC. 9. Section 11340.4 is added to the Government  
 8 Code, to read:

9 11340.4. (a) The office is authorized and directed to  
 10 do the following:

11 (1) Study the subject of administrative rulemaking in  
 12 all its aspects.

13 (2) In the interest of fairness, uniformity, and the  
 14 expedition of business, submit its suggestions to the  
 15 various agencies.

16 (3) Report its recommendations to the Governor and  
 17 Legislature at the commencement of each general  
 18 session.

19 (b) All agencies of the state shall give the office ready  
 20 access to their records and full information and  
 21 reasonable assistance in any matter of research requiring  
 22 recourse to them or to data within their knowledge or  
 23 control. Nothing in this subdivision authorizes an agency  
 24 to provide access to records required by statute to be kept  
 25 confidential.

26 SEC. 10. An article heading is added immediately  
 27 preceding Section 11370 to Chapter 4 of Part 1 of Division  
 28 3 of Title 2 of the Government Code, to read:

29  
 30 Article 1. General Provisions

31  
 32 SEC. 11. Section 11370 of the Government Code is  
 33 amended to read:

34 11370. Chapter 3.5 (commencing with Section  
 35 11340), Chapter 4 (commencing with Section 11370),  
 36 *Chapter 4.5 (commencing with Section 11400)*, and  
 37 Chapter 5 (commencing with Section 11500) constitute,  
 38 and may be cited as, the Administrative Procedure Act.

39 SEC. 12. Section 11370.3 of the Government Code is  
 40 amended to read:



1 11370.3. The director shall appoint and maintain a  
2 staff of full-time, and may appoint pro tempore part-time,  
3 administrative law judges qualified under Section 11502  
4 which is sufficient to fill the needs of the various state  
5 agencies. The director shall also appoint ~~hearing officers,~~  
6 ~~shorthand reporters, and such any~~ other technical and  
7 clerical personnel as may be required to perform the  
8 duties of the office. The director shall assign an  
9 administrative law judge for any proceeding arising  
10 under Chapter 5 (commencing with Section 11500) and,  
11 upon request from any agency, may assign an  
12 administrative law judge ~~or a hearing officer~~ to conduct  
13 other administrative proceedings not arising under that  
14 chapter and shall assign hearing reporters as required.  
15 ~~The director shall assign an administrative law judge for~~  
16 ~~any proceeding arising pursuant to Chapter 20~~  
17 ~~(commencing with Section 22450) of Division 8 of the~~  
18 ~~Business and Professions Code upon the request of a~~  
19 ~~public prosecutor.~~ Any administrative law judge, ~~hearing~~  
20 ~~officer,~~ or other employee so assigned shall be deemed an  
21 employee of the office and not of the agency to which he  
22 or she is assigned. When not engaged in hearing cases,  
23 administrative law judges ~~and hearing officers~~ may be  
24 assigned by the director to perform other duties vested in  
25 or required of the office, including those provided for in  
26 Section 11370.5.

27 SEC. 13. Section 11370.5 of the Government Code is  
28 amended to read:

29 11370.5. The office is authorized and directed to study  
30 the subject of administrative law ~~and procedure~~  
31 *adjudication* in all its aspects; to submit its suggestions to  
32 the various agencies in the interests of fairness,  
33 uniformity and the expedition of business; and to report  
34 its recommendations to the Governor and Legislature at  
35 the commencement of each general session. All  
36 departments, agencies, officers, and employees of the  
37 State shall give the office ready access to their records and  
38 full information and reasonable assistance in any matter  
39 of research requiring recourse to them or to data within  
40 their knowledge or control. *Nothing in this section*



1 *authorizes an agency to provide access to records*  
2 *required by statute to be kept confidential.*

3 SEC. 14. An article heading is added immediately  
4 preceding Section 11371 to Chapter 4 of Part 1 of Division  
5 3 of Title 2 of the Government Code, to read:

6

7 Article 2. Medical Quality Hearing Panel

8

9 SEC. 15. Article 3 (commencing with Section 11380)  
10 is added to Chapter 4 of Part 1 of Division 3 of Title 2 of  
11 the Government Code, to read:

12

13 Article 3. State Agency Reports and Forms Appeals

14

15 11380. (a) (1) The office shall hear and render a  
16 decision on any appeal filed by a business, pursuant to  
17 subdivision (c) of Section 14775, in the event the business  
18 contests the certification by a state agency head that  
19 reporting requirements meet established criteria and  
20 shall not be eliminated.

21 (2) Before a business may file an appeal with the office  
22 pursuant to subdivision (c) of Section 14775, the business  
23 shall file a challenge to a form or report required by a state  
24 agency with that state agency. Within 60 days of filing the  
25 challenge with a state agency, the state agency shall  
26 either eliminate the form or report or provide written  
27 justification for its continued use.

28 (3) A business may appeal a state agency's written  
29 justification for the continued use of a form or report with  
30 the office.

31 (4) If a state agency fails to respond within 60 days of  
32 the filing of a challenge pursuant to paragraph (2), the  
33 business shall have an immediate right to file an appeal  
34 with the office.

35 (b) No later than January 1, 1996, the office shall adopt  
36 procedures governing the filing, hearing, and disposition  
37 of appeals. The procedures shall include, but shall not be  
38 limited to, provisions that assure that appeals are heard  
39 and decisions rendered by the office in a fair, impartial,  
40 and timely fashion.



1 (c) The office may charge appellants a reasonable fee  
 2 to pay for costs it incurs in complying with this section.

3 SEC. 16. Chapter 4.5 (commencing with Section  
 4 11400) is added to Part 1 of Division 3 of Title 2 of the  
 5 Government Code, to read:

6  
 7  
 8  
 9

CHAPTER 4.5. ADMINISTRATIVE ADJUDICATION: GENERAL  
 PROVISIONS

10 Article 1. Preliminary Provisions  
 11

12 11400. (a) This chapter and Chapter 5 (commencing  
 13 with Section 11500) constitute the administrative  
 14 adjudication provisions of the Administrative Procedure  
 15 Act.

16 (b) A reference in any other statute or in a rule of  
 17 court, executive order, or regulation, to a provision  
 18 formerly found in Chapter 5 (commencing with Section  
 19 11500) that is superseded by a provision of this chapter,  
 20 means the applicable provision of this chapter.

21 11400.10. (a) This chapter is operative on July 1, 1997.

22 (b) This chapter is applicable to an adjudicative  
 23 proceeding commenced on or after July 1, 1997.

24 (c) This chapter is not applicable to an adjudicative  
 25 proceeding commenced before July 1, 1997, except an  
 26 adjudicative proceeding conducted on a remand from a  
 27 court or another agency on or after July 1, 1997.

28 11400.20. (a) Before, on, or after July 1, 1997, an  
 29 agency may adopt interim or permanent regulations to  
 30 govern an adjudicative proceeding under this chapter.

31 (b) Except as provided in Section 11351:

32 (1) Interim regulations need not comply with Article  
 33 5 (commencing with Section 11346) or Article 6  
 34 (commencing with Section 11349) of Chapter 3.5, but are  
 35 governed by Chapter 3.5 (commencing with Section  
 36 11340) in all other respects.

37 (2) Interim regulations expire on December 31, 1998,  
 38 unless earlier terminated, replaced, or readopted as  
 39 permanent regulations under paragraph (3). If on  
 40 December 31, 1998, an agency has completed



1 proceedings to replace or readopt interim regulations  
2 and has submitted permanent regulations for review by  
3 the Office of Administrative Law, but permanent  
4 regulations have not yet been filed with the Secretary of  
5 State, the interim regulations are extended until the date  
6 permanent regulations are filed with the Secretary of  
7 State or March 31, 1999, whichever is earlier.

8 (3) Permanent regulations are subject to all the  
9 provisions of Chapter 3.5 (commencing with Section  
10 11340), except that if by December 31, 1998, an agency  
11 has submitted the regulations for review by the Office of  
12 Administrative Law, the regulations are not subject to  
13 review for necessity under Section 11349.1 or 11350.

14  
15 Article 2. Definitions

16  
17 11405.10. Unless the provision or context requires  
18 otherwise, the definitions in this article govern the  
19 construction of this chapter.

20 11405.20. “Adjudicative proceeding” means an  
21 evidentiary hearing for determination of facts pursuant  
22 to which an agency formulates and issues a decision.

23 11405.30. “Agency” means a board, bureau,  
24 commission, department, division, office, officer, or other  
25 administrative unit, including the agency head, and one  
26 or more members of the agency head or agency  
27 employees or other persons directly or indirectly  
28 purporting to act on behalf of or under the authority of  
29 the agency head. To the extent it purports to exercise  
30 authority pursuant to this chapter, an administrative unit  
31 otherwise qualifying as an agency shall be treated as a  
32 separate agency even if the unit is located within or  
33 subordinate to another agency.

34 11405.40. “Agency head” means a person or body in  
35 which the ultimate legal authority of an agency is vested,  
36 and includes a person or body to which the power to act  
37 is delegated pursuant to authority to delegate the  
38 agency’s power to hear and decide.

39 11405.50. (a) “Decision” means an agency action of  
40 specific application that determines a legal right, duty,

1 privilege, immunity, or other legal interest of a particular  
2 person.

3 (b) Nothing in this section limits any of the following:

4 (1) The precedential effect of a decision under Section  
5 11425.60.

6 (2) The authority of an agency to make a declaratory  
7 decision pursuant to Article 14 (commencing with  
8 Section 11465.10).

9 11405.60. “Party” includes the agency that is taking  
10 action, the person to which the agency action is directed,  
11 and any other person named as a party or allowed to  
12 appear or intervene in the proceeding. If the agency that  
13 is taking action and the agency that is conducting the  
14 adjudicative proceeding are separate agencies, the  
15 agency that is taking action is a party and the agency that  
16 is conducting the adjudicative proceeding is not a party.

17 11405.70. “Person” includes an individual,  
18 partnership, corporation, governmental subdivision or  
19 unit of a governmental subdivision, or public or private  
20 organization or entity of any character.

21 11405.80. “Presiding officer” means the agency head,  
22 member of the agency head, administrative law judge,  
23 hearing officer, or other person who presides in an  
24 adjudicative proceeding.

25

### 26 Article 3. Application of Chapter

27

28 11410.10. This chapter applies to a decision by an  
29 agency if, under the federal or state Constitution or a  
30 federal or state statute, an evidentiary hearing for  
31 determination of facts is required for formulation and  
32 issuance of the decision.

33 11410.20. Except as otherwise expressly provided by  
34 statute:

35 (a) This chapter applies to all agencies of the state.

36 (b) This chapter does not apply to the Legislature, the  
37 courts or judicial branch, or the Governor or office of the  
38 Governor.

39 11410.30. (a) As used in this section, “local agency”  
40 means a county, city, district, public authority, public



1 agency, or other political subdivision or public  
2 corporation in the state other than the state.

3 (b) This chapter does not apply to a local agency  
4 except to the extent the provisions are made applicable  
5 by statute.

6 (c) This chapter applies to an agency created or  
7 appointed by joint or concerted action of the state and  
8 one or more local agencies.

9 11410.40. This chapter applies to an adjudicative  
10 proceeding required to be conducted under Chapter 5  
11 (commencing with Section 11500) unless the statutes  
12 relating to the proceeding provide otherwise.

13  
14 Article 4. Governing Procedure

15  
16 11415.10. (a) The governing procedure by which an  
17 agency conducts an adjudicative proceeding is  
18 determined by the statutes and regulations applicable to  
19 that proceeding. If no other governing procedure is  
20 provided by statute or regulation, an agency may conduct  
21 an adjudicative proceeding under the administrative  
22 adjudication provisions of the Administrative Procedure  
23 Act.

24 (b) This chapter supplements the governing  
25 procedure by which an agency conducts an adjudicative  
26 proceeding.

27 11415.20. A state statute or a federal statute or  
28 regulation applicable to a particular agency or decision  
29 prevails over a conflicting or inconsistent provision of this  
30 chapter.

31 11415.30. (a) To the extent necessary to avoid a loss  
32 or delay of funds or services from the federal government  
33 that would otherwise be available to the state, the  
34 Governor may do any of the following by executive order:

35 (1) Suspend, in whole or in part, any administrative  
36 adjudication provision of the Administrative Procedure  
37 Act.

38 (2) Adopt a rule of procedure that will avoid the loss  
39 or delay.

1 (b) The Governor shall rescind an executive order  
2 issued under this section as soon as it is no longer  
3 necessary to prevent the loss or delay of funds or services  
4 from the federal government.

5 (c) If an administrative adjudication provision is  
6 suspended or rule of procedure is adopted pursuant to  
7 this section, the Governor shall promptly report the  
8 suspension or adoption to the Legislature. The report  
9 shall include recommendations concerning any  
10 legislation that may be necessary to conform the  
11 provision to federal law.

12 11415.40. Except to the extent prohibited by another  
13 statute or regulation, a person may waive a right  
14 conferred on the person by the administrative  
15 adjudication provisions of the Administrative Procedure  
16 Act.

17 11415.50. (a) An agency may provide any  
18 appropriate procedure for a decision for which an  
19 adjudicative proceeding is not required.

20 (b) An adjudicative proceeding is not required for  
21 informal factfinding or an informal investigatory hearing,  
22 or a decision to initiate or not to initiate an investigation,  
23 prosecution, or other proceeding before the agency,  
24 another agency, or a court, whether in response to an  
25 application for an agency decision or otherwise.

26 11415.60. (a) An agency may formulate and issue a  
27 decision by settlement, pursuant to an agreement of the  
28 parties, without conducting an adjudicative proceeding.  
29 Subject to subdivision (c), the settlement may be on any  
30 terms the parties determine are appropriate.  
31 Notwithstanding any other provision of law, no evidence  
32 of an offer of compromise or settlement made in  
33 settlement negotiations is admissible in an adjudicative  
34 proceeding or civil action, whether as affirmative  
35 evidence, by way of impeachment, or for any other  
36 purpose.

37 (b) A settlement may be made before or after issuance  
38 of an agency pleading, except that in an adjudicative  
39 proceeding to determine whether an occupational  
40 license should be revoked, suspended, limited, or



1 conditioned, a settlement may not be made before  
2 issuance of the agency pleading.

3 (c) A settlement is subject to any necessary agency  
4 approval. An agency head may delegate the power to  
5 approve a settlement. The terms of a settlement may not  
6 be contrary to statute or regulation, except that the  
7 settlement may include sanctions the agency would  
8 otherwise lack power to impose.

9

10 Article 5. Alternative Dispute Resolution

11

12 11420.10. (a) An agency, with the consent of all the  
13 parties, may refer a dispute that is the subject of an  
14 adjudicative proceeding for resolution by any of the  
15 following means:

16 (1) Mediation by a neutral mediator.

17 (2) Binding arbitration by a neutral arbitrator. An  
18 award in a binding arbitration is subject to judicial review  
19 in the manner provided in Chapter 4 (commencing with  
20 Section 1285) of Title 9 of Part 3 of the Code of Civil  
21 Procedure.

22 (3) Nonbinding arbitration by a neutral arbitrator.  
23 The arbitrator's decision in a nonbinding arbitration is  
24 final unless within 30 days after the arbitrator delivers the  
25 award to the agency head a party requests that the agency  
26 conduct a de novo adjudicative proceeding. If the  
27 decision in the de novo proceeding is not more favorable  
28 to the party electing the de novo proceeding, the party  
29 shall pay the costs and fees specified in Section 1141.21 of  
30 the Code of Civil Procedure insofar as applicable in the  
31 adjudicative proceeding.

32 (b) If another statute requires mediation or  
33 arbitration in an adjudicative proceeding, that statute  
34 prevails over this section.

35 (c) This section does not apply in an adjudicative  
36 proceeding to the extent an agency by regulation  
37 provides that this section is not applicable in a proceeding  
38 of the agency.

39 11420.20. (a) The Office of Administrative Hearings  
40 shall adopt and promulgate model regulations for



1 alternative dispute resolution under this article. The  
2 model regulations govern alternative dispute resolution  
3 by an agency under this article, except to the extent the  
4 agency by regulation provides inconsistent rules or  
5 provides that the model regulations are not applicable in  
6 a proceeding of the agency.

7 (b) The model regulations shall include provisions for  
8 selection and compensation of a mediator or arbitrator,  
9 qualifications of a mediator or arbitrator, and  
10 confidentiality of the mediation or arbitration  
11 proceeding.

12 11420.30. Notwithstanding any other provision of law,  
13 a communication made in alternative dispute resolution  
14 under this article is protected to the following extent:

15 (a) Anything said, any admission made, and any  
16 document prepared in the course of, or pursuant to,  
17 mediation under this article is a confidential  
18 communication, and a party to the mediation has a  
19 privilege to refuse to disclose and to prevent another  
20 from disclosing the communication, whether in an  
21 adjudicative proceeding, civil action, or other  
22 proceeding. This subdivision does not limit the  
23 admissibility of evidence if all parties to the proceedings  
24 consent.

25 (b) No reference to nonbinding arbitration  
26 proceedings, an award under this article, the evidence  
27 produced, or any other aspect of the arbitration may be  
28 made in an adjudicative proceeding or civil action,  
29 whether as affirmative evidence, by way of  
30 impeachment, or for any other purpose.

31 (c) No mediator or arbitrator is competent to testify in  
32 a subsequent administrative or civil proceeding as to any  
33 statement, conduct, decision, or order occurring at, or in  
34 conjunction with, the alternative dispute resolution.

35

#### 36 Article 6. Administrative Adjudication Bill of Rights

37

38 11425.10. (a) The governing procedure by which an  
39 agency conducts an adjudicative proceeding is subject to  
40 all of the following requirements:



1 (1) The agency shall give the person to which the  
2 agency action is directed notice and an opportunity to be  
3 heard, including the opportunity to present and rebut  
4 evidence.

5 (2) The agency shall make available to the person to  
6 which the agency action is directed a copy of the  
7 governing procedure, including a statement whether  
8 Chapter 5 (commencing with Section 11500) is  
9 applicable to the proceeding.

10 (3) The hearing shall be open to public observation as  
11 provided in Section 11425.20.

12 (4) The adjudicative function shall be separated from  
13 the investigative, prosecutorial, and advocacy functions  
14 within the agency as provided in Section 11425.30.

15 (5) The presiding officer is subject to disqualification  
16 for bias, prejudice, or interest as provided in Section  
17 11425.40.

18 (6) The decision shall be in writing, be based on the  
19 record, and include a statement of the factual and legal  
20 basis of the decision as provided in Section 11425.50.

21 (7) A decision may not be relied on as precedent  
22 unless the agency designates and indexes the decision as  
23 precedent as provided in Section 11425.60.

24 (8) Ex parte communications shall be restricted as  
25 provided in Article 7 (commencing with Section  
26 11430.10).

27 (9) Language assistance shall be made available as  
28 provided in Article 8 (commencing with Section  
29 11435.05) by an agency described in Section 11018 or  
30 Section 11435.15.

31 (b) The governing procedure by which an agency  
32 conducts an adjudicative proceeding may include  
33 procedures equivalent to, or more protective of the rights  
34 of the person to which the agency action is directed than,  
35 the requirements of this section.

36 11425.20. (a) A hearing shall be open to public  
37 observation except to the extent that any of the following  
38 applies:

39 (1) A closed hearing is required in whole or in part by  
40 statute or by the federal or state Constitution.



1 (2) The presiding officer determines it is necessary to  
2 close the hearing in whole or in part to ensure a fair  
3 hearing in the circumstances of the particular case. The  
4 presiding officer may conduct the hearing, including the  
5 manner of examining witnesses and closing the hearing,  
6 in a way that is appropriate to protect a minor witness or  
7 a witness with a developmental disability, as defined in  
8 Section 4512 of the Welfare and Institutions Code, from  
9 intimidation or other harm, taking into account the rights  
10 of all persons.

11 (b) To the extent a hearing is conducted by telephone,  
12 television, or other electronic means, subdivision (a) is  
13 satisfied if members of the public have an opportunity to  
14 do both of the following:

15 (1) At reasonable times, hear or inspect the agency's  
16 record, and inspect any transcript obtained by the  
17 agency.

18 (2) Be physically present at the place where the  
19 presiding officer is conducting the hearing.

20 (c) This section does not apply to a prehearing  
21 conference, settlement conference, or proceedings for  
22 alternative dispute resolution.

23 11425.30. (a) A person may not serve as presiding  
24 officer in an adjudicative proceeding in any of the  
25 following circumstances:

26 (1) The person has served as investigator, prosecutor,  
27 or advocate in the proceeding or its pre-adjudicative  
28 stage.

29 (2) The person is subject to the authority, direction, or  
30 discretion of a person who has served as investigator,  
31 prosecutor, or advocate in the proceeding or its  
32 pre-adjudicative stage.

33 (b) Notwithstanding subdivision (a):

34 (1) A person may serve as presiding officer at  
35 successive stages of an adjudicative proceeding.

36 (2) A person who has participated as a decisionmaker  
37 in a determination of probable cause or other equivalent  
38 preliminary determination in an adjudicative proceeding  
39 or its pre-adjudicative stage may serve as presiding officer  
40 in the proceeding.



1 (c) The provisions of this section governing separation  
2 of functions as to the presiding officer also govern  
3 separation of functions as to the agency head or other  
4 person or body to which the power to hear or decide in  
5 the proceeding is delegated.

6 11425.40. (a) The presiding officer is subject to  
7 disqualification for bias, prejudice, or interest in the  
8 proceeding.

9 (b) It is not alone or in itself grounds for  
10 disqualification, without further evidence of bias,  
11 prejudice, or interest, that the presiding officer:

12 (1) Is or is not a member of a racial, ethnic, religious,  
13 sexual, or similar group and the proceeding involves the  
14 rights of that group.

15 (2) Has experience, technical competence, or  
16 specialized knowledge of, or has in any capacity  
17 expressed a view on, a legal, factual, or policy issue  
18 presented in the proceeding.

19 (3) Has as a lawyer or public official participated in the  
20 drafting of laws or regulations or in the effort to pass or  
21 defeat laws or regulations, the meaning, effect, or  
22 application of which is in issue in the proceeding.

23 (c) The provisions of this section governing  
24 disqualification of the presiding officer also govern  
25 disqualification of the agency head or other person or  
26 body to which the power to hear or decide in the  
27 proceeding is delegated.

28 11425.50. (a) The decision shall be in writing and  
29 shall include a statement of the factual and legal basis for  
30 the decision as to each of the principal controverted  
31 issues.

32 (b) The statement of the factual basis for the decision  
33 may be in the language of, or by reference to, the  
34 pleadings. If the statement is no more than mere  
35 repetition or paraphrase of the relevant statute or  
36 regulation, the statement shall be accompanied by a  
37 concise and explicit statement of the underlying facts of  
38 record that support the decision. If the factual basis for  
39 the decision includes a determination based substantially  
40 on the credibility of a witness, the statement shall identify



1 any specific evidence of the observed demeanor, manner,  
2 or attitude of the witness that supports the determination,  
3 and on judicial review the court shall give great weight  
4 to the determination to the extent the determination  
5 identifies the observed demeanor, manner, or attitude of  
6 the witness that supports it.

7 (c) The statement of the factual basis for the decision  
8 shall be based exclusively on the evidence of record in the  
9 proceeding and on matters officially noticed in the  
10 proceeding. Evidence of record may include  
11 supplements to the record that are made after the  
12 hearing, provided that all parties are given an  
13 opportunity to comment on it. The presiding officer's  
14 experience, technical competence, and specialized  
15 knowledge may be used in evaluating evidence.

16 (d) Nothing in this section limits the information that  
17 may be contained in the decision, including a summary  
18 of evidence relied on.

19 (e) A penalty may not be based on a guideline,  
20 criterion, bulletin, manual, instruction, order, standard of  
21 general application or other rule unless it has been  
22 adopted as a regulation pursuant to Chapter 3.5  
23 (commencing with Section 11340).

24 11425.60. (a) A decision may not be expressly relied  
25 on as precedent unless it is designated as a precedent  
26 decision by the agency.

27 (b) An agency may designate as a precedent decision  
28 a decision or part of a decision that contains a significant  
29 legal or policy determination of general application that  
30 is likely to recur. Designation of a decision or part of a  
31 decision as a precedent decision is not rulemaking and  
32 need not be done under Chapter 3.5 (commencing with  
33 Section 11340). An agency's designation of a decision or  
34 part of a decision, or failure to designate a decision or part  
35 of a decision, as a precedent decision is not subject to  
36 judicial review.

37 (c) An agency shall maintain an index of significant  
38 legal and policy determinations made in precedent  
39 decisions. The index shall be updated not less frequently  
40 than annually, unless no precedent decision has been



1 designated since the last preceding update. The index  
2 shall be made available to the public by subscription, and  
3 its availability shall be publicized annually in the  
4 California Regulatory Notice Register.

5 (d) This section applies to decisions issued on or after  
6 July 1, 1997. Nothing in this section precludes an agency  
7 from designating as a precedent decision a decision issued  
8 before July 1, 1997.

9

10 Article 7. Ex Parte Communications

11

12 11430.10. (a) While the proceeding is pending there  
13 shall be no communication, direct or indirect, regarding  
14 any issue in the proceeding, to the presiding officer from  
15 an employee or representative of an agency that is a party  
16 or from an interested person outside the agency, without  
17 notice and opportunity for all parties to participate in the  
18 communication.

19 (b) Nothing in this section precludes a  
20 communication, including a communication from an  
21 employee or representative of an agency that is a party,  
22 made on the record at the hearing.

23 (c) For the purpose of this section, a proceeding is  
24 pending from the issuance of the agency's pleading, or  
25 from an application for an agency decision, whichever is  
26 earlier.

27 11430.20. A communication otherwise prohibited by  
28 Section 11430.10 is permissible in any of the following  
29 circumstances:

30 (a) The communication is required for disposition of  
31 an ex parte matter specifically authorized by statute.

32 (b) The communication concerns a matter of  
33 procedure or practice, including a request for a  
34 continuance, that is not in controversy.

35 11430.30. A communication otherwise prohibited by  
36 Section 11430.10 from an employee or representative of  
37 an agency that is a party to the presiding officer is  
38 permissible in any of the following circumstances:

39 (a) The communication is for the purpose of assistance  
40 and advice to the presiding officer from a person who has



1 not served as investigator, prosecutor, or advocate in the  
2 proceeding or its pre-adjudicative stage. An assistant or  
3 advisor shall not furnish, augment, diminish, or modify  
4 the evidence in the record.

5 (b) The communication is for the purpose of advising  
6 the presiding officer concerning a settlement proposal  
7 advocated by the advisor.

8 (c) The communication is for the purpose of advising  
9 the presiding officer concerning any of the following  
10 matters in an adjudicative proceeding that is  
11 nonprosecutorial in character, provided the content of  
12 the advice is disclosed on the record and all parties are  
13 given an opportunity to comment on it in the manner  
14 provided in Section 11430.50:

15 (1) The advice involves a technical issue in the  
16 proceeding and the advice is necessary for, and is not  
17 otherwise reasonably available to, the presiding officer.

18 (2) The advice involves an issue in a proceeding of the  
19 California Coastal Commission, San Francisco Bay  
20 Conservation and Development Commission, California  
21 Tahoe Regional Planning Agency, Delta Protection  
22 Commission, Water Resources Control Board, or a  
23 regional water quality control board.

24 11430.40. If, while the proceeding is pending but  
25 before serving as presiding officer, a person receives a  
26 communication of a type that would be in violation of this  
27 article if received while serving as presiding officer, the  
28 person, promptly after starting to serve, shall disclose the  
29 content of the communication on the record and give all  
30 parties an opportunity to comment on it in the manner  
31 provided in Section 11430.50.

32 11430.50. (a) If a presiding officer receives a  
33 communication in violation of this article, the presiding  
34 officer shall make all of the following a part of the record  
35 in the proceeding:

36 (1) If the communication is written, the writing and  
37 any written response to the communication.

38 (2) If the communication is oral, a memorandum  
39 stating the substance of the communication, any response



1 made, and the identity of each person from whom the  
2 presiding officer received the communication.

3 (b) The presiding officer shall notify all parties that a  
4 communication described in this section has been made  
5 a part of the record. A party that requests an opportunity  
6 to comment on the communication within ten days after  
7 receipt of notice of the communication shall be allowed  
8 to comment.

9 11430.60. Receipt by the presiding officer of a  
10 communication in violation of this article may be grounds  
11 for disqualification of the presiding officer. If the  
12 presiding officer is disqualified, the portion of the record  
13 pertaining to the ex parte communication may be sealed  
14 by protective order of the disqualified presiding officer.

15 11430.70. The provisions of this article governing ex  
16 parte communications to the presiding officer also  
17 govern ex parte communications to the agency head or  
18 other person or body to which the power to hear or decide  
19 in the proceeding is delegated.

20 11430.80. (a) There shall be no communication,  
21 direct or indirect, regarding any issue in the proceeding,  
22 between the presiding officer and the agency head or  
23 other person or body to which the power to hear or decide  
24 in the proceeding is delegated.

25 (b) This section does not apply where the agency head  
26 or other person or body to which the power to hear or  
27 decide in the proceeding is delegated serves as both  
28 presiding officer and agency head.

29

30 Article 8. Language Assistance

31

32 11435.05. As used in this article, “language assistance”  
33 means oral interpretation or written translation into  
34 English of a language other than English or of English into  
35 another language for a party or witness who cannot speak  
36 or understand English or who can do so only with  
37 difficulty.

38 11435.10. Nothing in this article limits the application  
39 or effect of Section 754 of the Evidence Code to



1 interpretation for a deaf or hard-of-hearing party or  
2 witness in an adjudicative proceeding.

3 11435.15. (a) The following state agencies shall  
4 provide language assistance in adjudicative proceedings  
5 to the extent provided in this article:

- 6 Agricultural Labor Relations Board
- 7 Department of Alcohol and Drug Abuse
- 8 State Athletic Commission California
- 9 Unemployment Insurance Appeals Board
- 10 Board of Prison Terms
- 11 State Board of Barbering and Cosmetology
- 12 State Department of Developmental Services
- 13 Public Employment Relations Board
- 14 Franchise Tax Board
- 15 State Department of Health Services
- 16 Department of Housing and Community  
17 Development
- 18 Department of Industrial Relations
- 19 State Department of Mental Health
- 20 Department of Motor Vehicles
- 21 Notary Public Section, Office of the Secretary of State
- 22 Public Utilities Commission
- 23 Office of Statewide Health Planning and Development
- 24 State Department of Social Services
- 25 Workers' Compensation Appeals Board
- 26 Department of the Youth Authority
- 27 Youthful Offender Parole Board
- 28 Bureau of Employment Agencies
- 29 Department of Insurance
- 30 State Personnel Board
- 31 California Board of Podiatric Medicine
- 32 Board of Psychology

33 (b) Nothing in this section prevents an agency other  
34 than an agency listed in subdivision (a) from electing to  
35 adopt any of the procedures in this article, provided that  
36 any selection of an interpreter is subject to Section  
37 11435.30.

38 (c) Nothing in this section prohibits an agency from  
39 providing an interpreter during a proceeding to which



1 this chapter does not apply, including an informal  
2 factfinding or informal investigatory hearing.

3 (d) This article applies to an agency listed in  
4 subdivision (a) notwithstanding a general provision that  
5 this chapter does not apply to some or all of an agency's  
6 adjudicative proceedings.

7 11435.20. (a) The hearing, or any medical  
8 examination conducted for the purpose of determining  
9 compensation or monetary award, shall be conducted in  
10 English.

11 (b) If a party or the party's witness does not  
12 proficiently speak or understand English and before  
13 commencement of the hearing or medical examination  
14 requests language assistance, an agency subject to the  
15 language assistance requirement of this article shall  
16 provide the party or witness an interpreter.

17 11435.25. (a) The cost of providing an interpreter  
18 under this article shall be paid by the agency having  
19 jurisdiction over the matter if the presiding officer so  
20 directs, otherwise by the party at whose request the  
21 interpreter is provided.

22 (b) The presiding officer's decision to direct payment  
23 shall be based upon an equitable consideration of all the  
24 circumstances in each case, such as the ability of the party  
25 in need of the interpreter to pay.

26 (c) Notwithstanding any other provision of this  
27 section, in a hearing before the Workers' Compensation  
28 Appeals Board or the Division of Workers' Compensation  
29 relating to worker's compensation claims, the payment of  
30 the costs of providing an interpreter shall be governed by  
31 the rules and regulations promulgated by the Workers'  
32 Compensation Appeals Board or the Administrative  
33 Director of the Division of Workers' Compensation, as  
34 appropriate.

35 11435.30. (a) The State Personnel Board shall  
36 establish, maintain, administer, and publish annually an  
37 updated list of certified administrative hearing  
38 interpreters it has determined meet the minimum  
39 standards in interpreting skills and linguistic abilities in  
40 languages designated pursuant to Section 11435.40. Any



1 interpreter so listed may be examined by each employing  
2 agency to determine the interpreter's knowledge of the  
3 employing agency's technical program terminology and  
4 procedures.

5 (b) Court interpreters certified pursuant to Section  
6 68562, and interpreters listed on the State Personnel  
7 Board's recommended lists of court and administrative  
8 hearing interpreters prior to July 1, 1993, shall be deemed  
9 certified for purposes of this section.

10 11435.35. (a) The State Personnel Board shall  
11 establish, maintain, administer, and publish annually, an  
12 updated list of certified medical examination interpreters  
13 it has determined meet the minimum standards in  
14 interpreting skills and linguistic abilities in languages  
15 designated pursuant to Section 11435.40.

16 (b) Court interpreters certified pursuant to Section  
17 68562 and administrative hearing interpreters certified  
18 pursuant to Section 11435.30 shall be deemed certified for  
19 purposes of this section.

20 11435.40. (a) The State Personnel Board shall  
21 designate the languages for which certification shall be  
22 established under Sections 11435.30 and 11435.35. The  
23 languages designated shall include, but not be limited to,  
24 Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean,  
25 Portuguese, and Vietnamese until the State Personnel  
26 Board finds that there is an insufficient need for  
27 interpreting assistance in these languages.

28 (b) The language designations shall be based on the  
29 following:

30 (1) The language needs of non-English-speaking  
31 persons appearing before the administrative agencies, as  
32 determined by consultation with the agencies.

33 (2) The cost of developing a language examination.

34 (3) The availability of experts needed to develop a  
35 language examination.

36 (4) Other information the board deems relevant.

37 11435.45. (a) The State Personnel Board shall  
38 establish and charge fees for applications to take  
39 interpreter examinations and for renewal of  
40 certifications. The purpose of these fees is to cover the



1 annual projected costs of carrying out this article. The  
2 fees may be adjusted each fiscal year by a percent that is  
3 equal to or less than the percent change in the California  
4 Necessities Index prepared by the Commission on State  
5 Finance.

6 (b) Each certified administrative hearing interpreter  
7 and each certified medical examination interpreter shall  
8 pay a fee, due on July 1 of each year, for the renewal of  
9 the certification. Court interpreters certified under  
10 Section 68562 shall not pay any fees required by this  
11 section.

12 (c) If the amount of money collected in fees is not  
13 sufficient to cover the costs of carrying out this article, the  
14 board shall charge and be reimbursed a pro rata share of  
15 the additional costs by the state agencies that conduct  
16 administrative hearings.

17 11435.50. The State Personnel Board may remove the  
18 name of a person from the list of certified interpreters if  
19 any of the following conditions occurs:

20 (a) The person is deceased.

21 (b) The person notifies the board that the person is  
22 unavailable for work.

23 (c) The person does not submit a renewal fee as  
24 required by Section 11435.45.

25 11435.55. (a) An interpreter used in a hearing shall  
26 be certified pursuant to Section 11435.30. However, if an  
27 interpreter certified pursuant to Section 11435.30 cannot  
28 be present at the hearing, the hearing agency shall have  
29 discretionary authority to provisionally qualify and use  
30 another interpreter.

31 (b) An interpreter used in a medical examination shall  
32 be certified pursuant to Section 11435.35. However, if an  
33 interpreter certified pursuant to Section 11435.35 cannot  
34 be present at the medical examination, the physician  
35 provisionally may use another interpreter if that fact is  
36 noted in the record of the medical evaluation.

37 11435.60. Every agency subject to the language  
38 assistance requirement of this article shall advise each  
39 party of the right to an interpreter at the same time that  
40 each party is advised of the hearing date or medical



1 examination. Each party in need of an interpreter shall  
2 also be encouraged to give timely notice to the agency  
3 conducting the hearing or medical examination so that  
4 appropriate arrangements can be made.

5 11435.65. (a) The rules of confidentiality of the  
6 agency, if any, that apply in an adjudicative proceeding  
7 shall apply to any interpreter in the hearing or medical  
8 examination, whether or not the rules so state.

9 (b) The interpreter shall not have had any  
10 involvement in the issues of the case prior to the hearing.

11

#### 12 Article 9. General Procedural Provisions

13

14 11440.10. (a) The agency head may do any of the  
15 following with respect to a decision of the presiding  
16 officer or the agency:

17 (1) Determine to review some but not all issues, or not  
18 to exercise any review.

19 (2) Delegate its review authority to one or more  
20 persons.

21 (3) Authorize review by one or more persons, subject  
22 to further review by the agency head.

23 (b) By regulation an agency may mandate review, or  
24 may preclude or limit review, of a decision of the  
25 presiding officer or the agency.

26 11440.20. Service of a writing on, or giving of a notice  
27 to, a person in a procedure provided in this chapter is  
28 subject to the following provisions:

29 (a) The writing or notice shall be delivered personally  
30 or sent by mail or other means to the person at the  
31 person's last known address or, if the person is a party with  
32 an attorney or other authorized representative of record  
33 in the proceeding, to the party's attorney or other  
34 authorized representative. If a party is required by  
35 statute or regulation to maintain an address with an  
36 agency, the party's last known address is the address  
37 maintained with the agency.

38 (b) Unless a provision specifies the form of mail,  
39 service or notice by mail may be by first class mail,  
40 registered mail, or certified mail, by mail delivery service,



1 by facsimile transmission if complete and without error,  
2 or by other electronic means as provided by regulation,  
3 in the discretion of the sender.

4 11440.30. (a) The presiding officer may conduct all  
5 or part of a hearing by telephone, television, or other  
6 electronic means if each participant in the hearing has an  
7 opportunity to participate in and to hear the entire  
8 proceeding while it is taking place and to observe  
9 exhibits.

10 (b) The presiding officer may not conduct all or part  
11 of a hearing by telephone, television, or other electronic  
12 means if a party objects.

13 11440.40. (a) In any proceeding under subdivision  
14 (h) or (i) of Section 12940, or Section 19572 or 19702,  
15 alleging conduct that constitutes sexual harassment,  
16 sexual assault, or sexual battery, evidence of specific  
17 instances of a complainant's sexual conduct with  
18 individuals other than the alleged perpetrator is subject  
19 to all of the following limitations:

20 (1) The evidence is not discoverable unless it is to be  
21 offered at a hearing to attack the credibility of the  
22 complainant as provided for under subdivision (b). This  
23 paragraph is intended only to limit the scope of discovery;  
24 it is not intended to affect the methods of discovery  
25 allowed by statute.

26 (2) The evidence is not admissible at the hearing  
27 unless offered to attack the credibility of the complainant  
28 as provided for under subdivision (b). Reputation or  
29 opinion evidence regarding the sexual behavior of the  
30 complainant is not admissible for any purpose.

31 (b) Evidence of specific instances of a complainant's  
32 sexual conduct with individuals other than the alleged  
33 perpetrator is presumed inadmissible absent an offer of  
34 proof establishing its relevance and reliability and that its  
35 probative value is not substantially outweighed by the  
36 probability that its admission will create substantial  
37 danger of undue prejudice or confuse the issue.

38 (c) As used in this section "complainant" means a  
39 person claiming to have been subjected to conduct that



1 constitutes sexual harassment, sexual assault, or sexual  
2 battery.

3

4

Article 10. Informal Hearing

5

6 11445.10. (a) Subject to the limitations in this article,  
7 an agency may conduct an adjudicative proceeding  
8 under the informal hearing procedure provided in this  
9 article.

10 (b) The Legislature finds and declares the following:

11 (1) The informal hearing procedure is intended to  
12 satisfy due process and public policy requirements in a  
13 manner that is simpler and more expeditious than  
14 hearing procedures otherwise required by statute, for use  
15 in appropriate circumstances.

16 (2) The informal hearing procedure provides a forum  
17 in the nature of a conference in which a party has an  
18 opportunity to be heard by the presiding officer.

19 (3) The informal hearing procedure provides a forum  
20 that may accommodate a hearing where by regulation or  
21 statute a member of the public may participate without  
22 appearing or intervening as a party.

23 11445.20. An informal hearing procedure may be used  
24 in any of the following proceedings, if in the  
25 circumstances its use does not violate another statute or  
26 the federal or state Constitution:

27 (a) A proceeding where there is no disputed issue of  
28 material fact.

29 (b) A proceeding where there is a disputed issue of  
30 material fact, if the matter is limited to any of the  
31 following:

32 (1) A monetary amount of not more than one  
33 thousand dollars (\$1,000).

34 (2) A disciplinary sanction against a student that does  
35 not involve expulsion from an academic institution or  
36 suspension for more than 10 days.

37 (3) A disciplinary sanction against an employee that  
38 does not involve discharge from employment, demotion,  
39 or suspension for more than 5 days.



1 (4) A disciplinary sanction against a licensee that does  
2 not involve revocation, suspension, annulment,  
3 withdrawal, or amendment of a license.

4 (c) A proceeding where, by regulation, the agency has  
5 authorized use of an informal hearing.

6 (d) A proceeding where an evidentiary hearing for  
7 determination of facts is not required by statute but  
8 where the agency determines the federal or state  
9 Constitution may require a hearing.

10 11445.30. (a) The agency's pleading shall state the  
11 agency's selection of the informal hearing procedure.

12 (b) Any objection of a party to use of the informal  
13 hearing procedure shall be made in the party's pleading.

14 (c) An objection to use of the informal hearing  
15 procedure shall be resolved by the presiding officer  
16 before the hearing on the basis of the pleadings and any  
17 written submissions in support of the pleadings.

18 11445.40. (a) Except as provided in this article, the  
19 hearing procedures otherwise required by statute for an  
20 adjudicative proceeding apply to an informal hearing.

21 (b) In an informal hearing the presiding officer shall  
22 regulate the course of the proceeding. The presiding  
23 officer shall permit the parties and may permit others to  
24 offer written or oral comments on the issues. The  
25 presiding officer may limit the use of witnesses,  
26 testimony, evidence, and argument, and may limit or  
27 eliminate the use of pleadings, intervention, discovery,  
28 prehearing conferences, and rebuttal.

29 11445.50. (a) The presiding officer may deny use of  
30 the informal hearing procedure, or may convert an  
31 informal hearing to a formal hearing after an informal  
32 hearing is commenced, if it appears to the presiding  
33 officer that cross-examination is necessary for proper  
34 determination of the matter and that the delay, burden,  
35 or complication due to allowing cross-examination in the  
36 informal hearing will be more than minimal.

37 (b) An agency, by regulation, may specify categories  
38 of cases in which cross-examination is deemed not  
39 necessary for proper determination of the matter under  
40 the informal hearing procedure. The presiding officer



1 may allow cross-examination of witnesses in an informal  
2 hearing notwithstanding an agency regulation if it  
3 appears to the presiding officer that in the circumstances  
4 cross-examination is necessary for proper determination  
5 of the matter.

6 (c) The actions of the presiding officer under this  
7 section are not subject to judicial review.

8 11445.60. (a) If the presiding officer has reason to  
9 believe that material facts are in dispute, the presiding  
10 officer may require a party to state the identity of the  
11 witnesses or other sources through which the party would  
12 propose to present proof if the proceeding were  
13 converted to a formal or other applicable hearing  
14 procedure. If disclosure of a fact, allegation, or source is  
15 privileged or expressly prohibited by a regulation,  
16 statute, or the federal or state Constitution, the presiding  
17 officer may require the party to indicate that confidential  
18 facts, allegations, or sources are involved, but not to  
19 disclose the confidential facts, allegations, or sources.

20 (b) If a party has reason to believe that essential facts  
21 must be obtained in order to permit an adequate  
22 presentation of the case, the party may inform the  
23 presiding officer regarding the general nature of the facts  
24 and the sources from which the party would propose to  
25 obtain the facts if the proceeding were converted to a  
26 formal or other applicable hearing procedure.

27

28

#### Article 11. Subpoenas

29

30 11450.10. (a) Subpoenas and subpoenas duces tecum  
31 may be issued for attendance at a hearing and for  
32 production of documents at any reasonable time and  
33 place or at a hearing.

34 (b) The custodian of documents that are the subject of  
35 a subpoena duces tecum may satisfy the subpoena by  
36 delivery of the documents or a copy of the documents, or  
37 by making the documents available for inspection or  
38 copying, together with an affidavit in compliance with  
39 Section 1561 of the Evidence Code.



1 11450.20. (a) Subpoenas and subpoenas duces tecum  
2 shall be issued by the agency or presiding officer at the  
3 request of a party, or by the attorney of record for a party,  
4 in accordance with Sections 1985 to 1985.4, inclusive, of  
5 the Code of Civil Procedure.

6 (b) The process extends to all parts of the state and  
7 shall be served in accordance with Sections 1987 and 1988  
8 of the Code of Civil Procedure. A subpoena or subpoena  
9 duces tecum may also be delivered by certified mail  
10 return receipt requested or by messenger. Service by  
11 messenger shall be effected when the witness  
12 acknowledges receipt of the subpoena to the sender, by  
13 telephone, by mail, or in person, and identifies himself or  
14 herself either by reference to date of birth and driver's  
15 license number or Department of Motor Vehicles  
16 identification number, or the sender may verify receipt  
17 of the subpoena by obtaining other identifying  
18 information from the recipient. The sender shall make a  
19 written notation of the acknowledgment. A subpoena  
20 issued and acknowledged pursuant to this section has the  
21 same force and effect as a subpoena personally served.  
22 Failure to comply with a subpoena issued and  
23 acknowledged pursuant to this section may be punished  
24 as a contempt and the subpoena may so state. A party  
25 requesting a continuance based upon the failure of a  
26 witness to appear in court at the time and place required  
27 for the appearance or testimony pursuant to a subpoena,  
28 shall prove to the court that the party has complied with  
29 this section. The continuance shall only be granted for a  
30 period of time that would allow personal service of the  
31 subpoena and in no event longer than that allowed by  
32 law.

33 (c) No witness is obliged to attend unless the witness  
34 is a resident of the state at the time of service.

35 11450.30. (a) A person served with a subpoena or a  
36 subpoena duces tecum may object to its terms by a  
37 motion for a protective order, including a motion to  
38 quash.

39 (b) The objection shall be resolved by the presiding  
40 officer on terms and conditions that the presiding officer



1 declares. The presiding officer may make another order  
2 that is appropriate to protect the parties or the witness  
3 from unreasonable or oppressive demands, including  
4 violations of the right to privacy.

5 (c) A subpoena or a subpoena duces tecum issued by  
6 the agency on its own motion may be quashed by the  
7 agency.

8 11450.40. A witness appearing pursuant to a subpoena  
9 or a subpoena duces tecum, other than a party, shall  
10 receive for the appearance the following mileage and  
11 fees, to be paid by the party at whose request the witness  
12 is subpoenaed:

13 (a) The same mileage allowed by law to a witness in a  
14 civil case.

15 (b) The same fees allowed by law to a witness in a civil  
16 case. This subdivision does not apply to an officer or  
17 employee of the state or a political subdivision of the state.

18

#### 19 Article 12. Enforcement of Orders and Sanctions

20

21 11455.10. A person is subject to the contempt sanction  
22 for any of the following in an adjudicative proceeding  
23 before an agency:

24 (a) Disobedience of or resistance to a lawful order.

25 (b) Refusal to take the oath or affirmation as a witness  
26 or thereafter refusal to be examined.

27 (c) Obstruction or interruption of the due course of  
28 the proceeding during a hearing or near the place of the  
29 hearing by any of the following:

30 (1) Disorderly, contemptuous, or insolent behavior  
31 toward the presiding officer while conducting the  
32 proceeding.

33 (2) Breach of the peace, boisterous conduct, or violent  
34 disturbance.

35 (3) Other unlawful interference with the process or  
36 proceedings of the agency.

37 (d) Violation of the prohibition of ex parte  
38 communications under Article 7 (commencing with  
39 Section 11430.10).



1 (e) Failure or refusal, without substantial justification,  
2 to comply with a deposition order, discovery request,  
3 subpoena, or other order of the presiding officer, or  
4 moving, without substantial justification, to compel  
5 discovery.

6 11455.20. (a) The presiding officer or agency head  
7 may certify the facts that justify the contempt sanction  
8 against a person to the superior court in and for the  
9 county where the proceeding is conducted. The court  
10 shall thereupon issue an order directing the person to  
11 appear before the court at a specified time and place, and  
12 then and there to show cause why the person should not  
13 be punished for contempt. The order and a copy of the  
14 certified statement shall be served on the person. Upon  
15 service of the order and a copy of the certified statement,  
16 the court has jurisdiction of the matter.

17 (b) The same proceedings shall be had, the same  
18 penalties may be imposed, and the person charged may  
19 purge the contempt in the same way, as in the case of a  
20 person who has committed a contempt in the trial of a  
21 civil action before a superior court.

22 11455.30. (a) The presiding officer may order a  
23 party, the party's attorney or other authorized  
24 representative, or both, to pay reasonable expenses,  
25 including attorney's fees, incurred by another party as a  
26 result of bad faith actions or tactics that are frivolous or  
27 solely intended to cause unnecessary delay as defined in  
28 Section 128.5 of the Code of Civil Procedure.

29 (b) The order, or denial of an order, is subject to  
30 judicial review in the same manner as a decision in the  
31 proceeding. The order is enforceable in the same manner  
32 as a money judgment or by the contempt sanction.

33

34 Article 13. Emergency Decision

35

36 11460.10. Subject to the limitations in this article, an  
37 agency may conduct an adjudicative proceeding under  
38 the emergency decision procedure provided in this  
39 article.



1 11460.20. (a) An agency may issue an emergency  
2 decision for temporary, interim relief under this article if  
3 the agency has adopted a regulation that provides that  
4 the agency may use the procedure provided in this  
5 article.

6 (b) The regulation shall elaborate the application of  
7 the provisions of this article to an emergency decision by  
8 the agency, including all of the following:

9 (1) Define the specific circumstances in which an  
10 emergency decision may be issued under this article.

11 (2) State the nature of the temporary, interim relief  
12 that the agency may order.

13 (3) Prescribe the procedures that will be available  
14 before and after issuance of an emergency decision under  
15 this article. The procedures may be more protective of  
16 the person to which the agency action is directed than  
17 those provided in this article.

18 (c) This article does not apply to an emergency  
19 decision, including a cease and desist order or temporary  
20 suspension order, issued pursuant to other express  
21 statutory authority.

22 11460.30. (a) An agency may issue an emergency  
23 decision under this article in a situation involving an  
24 immediate danger to the public health, safety, or welfare  
25 that requires immediate agency action.

26 (b) An agency may only take action under this article  
27 that is necessary to prevent or avoid the immediate  
28 danger to the public health, safety, or welfare that justifies  
29 issuance of an emergency decision.

30 (c) An emergency decision issued under this article is  
31 limited to temporary, interim relief. The temporary,  
32 interim relief is subject to judicial review under Section  
33 11460.80, and the underlying issue giving rise to the  
34 temporary, interim relief is subject to an adjudicative  
35 proceeding pursuant to Section 11460.60.

36 11460.40. (a) Before issuing an emergency decision  
37 under this article, the agency shall, if practicable, give the  
38 person to which the agency action is directed notice and  
39 an opportunity to be heard.



1 (b) Notice and hearing under this section may be oral  
2 or written, including notice and hearing by telephone,  
3 facsimile transmission, or other electronic means, as the  
4 circumstances permit. The hearing may be conducted in  
5 the same manner as an informal hearing.

6 11460.50. (a) The agency shall issue an emergency  
7 decision, including a brief explanation of the factual and  
8 legal basis and reasons for the emergency decision, to  
9 justify the determination of an immediate danger and the  
10 agency's emergency decision to take the specific action.

11 (b) The agency shall give notice to the extent  
12 practicable to the person to which the agency action is  
13 directed. The emergency decision is effective when  
14 issued or as provided in the decision.

15 11460.60. (a) After issuing an emergency decision  
16 under this article for temporary, interim relief, the  
17 agency shall conduct an adjudicative proceeding under  
18 a formal, informal, or other applicable hearing procedure  
19 to resolve the underlying issues giving rise to the  
20 temporary, interim relief.

21 (b) The agency shall commence an adjudicative  
22 proceeding under another procedure within 10 days after  
23 issuing an emergency decision under this article,  
24 notwithstanding the pendency of proceedings for judicial  
25 review of the emergency decision.

26 11460.70. The agency record consists of any  
27 documents concerning the matter that were considered  
28 or prepared by the agency. The agency shall maintain  
29 these documents as its official record.

30 11460.80. (a) On issuance of an emergency decision  
31 under this article, the person to which the agency action  
32 is directed may obtain judicial review of the decision in  
33 the manner provided in this section without exhaustion  
34 of administrative remedies.

35 (b) Judicial review under this section shall be pursuant  
36 to Section 1094.5 of the Code of Civil Procedure, subject  
37 to the following provisions:

38 (1) The hearing shall be on the earliest day that the  
39 business of the court will admit of, but not later than 15  
40 days after service of the petition on the agency.



1 (2) Where it is claimed that the findings are not  
2 supported by the evidence, abuse of discretion is  
3 established if the court determines that the findings are  
4 not supported by substantial evidence in the light of the  
5 whole record.

6 (3) A party, on written request to another party,  
7 before the proceedings for review and within 10 days  
8 after issuance of the emergency decision, is entitled to  
9 appropriate discovery.

10 (4) The relief that may be ordered on judicial review  
11 is limited to a stay of the emergency decision.

12

13 Article 14. Declaratory Decision

14

15 11465.10. Subject to the limitations in this article, an  
16 agency may conduct an adjudicative proceeding under  
17 the declaratory decision procedure provided in this  
18 article.

19 11465.20. (a) In case of an actual controversy, a  
20 person may apply to an agency for a declaratory decision  
21 as to the applicability to specified circumstances of a  
22 statute, regulation, or decision within the primary  
23 jurisdiction of the agency.

24 (b) The agency in its discretion may issue a  
25 declaratory decision in response to the application. The  
26 agency shall not issue a declaratory decision if the agency  
27 determines that any of the following applies:

28 (1) Issuance of the decision would be contrary to a  
29 regulation adopted under this article.

30 (2) The decision would substantially prejudice the  
31 rights of a person who would be a necessary party and  
32 who does not consent in writing to the determination of  
33 the matter by a declaratory decision proceeding.

34 (c) An application for a declaratory decision is not  
35 required for exhaustion of the applicant's administrative  
36 remedies for purposes of judicial review.

37 11465.30. Within 30 days after receipt of an  
38 application for a declaratory decision, an agency shall  
39 give notice of the application to all persons to which



1 notice of an adjudicative proceeding is otherwise  
2 required, and may give notice to any other person.

3 11465.40. The provisions of a formal, informal, or  
4 other applicable hearing procedure do not apply to an  
5 agency proceeding for a declaratory decision except to  
6 the extent provided in this article or to the extent the  
7 agency so provides by regulation or order.

8 11465.50. (a) Within 60 days after receipt of an  
9 application for a declaratory decision, an agency shall do  
10 one of the following, in writing:

11 (1) Issue a decision declaring the applicability of the  
12 statute, regulation, or decision in question to the specified  
13 circumstances.

14 (2) Set the matter for specified proceedings.

15 (3) Agree to issue a declaratory decision by a specified  
16 time.

17 (4) Decline to issue a declaratory decision, stating in  
18 writing the reasons for its action. Agency action under  
19 this paragraph is not subject to judicial review.

20 (b) A copy of the agency's action under subdivision  
21 (a) shall be served promptly on the applicant and any  
22 other party.

23 (c) If an agency has not taken action under subdivision  
24 (a) within 60 days after receipt of an application for a  
25 declaratory decision, the agency is considered to have  
26 declined to issue a declaratory decision on the matter.

27 11465.60. (a) A declaratory decision shall contain the  
28 names of all parties to the proceeding, the particular facts  
29 on which it is based, and the reasons for its conclusion.

30 (b) A declaratory decision has the same status and  
31 binding effect as any other decision issued by the agency  
32 in an adjudicative proceeding.

33 11465.70. (a) The Office of Administrative Hearings  
34 shall adopt and promulgate model regulations under this  
35 article that are consistent with the public interest and  
36 with the general policy of this article to facilitate and  
37 encourage agency issuance of reliable advice. The model  
38 regulations shall provide for all of the following:

39 (1) A description of the classes of circumstances in  
40 which an agency will not issue a declaratory decision.



1 (2) The form, contents, and filing of an application for  
2 a declaratory decision.

3 (3) The procedural rights of a person in relation to an  
4 application.

5 (4) The disposition of an application.

6 (b) The regulations adopted by the Office of  
7 Administrative Hearings under this article apply in an  
8 adjudicative proceeding unless an agency adopts its own  
9 regulations to govern declaratory decisions of the agency.

10 (c) This article does not apply in an adjudicative  
11 proceeding to the extent an agency by regulation  
12 provides inconsistent rules or provides that this article is  
13 not applicable in a proceeding of the agency.

14

15 Article 15. Conversion of Proceeding

16

17 11470.10. (a) Subject to any applicable regulation  
18 adopted under Section 11470.50, at any point in an agency  
19 proceeding the presiding officer or other agency official  
20 responsible for the proceeding:

21 (1) May convert the proceeding to another type of  
22 agency proceeding provided for by statute if the  
23 conversion is appropriate, is in the public interest, and  
24 does not substantially prejudice the rights of a party.

25 (2) Shall convert the proceeding to another type of  
26 agency proceeding provided for by statute, if required by  
27 regulation or statute.

28 (b) A proceeding of one type may be converted to a  
29 proceeding of another type only on notice to all parties to  
30 the original proceeding.

31 11470.20. If the presiding officer or other agency  
32 official responsible for the original proceeding would not  
33 have authority over the new proceeding to which it is to  
34 be converted, the agency head shall appoint a successor  
35 to preside over or be responsible for the new proceeding.

36 11470.30. To the extent practicable and consistent  
37 with the rights of parties and the requirements of this  
38 article relating to the new proceeding, the record of the  
39 original agency proceeding shall be used in the new  
40 agency proceeding.



1 11470.40. After a proceeding is converted from one  
2 type to another, the presiding officer or other agency  
3 official responsible for the new proceeding shall do all of  
4 the following:

5 (a) Give additional notice to parties or other persons  
6 necessary to satisfy the statutory requirements relating to  
7 the new proceeding.

8 (b) Dispose of the matters involved without further  
9 proceedings if sufficient proceedings have already been  
10 held to satisfy the statutory requirements relating to the  
11 new proceeding.

12 (c) Conduct or cause to be conducted any additional  
13 proceedings necessary to satisfy the statutory  
14 requirements relating to the new proceeding, and allow  
15 the parties a reasonable time to prepare for the new  
16 proceeding.

17 11470.50. An agency may adopt regulations to govern  
18 the conversion of one type of proceeding to another. The  
19 regulations may include an enumeration of the factors to  
20 be considered in determining whether and under what  
21 circumstances one type of proceeding will be converted  
22 to another.

23 SEC. 17. The heading of Chapter 5 (commencing  
24 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
25 Government Code is amended to read:

26

27 CHAPTER 5. ADMINISTRATIVE ~~ADJUDICATION~~

28

*ADJUDICATION: FORMAL HEARING*

29 SEC. 18. Section 11500 of the Government Code is  
30 amended to read:

31 11500. In this chapter unless the context or subject  
32 matter otherwise requires:

33 (a) "Agency" includes the state boards, commissions,  
34 and officers ~~enumerated in Section 11501 and those~~ to  
35 which this chapter is made applicable by law, except that  
36 wherever the word "agency" alone is used the power to  
37 act may be delegated by the agency, and wherever the  
38 words "agency itself" are used the power to act shall not  
39 be delegated unless the statutes relating to the particular



1 agency authorize the delegation of the agency’s power to  
2 hear and decide.

3 (b) “Party” includes the agency, the respondent, and  
4 any person, other than an officer or an employee of the  
5 agency in his or her official capacity, who has been  
6 allowed to appear or participate in the proceeding.

7 (c) “Respondent” means any person against whom an  
8 accusation is filed pursuant to Section 11503 or against  
9 whom a statement of issues is filed pursuant to Section  
10 11504.

11 (d) “Administrative law judge” means an individual  
12 qualified under Section 11502.

13 (e) “Agency member” means any person who is a  
14 member of any agency to which this chapter is applicable  
15 and includes any person who himself or herself  
16 constitutes an agency.

17 ~~(f) “Adjudicatory hearing” means a state agency  
18 hearing which involves the personal or property rights of  
19 an individual, the granting or revocation of an  
20 individual’s license, or the resolution of an issue  
21 pertaining to an individual. However, the procedures  
22 governing such a hearing shall include, but not be limited  
23 to, all of the following:~~

- 24 ~~(1) Testimony under oath.~~
- 25 ~~(2) The right to cross-examination and to confront~~  
26 ~~adversary witnesses.~~
- 27 ~~(3) The right to representation.~~
- 28 ~~(4) The issuance of a formal decision.~~

29 ~~For purposes of this subdivision, an “adjudicatory  
30 hearing” shall not be required to include any informal  
31 factfinding or informal investigatory hearing. However,  
32 nothing in this subdivision shall be construed to prohibit  
33 an agency from providing an interpreter during any such  
34 informal hearing.~~

35 ~~(g) “Language assistance” means oral interpretation  
36 or written translation of a language other than English  
37 into English or of English into another language for a  
38 party who cannot speak or understand English or who can  
39 do so only with difficulty.~~



1 SEC. 19. Section 11501 of the Government Code is  
2 amended to read:

3 11501. (a) This chapter applies to any agency as  
4 determined by the statutes relating to that agency.

5 (b) ~~The enumerated agencies referred to in Section~~  
6 ~~11500 are:~~

- 7 ~~Accountancy, State Board of~~
- 8 ~~Air Resources Board, State~~
- 9 ~~Alcohol and Drug Programs, State Department of~~
- 10 ~~Architectural Examiners, California Board of~~
- 11 ~~Attorney General~~
- 12 ~~Auctioneer Commission, Board of Governors of~~
- 13 ~~Automotive Repair, Bureau of~~
- 14 ~~Barbering and Cosmetology, State Board of~~
- 15 ~~Behavioral Science Examiners, Board of~~
- 16 ~~Boating and Waterways, Department of~~
- 17 ~~Cancer Advisory Council~~
- 18 ~~Cemetery Board~~
- 19 ~~Chiropractic Examiners, Board of~~
- 20 ~~Security and Investigative Services, Bureau of~~
- 21 ~~Community Colleges, Board of Governors of the~~  
22 ~~California~~
- 23 ~~Conservation, Department of~~
- 24 ~~Consumer Affairs, Department of~~
- 25 ~~Contractors' State License Board~~
- 26 ~~Corporations, Commissioner of~~
- 27 ~~Court Reporters Board of California~~
- 28 ~~Dental Examiners of California, Board of~~
- 29 ~~Education, State Department of~~
- 30 ~~Electronic and Appliance Repair, Bureau of~~
- 31 ~~Engineers and Land Surveyors, State Board of~~  
32 ~~Registration for Professional~~
- 33 ~~Fair Political Practices Commission~~
- 34 ~~Fire Marshal, State~~
- 35 ~~Food and Agriculture, Director of~~
- 36 ~~Forestry and Fire Protection, Department of~~
- 37 ~~Funeral Directors and Embalmers, State Board of~~
- 38 ~~Geologists and Geophysicists, State Board of~~  
39 ~~Registration for~~
- 40 ~~Guide Dogs for the Blind, State Board of~~



1 ~~Health Services, State Department of~~  
 2 ~~Highway Patrol, Department of the California~~  
 3 ~~Home Furnishings and Thermal Insulation, Bureau of~~  
 4 ~~Horse Racing Board, California~~  
 5 ~~Housing and Community Development, Department~~  
 6 ~~of~~  
 7 ~~Insurance Commissioner~~  
 8 ~~Labor Commissioner~~  
 9 ~~Landscape Architects, State Board of~~  
 10 ~~Medical Board of California, Medical Quality Review~~  
 11 ~~Committees and Examining Committees~~  
 12 ~~Motor Vehicles, Department of~~  
 13 ~~Nursing, Board of Registered~~  
 14 ~~Nursing Home Administrators, Board of Examiners of~~  
 15 ~~Optometry, State Board of~~  
 16 ~~Osteopathic Medical Board of California~~  
 17 ~~Pharmacy, California State Board of~~  
 18 ~~Podiatric Medicine, Board of~~  
 19 ~~Psychology, Board of~~  
 20 ~~Public Employees' Retirement System, Board of~~  
 21 ~~Administration of the~~  
 22 ~~Real Estate, Department of~~  
 23 ~~San Francisco, San Pablo and Suisun, Board of Pilot~~  
 24 ~~Commissioners for the Bays of~~  
 25 ~~Savings and Loan Commissioner~~  
 26 ~~School Districts~~  
 27 ~~Secretary of State, Office of~~  
 28 ~~Social Services, State Department of~~  
 29 ~~Statewide Health Planning and Development, Office~~  
 30 ~~of~~  
 31 ~~Structural Pest Control Board~~  
 32 ~~Tax Preparers Program~~  
 33 ~~Teacher Credentialing, Commission on~~  
 34 ~~Teachers' Retirement System, State~~  
 35 ~~Transportation, Department of, acting pursuant to the~~  
 36 ~~State Aeronautics Act~~  
 37 ~~Veterinary Medicine, Board of Examiners in~~  
 38 ~~Vocational Nurse and Psychiatric Technician~~  
 39 ~~Examiners of the State of California, Board of This~~  
 40 *chapter applies to an adjudicative proceeding of an*



1 agency created on or after July 1, 1997, unless the statutes  
2 relating to the proceeding provide otherwise.

3 (c) Chapter 4.5 (commencing with Section 11400)  
4 applies to an adjudicative proceeding required to be  
5 conducted under this chapter, unless the statutes relating  
6 to the proceeding provide otherwise.

7 SEC. 20. Section 11501.5 of the Government Code is  
8 repealed.

9 11501.5. (a) The following state agencies shall  
10 provide language assistance at adjudicatory hearings  
11 pursuant to subdivision (d) of Section 11513:

- 12 ~~Agricultural Labor Relations Board~~
- 13 ~~State Department of Alcohol and Drug Abuse~~
- 14 ~~Athletic Commission~~
- 15 ~~California Unemployment Insurance Appeals Board~~
- 16 ~~Board of Prison Terms~~
- 17 ~~State Board of Barbering and Cosmetology~~
- 18 ~~State Department of Developmental Services~~
- 19 ~~Public Employment Relations Board~~
- 20 ~~Franchise Tax Board~~
- 21 ~~State Department of Health Services~~
- 22 ~~Department of Housing and Community~~
- 23 ~~Development~~
- 24 ~~Department of Industrial Relations~~
- 25 ~~State Department of Mental Health~~
- 26 ~~Department of Motor Vehicles~~
- 27 ~~Notary Public Section, office of the Secretary of State~~
- 28 ~~Public Utilities Commission~~
- 29 ~~Office of Statewide Health Planning and Development~~
- 30 ~~State Department of Social Services~~
- 31 ~~Workers' Compensation Appeals Board~~
- 32 ~~Department of the Youth Authority~~
- 33 ~~Youthful Offender Parole Board~~
- 34 ~~Bureau of Employment Agencies~~
- 35 ~~Department of Insurance~~
- 36 ~~State Personnel Board~~
- 37 ~~Board of Podiatric Medicine~~
- 38 ~~Board of Psychology~~

39 (b) Nothing in this section shall be construed to  
40 prevent any agency other than those listed in subdivision



1 ~~(a) from electing to adopt any of the procedures set forth~~  
2 ~~in subdivision (d), (e), (f), (g), (h), or (i) of Section~~  
3 ~~11513, except that the State Personnel Board shall~~  
4 ~~determine the general language proficiency of~~  
5 ~~prospective interpreters as described in subdivisions (d)~~  
6 ~~and (e) of Section 11513 unless otherwise provided for as~~  
7 ~~described in subdivision (f) of Section 11513.~~

8 SEC. 21. Section 11502 of the Government Code is  
9 amended to read:

10 11502. (a) All hearings of state agencies required to  
11 be conducted under this chapter shall be conducted by  
12 administrative law judges on the staff of the Office of  
13 Administrative Hearings. ~~The~~ *This subdivision applies to*  
14 *a hearing required to be conducted under this chapter*  
15 *that is conducted under the informal hearing or*  
16 *emergency decision procedure provided in Chapter 4.5*  
17 *(commencing with Section 11400).*

18 (b) ~~The~~ Director of the Office of Administrative  
19 Hearings has power to appoint a staff of administrative  
20 law judges for the office as provided in Section 11370.3 ~~of~~  
21 ~~the Government Code.~~ Each administrative law judge  
22 shall have been admitted to practice law in this state for  
23 at least five years immediately preceding his or her  
24 appointment and shall possess any additional  
25 qualifications established by the State Personnel Board  
26 for the particular class of position involved.

27 SEC. 22. Section 11502.1 of the Government Code is  
28 repealed.

29 ~~11502.1. There is hereby established in the Office of~~  
30 ~~Administrative Hearings a unit of administrative law~~  
31 ~~judges who shall preside over hearings conducted~~  
32 ~~pursuant to Part 1.5 (commencing with Section 437) of~~  
33 ~~Division 1 of the Health and Safety Code. In addition to~~  
34 ~~meeting the qualifications of administrative law judges as~~  
35 ~~prescribed in Section 11502, the administrative law judges~~  
36 ~~in this unit shall have a demonstrated knowledge of~~  
37 ~~health planning and certificate-of-need matters. As many~~  
38 ~~administrative law judges as are necessary to handle the~~  
39 ~~caseload shall be permanently assigned to this unit. In the~~  
40 ~~event there are no pending certificate of need of health~~



1 ~~planning matters, administrative law judges in this unit~~  
2 ~~may be assigned to other matters pending before the~~  
3 ~~Office of Administrative Hearings. Health planning~~  
4 ~~matters shall be given priority on the calendar of~~  
5 ~~administrative law judges assigned to this unit.~~

6 SEC. 23. Section 11505 of the Government Code is  
7 amended to read:

8 11505. (a) Upon the filing of the accusation the  
9 agency shall serve a copy thereof on the respondent as  
10 provided in subdivision (c). The agency may include with  
11 the accusation any information which it deems  
12 appropriate, but it shall include a post card or other form  
13 entitled Notice of Defense which, when signed by or on  
14 behalf of the respondent and returned to the agency, will  
15 acknowledge service of the accusation and constitute a  
16 notice of defense under Section 11506. The copy of the  
17 accusation shall include or be accompanied by (1) a  
18 statement that respondent may request a hearing by  
19 filing a notice of defense as provided in Section 11506  
20 within 15 days after service upon ~~him~~ *the respondent* of  
21 the accusation, and that failure to do so will constitute a  
22 waiver of ~~his~~ *the respondent's* right to a hearing, and (2)  
23 copies of Sections 11507.5, 11507.6, and 11507.7.

24 (b) The statement to respondent shall be substantially  
25 in the following form:

26 Unless a written request for a hearing signed by or on  
27 behalf of the person named as respondent in the  
28 accompanying accusation is delivered or mailed to the  
29 agency within 15 days after the accusation was personally  
30 served on you or mailed to you, (here insert name of  
31 agency) may proceed upon the accusation without a  
32 hearing. The request for a hearing may be made by  
33 delivering or mailing the enclosed form entitled Notice  
34 of Defense, or by delivering or mailing a notice of defense  
35 as provided by Section 11506 ~~of the Government Code~~ to:  
36 (here insert name and address of agency). You may, but  
37 need not, be represented by counsel at any or all stages  
38 of these proceedings.

39 If you desire the names and addresses of witnesses or an  
40 opportunity to inspect and copy the items mentioned in



1 Section 11507.6 in the possession, custody or control of the  
2 agency, you may contact: (here insert name and address  
3 of appropriate person).

4 The hearing may be postponed for good cause. If you  
5 have good cause, you are obliged to notify the agency *or,*  
6 *if an administrative law judge has been assigned to the*  
7 *hearing, the Office of Administrative Hearings,* within 10  
8 working days after you discover the good cause. Failure  
9 to ~~notify the agency~~ *give notice* within 10 days will  
10 deprive you of a postponement.

11 (c) The accusation and all accompanying information  
12 may be sent to *the* respondent by any means selected by  
13 the agency. But no order adversely affecting the rights of  
14 the respondent shall be made by the agency in any case  
15 unless the respondent shall have been served personally  
16 or by registered mail as provided herein, or shall have  
17 filed a notice of defense or otherwise appeared. Service  
18 may be proved in the manner authorized in civil actions.  
19 Service by registered mail shall be effective if a statute or  
20 agency rule requires *the* respondent to file ~~his~~ *the*  
21 *respondent's* address with the agency and to notify the  
22 agency of any change, and if a registered letter containing  
23 the accusation and accompanying material is mailed,  
24 addressed to *the* respondent at the latest address on file  
25 with the agency.

26 SEC. 24. Section 11506 of the Government Code is  
27 amended to read:

28 11506. (a) Within 15 days after service ~~upon him~~ of  
29 the accusation the respondent may file with the agency  
30 a notice of defense in which ~~he~~ *the respondent* may:

31 (1) Request a hearing.

32 (2) Object to the accusation upon the ground that it  
33 does not state acts or omissions upon which the agency  
34 may proceed.

35 (3) Object to the form of the accusation on the ground  
36 that it is so indefinite or uncertain that ~~he~~ *the respondent*  
37 cannot identify the transaction or prepare ~~his~~ *a* defense.

38 (4) Admit the accusation in whole or in part.

39 (5) Present new matter by way of defense.



1 (6) Object to the accusation upon the ground that,  
2 under the circumstances, compliance with the  
3 requirements of a regulation would result in a material  
4 violation of another regulation enacted by another  
5 department affecting substantive rights.

6 ~~Within~~

7 (b) *Within* the time specified respondent may file one  
8 or more notices of defense upon any or all of these  
9 grounds but all such notices shall be filed within that  
10 period unless the agency in its discretion authorizes the  
11 filing of a later notice.

12 ~~(b)–~~

13 (c) The respondent shall be entitled to a hearing on  
14 the merits if ~~he~~ *the respondent* files a notice of defense,  
15 and ~~any such~~ *the* notice shall be deemed a specific denial  
16 of all parts of the accusation not expressly admitted.  
17 Failure to file ~~such~~ *a notice of defense* shall constitute a  
18 waiver of respondent’s right to a hearing, but the agency  
19 in its discretion may nevertheless grant a hearing. Unless  
20 objection is taken as provided in paragraph (3) of  
21 subdivision (a), all objections to the form of the  
22 accusation shall be deemed waived.

23 ~~(e)–~~

24 (d) The notice of defense shall be in writing signed by  
25 or on behalf of the respondent and shall state ~~his~~ *the*  
26 *respondent’s* mailing address. It need not be verified or  
27 follow any particular form.

28 ~~(d) Respondent may file a statement by way of~~  
29 ~~mitigation even if he does not file a notice of defense.~~

30 (e) As used in this section, “file,” “files,” “filed,” or  
31 “filing” means “delivered or mailed” to the agency as  
32 provided in Section 11505.

33 SEC. 25. Section 11507.2 is added to the Government  
34 Code, to read:

35 11507.2. (a) This section does not apply in an  
36 adjudicative proceeding to the extent an agency by  
37 regulation provides inconsistent rules or provides that  
38 this section is not applicable in a proceeding of the  
39 agency.



1 (b) The administrative law judge shall grant a motion  
2 for intervention if all of the following conditions are  
3 satisfied:

4 (1) The motion is submitted in writing, with copies  
5 served on all parties named in the accusation.

6 (2) The motion is made as early as practicable in  
7 advance of the hearing. If there is a prehearing  
8 conference, the motion shall be made in advance of the  
9 prehearing conference and shall be resolved at the  
10 prehearing conference.

11 (3) The motion states facts demonstrating that the  
12 applicant's legal rights, duties, privileges, or immunities  
13 will be substantially affected by the proceeding or that  
14 the applicant qualifies as an intervenor under a statute or  
15 regulation.

16 (4) The administrative law judge determines that the  
17 interests of justice and the orderly and prompt conduct  
18 of the proceeding will not be impaired by allowing the  
19 intervention.

20 (c) If an applicant qualifies for intervention, the  
21 administrative law judge may impose conditions on the  
22 intervenor's participation in the proceeding, either at the  
23 time that intervention is granted or at a subsequent time.  
24 Conditions may include the following:

25 (1) Limiting the intervenor's participation to  
26 designated issues in which the intervenor has a particular  
27 interest demonstrated by the motion.

28 (2) Limiting or excluding the use of discovery,  
29 cross-examination, and other procedures involving the  
30 intervenor so as to promote the orderly and prompt  
31 conduct of the proceeding.

32 (3) Requiring two or more intervenors to combine  
33 their presentations of evidence and argument,  
34 cross-examination, discovery, and other participation in  
35 the proceeding.

36 (4) Limiting or excluding the intervenor's  
37 participation in settlement negotiations.

38 (d) As early as practicable in advance of the hearing  
39 the administrative law judge shall issue an order granting  
40 or denying the motion for intervention, specifying any



1 conditions, and briefly stating the reasons for the order.  
2 The administrative law judge may modify the order at  
3 any time, stating the reasons for the modification. The  
4 administrative law judge shall promptly give notice of an  
5 order granting, denying, or modifying intervention to the  
6 applicant and to all parties.

7 (e) Whether the interests of justice and the orderly  
8 and prompt conduct of the proceedings will be impaired  
9 by allowing intervention is a determination to be made  
10 in the sole discretion, and based on the knowledge and  
11 judgment at that time, of the administrative law judge.  
12 The determination is not subject to administrative or  
13 judicial review.

14 (f) Nothing in this section precludes an agency from  
15 adopting a regulation that permits participation by a  
16 person short of intervention as a party, subject to Article  
17 7 (commencing with Section 11430.10) of Chapter 4.5.

18 SEC. 26. Section 11507.3 is added to the Government  
19 Code, to read:

20 11507.3. (a) When proceedings that involve a  
21 common question of law or fact are pending, the  
22 administrative law judge on the judge's own motion or on  
23 motion of a party may order a joint hearing of any or all  
24 the matters at issue in the proceedings. The  
25 administrative law judge may order all the proceedings  
26 consolidated and may make orders concerning the  
27 procedure that may tend to avoid unnecessary costs or  
28 delay.

29 (b) The administrative law judge on the judge's own  
30 motion or on motion of a party, in furtherance of  
31 convenience or to avoid prejudice or when separate  
32 hearings will be conducive to expedition and economy,  
33 may order a separate hearing of any issue, including an  
34 issue raised in the notice of defense, or of any number of  
35 issues.

36 SEC. 27. Section 11507.6 of the Government Code is  
37 amended to read:

38 11507.6. After initiation of a proceeding in which a  
39 respondent or other party is entitled to a hearing on the  
40 merits, a party, upon written request made to another



1 party, prior to the hearing and within 30 days after service  
2 by the agency of the initial pleading or within 15 days  
3 after such service of an additional pleading, is entitled to  
4 (1) obtain the names and addresses of witnesses to the  
5 extent known to the other party, including, but not  
6 limited to, those intended to be called to testify at the  
7 hearing, and (2) inspect and make a copy of any of the  
8 following in the possession or custody or under the control  
9 of the other party:

10 (a) A statement of a person, other than the  
11 respondent, named in the initial administrative pleading,  
12 or in any additional pleading, when it is claimed that the  
13 act or omission of the respondent as to such person is the  
14 basis for the administrative proceeding;

15 (b) A statement pertaining to the subject matter of the  
16 proceeding made by any party to another party or person;

17 (c) Statements of witnesses then proposed to be called  
18 by the party and of other persons having personal  
19 knowledge of the acts, omissions or events which are the  
20 basis for the proceeding, not included in (a) or (b) above;

21 (d) All writings, including, but not limited to, reports  
22 of mental, physical and blood examinations and things  
23 which the party then proposes to offer in evidence;

24 (e) Any other writing or thing which is relevant and  
25 which would be admissible in evidence;

26 (f) Investigative reports made by or on behalf of the  
27 agency or other party pertaining to the subject matter of  
28 the proceeding, to the extent that such reports (1)  
29 contain the names and addresses of witnesses or of  
30 persons having personal knowledge of the acts, omissions  
31 or events which are the basis for the proceeding, or (2)  
32 reflect matters perceived by the investigator in the  
33 course of his or her investigation, or (3) contain or include  
34 by attachment any statement or writing described in (a)  
35 to (e), inclusive, or summary thereof.

36 For the purpose of this section, “statements” include  
37 written statements by the person signed or otherwise  
38 authenticated by him or her, stenographic, mechanical,  
39 electrical or other recordings, or transcripts thereof, of



1 oral statements by the person, and written reports or  
2 summaries of such oral statements.

3 Nothing in this section shall authorize the inspection or  
4 copying of any writing or thing which is privileged from  
5 disclosure by law or otherwise made confidential or  
6 protected as the attorney's work product.

7 ~~(g) In any proceeding under subdivision (i) or (j) of  
8 Section 12940, or Section 19572 or 19702, alleging conduct  
9 which constitutes sexual harassment, sexual assault, or  
10 sexual battery, evidence of specific instances of a  
11 complainant's sexual conduct with individuals other than  
12 the alleged perpetrator is not discoverable unless it is to  
13 be offered at a hearing to attack the credibility of the  
14 complainant as provided for under subdivision (j) of  
15 Section 11513. This subdivision is intended only to limit  
16 the scope of discovery; it is not intended to affect the  
17 methods of discovery allowed under this section.~~

18 SEC. 28. Section 11507.7 of the Government Code is  
19 amended to read:

20 11507.7. (a) Any party claiming ~~his~~ *the party's*  
21 request for discovery pursuant to Section 11507.6 has not  
22 been complied with may serve and file ~~a verified petition~~  
23 *with the administrative law judge a motion* to compel  
24 discovery ~~in the superior court for the county in which~~  
25 ~~the administrative hearing will be held~~, naming as  
26 respondent the party refusing or failing to comply with  
27 Section 11507.6. The ~~petition~~ *motion* shall state facts  
28 showing the respondent party failed or refused to comply  
29 with Section 11507.6, a description of the matters sought  
30 to be discovered, the reason or reasons why ~~such~~ *the*  
31 matter is discoverable under ~~this~~ *that* section, *that a*  
32 *reasonable and good faith attempt to contact the*  
33 *respondent for an informal resolution of the issue has*  
34 *been made*, and the ground or grounds of respondent's  
35 refusal so far as known to ~~petitioner~~ *the moving party*.

36 (b) The ~~petition~~ *motion* shall be served upon  
37 respondent party and filed within 15 days after the  
38 respondent party first evidenced ~~his~~ failure or refusal to  
39 comply with Section 11507.6 or within 30 days after  
40 request was made and the party has failed to reply to the



1 request, *or within another time provided by stipulation,*  
2 *whichever period is longer. However, no petition may be*  
3 *filed within 15 days of the date set for commencement of*  
4 *the administrative hearing except upon order of the court*  
5 *after motion and notice and for good cause shown. In*  
6 *acting upon such motion, the court shall consider the*  
7 *necessity and reasons for such discovery, the diligence or*  
8 *lack of diligence of the moving party, whether the*  
9 *granting of the motion will delay the commencement of*  
10 *the administrative hearing on the date set, and the*  
11 *possible prejudice of such action to any party.*

12 (c) ~~If from a reading of the petition the court is~~  
13 ~~satisfied that the petition sets forth good cause for relief,~~  
14 ~~the court shall issue an order to show cause directed to the~~  
15 ~~respondent party; otherwise the court shall enter an~~  
16 ~~order denying the petition. The order to show cause shall~~  
17 ~~be served upon the respondent and his attorney of record~~  
18 ~~in the administrative proceeding by personal delivery or~~  
19 ~~certified mail and shall be returnable no earlier than 10~~  
20 ~~days from its issuance nor later than 30 days after the filing~~  
21 ~~of the petition. *The hearing on the motion to compel*~~  
22 ~~*discovery shall be held within 15 days after the motion is*~~  
23 ~~*made, or a later time that the administrative law judge*~~  
24 ~~*may on the judge's own motion for good cause determine.*~~  
25 The respondent party shall have the right to serve and file  
26 a written answer or other response to the ~~petition and~~  
27 ~~order to show cause motion before or at the time of the~~  
28 ~~hearing.~~

29 (d) ~~The court may in its discretion order the~~  
30 ~~administrative proceeding stayed during the pendency of~~  
31 ~~the proceeding, and if necessary for a reasonable time~~  
32 ~~thereafter to afford the parties time to comply with the~~  
33 ~~court order.~~

34 (e) ~~Where the matter sought to be discovered is under~~  
35 ~~the custody or control of the respondent party and the~~  
36 ~~respondent party asserts that ~~such~~ *the* matter is not a~~  
37 ~~discoverable matter under the provisions of Section~~  
38 ~~11507.6, or is privileged against disclosure under ~~such~~~~  
39 ~~*those* provisions, the ~~court~~ *administrative law judge* may~~  
40 ~~order lodged with it ~~such~~ matters as ~~are~~ provided in~~



1 subdivision (b) of Section 915 of the Evidence Code and  
2 examine ~~such~~ *the* matters in accordance with ~~the~~ *its*  
3 provisions thereof.

4 ~~(f) The court~~

5 *(e) The administrative law judge* shall decide the case  
6 on the matters examined ~~by the court~~ in camera, the  
7 papers filed by the parties, and such oral argument and  
8 additional evidence as the ~~court~~ *administrative law judge*  
9 may allow.

10 ~~(g)~~

11 *(f)* Unless otherwise stipulated by the parties, the  
12 ~~court~~ *administrative law judge* shall no later than ~~30~~ *15*  
13 days after the ~~filing of the petition file hearing~~ *make its*  
14 order denying or granting the petition, ~~provided,~~  
15 ~~however, the court may on its own motion for good cause~~  
16 ~~extend such time an additional 30 days~~ *motion*. The order  
17 ~~of the court~~ shall be in writing setting forth the matters  
18 ~~or parts thereof the petitioner~~ *the moving party* is  
19 entitled to discover under Section 11507.6. A copy of the  
20 order shall forthwith be served by mail by the ~~clerk~~  
21 *administrative law judge* upon the parties. Where the  
22 order grants the ~~petition motion~~ *in whole or in part, such*  
23 *the* order shall not become effective until 10 days after the  
24 date the order is served ~~by the clerk~~. Where the order  
25 denies relief to the ~~petitioning~~ *moving* party, the order  
26 shall be effective on the date it is served ~~by the clerk~~.

27 ~~(h) The order of the superior court shall be final and~~  
28 ~~not subject to review by appeal. A party aggrieved by~~  
29 ~~such order, or any part thereof, may within 15 days after~~  
30 ~~the service of the superior court's order serve and file in~~  
31 ~~the district court of appeal for the district in which the~~  
32 ~~superior court is located, a petition for a writ of~~  
33 ~~mandamus to compel the superior court to set aside or~~  
34 ~~otherwise modify its order. Where such review is sought~~  
35 ~~from an order granting discovery, the order of the trial~~  
36 ~~court and the administrative proceeding shall be stayed~~  
37 ~~upon the filing of the petition for writ of mandamus,~~  
38 ~~provided, however, the court of appeal may dissolve or~~  
39 ~~modify the stay thereafter if it is in the public interest to~~  
40 ~~do so. Where such review is sought from a denial of~~



1 discovery, neither the trial court's order nor the  
2 administrative proceeding shall be stayed by the court of  
3 appeal except upon a clear showing of probable error.

4 (i) ~~Where the superior court finds that a party or his~~  
5 ~~attorney, without substantial justification, failed or~~  
6 ~~refused to comply with Section 11507.6, or, without~~  
7 ~~substantial justification, filed a petition to compel~~  
8 ~~discovery pursuant to this section, or, without substantial~~  
9 ~~justification, failed to comply with any order of court~~  
10 ~~made pursuant to this section, the court may award court~~  
11 ~~costs and reasonable attorney fees to the opposing party.~~  
12 ~~Nothing in this subdivision shall limit the power of the~~  
13 ~~superior court to compel obedience to its orders by~~  
14 ~~contempt proceedings.~~

15 SEC. 29. Section 11508 of the Government Code is  
16 amended to read:

17 11508. (a) The agency shall consult the office, and  
18 subject to the availability of its staff, shall determine the  
19 time and place of hearing. The hearing shall be held in  
20 San Francisco if the transaction occurred or the  
21 respondent resides within the First or Sixth Appellate  
22 District, in the County of Los Angeles if the transaction  
23 occurred or the respondent resides within the Second or  
24 Fourth Appellate District, ~~and other than the County of~~  
25 *Imperial or San Diego*, in the County of Sacramento if the  
26 transaction occurred or the respondent resides within the  
27 Third or Fifth Appellate District, *and in the County of San*  
28 *Diego if the transaction occurred or the respondent*  
29 *resides within the Fourth Appellate District in the*  
30 *County of Imperial or San Diego.*

31 (b) Notwithstanding subdivision (a):

32 (1) If the transaction occurred in a district other than  
33 that of respondent's residence, the agency may select the  
34 county appropriate for either district.

35 (2) The agency may select a different place nearer the  
36 place where the transaction occurred or the respondent  
37 resides.

38 (3) The parties by agreement may select any place  
39 within the state.



1 (c) *The respondent may move for, and the*  
2 *administrative law judge has discretion to grant or deny,*  
3 *a change in the place of the hearing. A motion for a*  
4 *change in the place of the hearing shall be made within*  
5 *10 days after service of the notice of hearing on the*  
6 *respondent.*

7 SEC. 30. Section 11509 of the Government Code is  
8 amended to read:

9 11509. The agency shall deliver or mail a notice of  
10 hearing to all parties at least 10 days prior to the hearing.  
11 The hearing shall not be prior to the expiration of the time  
12 within which the respondent is entitled to file a notice of  
13 defense.

14 The notice to respondent shall be substantially in the  
15 following form but may include other information:

16  
17 You are hereby notified that a hearing will be held  
18 before [here insert name of agency] at [here insert place  
19 of hearing] on the \_\_\_\_ day of \_\_\_\_, 19\_\_, at the  
20 hour of \_\_\_\_, upon the charges made in the  
21 accusation served upon you. *If you object to the place of*  
22 *hearing, you must notify the presiding officer within 10*  
23 *days after this notice is served on you. Failure to notify the*  
24 *presiding officer within 10 days will deprive you of a*  
25 *change in the place of the hearing.* You may be present  
26 at the hearing. You have the right to be represented by  
27 an attorney at your own expense. You are not entitled to  
28 the appointment of an attorney to represent you at public  
29 expense. You are entitled to represent yourself without  
30 legal counsel. You may present any relevant evidence,  
31 and will be given full opportunity to cross-examine all  
32 witnesses testifying against you. You are entitled to the  
33 issuance of subpoenas to compel the attendance of  
34 witnesses and the production of books, documents or  
35 other things by applying to [here insert appropriate office  
36 of agency].

37  
38 SEC. 31. Section 11510 of the Government Code is  
39 repealed.



1 11510. ~~(a) Before the hearing has commenced, the~~  
2 ~~agency or the assigned administrative law judge shall~~  
3 ~~issue subpoenas and subpoenas duces tecum at the~~  
4 ~~request of any party for attendance or production of~~  
5 ~~documents. Subpoenas and subpoenas duces tecum shall~~  
6 ~~be issued in accordance with Sections 1985, 1985.1, 1985.2,~~  
7 ~~and 1985.3 of the Code of Civil Procedure. After the~~  
8 ~~hearing has commenced, the agency itself hearing a case~~  
9 ~~or an administrative law judge sitting alone may issue~~  
10 ~~subpoenas and subpoenas duces tecum.~~

11 ~~(b) The process issued pursuant to subdivision (a)~~  
12 ~~shall be extended to all parts of the state and may be~~  
13 ~~served in person in accordance with Sections 1987 and~~  
14 ~~1988 of the Code of Civil Procedure. A subpoena or~~  
15 ~~subpoena duces tecum may also be delivered by certified~~  
16 ~~mail return receipt requested or by messenger. Service~~  
17 ~~by messenger shall be effected when the witness~~  
18 ~~acknowledges receipt of the subpoena to the sender, by~~  
19 ~~telephone, by mail, or in person, and identifies himself or~~  
20 ~~herself either by reference to his or her date of birth and~~  
21 ~~his or her driver's license number or Department of~~  
22 ~~Motor Vehicles identification number, or, the sender may~~  
23 ~~verify receipt of the subpoena by obtaining other~~  
24 ~~identifying information from the recipient. The sender~~  
25 ~~shall make a written notation of the acknowledgment. A~~  
26 ~~subpoena issued and acknowledged pursuant to this~~  
27 ~~section shall have the same force and effect as a subpoena~~  
28 ~~personally served. Failure to comply with a subpoena~~  
29 ~~issued and acknowledged pursuant to this section may be~~  
30 ~~punished as a contempt and the subpoena may so state.~~  
31 ~~A party requesting a continuance based upon the failure~~  
32 ~~of a witness to appear in court at the time and place~~  
33 ~~required for his or her appearance or testimony pursuant~~  
34 ~~to a subpoena, shall prove to the court that the party has~~  
35 ~~complied with this section. The continuance shall only be~~  
36 ~~granted for a period of time that would allow personal~~  
37 ~~service of the subpoena and in no event longer than that~~  
38 ~~allowed by law. No witness shall be obliged to attend~~  
39 ~~unless the witness is a resident of the state at the time of~~  
40 ~~service.~~



1 ~~(c) All witnesses appearing pursuant to subpoena,~~  
2 ~~other than the parties or officers or employees of the state~~  
3 ~~or any political subdivision thereof, shall receive fees, and~~  
4 ~~all witnesses appearing pursuant to subpoena, except the~~  
5 ~~parties, shall receive mileage in the same amount and~~  
6 ~~under the same circumstances as prescribed by law for~~  
7 ~~witnesses in civil actions in a superior court. Witnesses~~  
8 ~~appearing pursuant to subpoena, except the parties, who~~  
9 ~~attend hearings at points so far removed from their~~  
10 ~~residences as to prohibit return thereto from day to day,~~  
11 ~~shall be entitled, in addition to fees and mileage, to a per~~  
12 ~~diem compensation of three dollars (\$3) for expenses of~~  
13 ~~subsistence for each day of actual attendance and for each~~  
14 ~~day necessarily occupied in traveling to and from the~~  
15 ~~hearing. Fees, mileage, and expenses of subsistence shall~~  
16 ~~be paid by the party at whose request the witness is~~  
17 ~~subpoenaed.~~

18 SEC. 32. Section 11511 of the Government Code is  
19 amended to read:

20 11511. On verified petition of any party, an  
21 *administrative law judge or, if an administrative law*  
22 *judge has not been appointed, an agency may order that*  
23 *the testimony of any material witness residing within or*  
24 *without the —State state be taken by deposition in the*  
25 *manner prescribed by law for depositions in civil actions.*  
26 *The petition shall set forth the nature of the pending*  
27 *proceeding; the name and address of the witness whose*  
28 *testimony is desired; a showing of the materiality of his*  
29 *the testimony; a showing that the witness will be unable*  
30 *or can not be compelled to attend; and shall request an*  
31 *order requiring the witness to appear and testify before*  
32 *an officer named in the petition for that purpose. The*  
33 *petitioner shall serve notice of hearing and a copy of the*  
34 *petition on the other parties at least 10 days before the*  
35 *hearing. Where the witness resides outside the State state*  
36 *and where the administrative law judge or agency has*  
37 *ordered the taking of his the testimony by deposition, the*  
38 *agency shall obtain an order of court to that effect by*  
39 *filing a petition therefor in the superior court in*  
40 *Sacramento County. The proceedings thereon shall be in*



1 accordance with the provisions of Section 11189 of ~~the~~  
2 ~~Government Code~~.

3 SEC. 33. Section 11511.5 of the Government Code is  
4 amended to read:

5 11511.5. (a) On motion of a party or by order of an  
6 administrative law judge, the administrative law judge  
7 may conduct a prehearing conference. The  
8 administrative law judge shall set the time and place for  
9 the prehearing conference, and ~~the agency~~ shall give  
10 reasonable written notice to all parties.

11 (b) The prehearing conference may deal with one or  
12 more of the following matters:

13 (1) Exploration of settlement possibilities.

14 (2) Preparation of stipulations.

15 (3) Clarification of issues.

16 (4) Rulings on identity and limitation of the number of  
17 witnesses.

18 (5) Objections to proffers of evidence.

19 (6) Order of presentation of evidence and  
20 cross-examination.

21 (7) Rulings regarding issuance of subpoenas and  
22 protective orders.

23 (8) Schedules for the submission of written briefs and  
24 schedules for the commencement and conduct of the  
25 hearing.

26 (9) *Exchange of witness lists and of exhibits or*  
27 *documents to be offered in evidence at the hearing.*

28 (10) *Motions for intervention.*

29 (11) *Exploration of the possibility of using alternative*  
30 *dispute resolution provided in Article 5 (commencing*  
31 *with Section 11420.10) of, or the informal hearing*  
32 *procedure provided in Article 10 (commencing with*  
33 *Section 11445.10) of, Chapter 4.5.*

34 (12) Any other matters as shall promote the orderly  
35 and prompt conduct of the hearing.

36 (c) *The presiding officer may conduct all or part of the*  
37 *prehearing conference by telephone, television, or other*  
38 *electronic means if each participant in the conference has*  
39 *an opportunity to participate in and to hear the entire*  
40 *proceeding while it is taking place.*



1 (d) *With the consent of the parties, the prehearing*  
2 *conference may be converted immediately into*  
3 *alternative dispute resolution or an informal hearing.*  
4 *With the consent of the parties, the proceeding may be*  
5 *converted into alternative dispute resolution to be*  
6 *conducted at another time. With the consent of the*  
7 *agency, the proceeding may be converted into an*  
8 *informal hearing to be conducted at another time subject*  
9 *to the right of a party to object to use of the informal*  
10 *hearing procedure as provided in Section 11445.30.*

11 (e) The administrative law judge shall issue a  
12 prehearing order incorporating the matters determined  
13 at the prehearing conference. The administrative law  
14 judge may direct one or more of the parties to prepare a  
15 prehearing order.

16 SEC. 34. Section 11511.7 is added to the Government  
17 Code, to read:

18 11511.7. (a) The administrative law judge may order  
19 the parties to attend and participate in a settlement  
20 conference. The administrative law judge shall set the  
21 time and place for the settlement conference, and shall  
22 give reasonable written notice to all parties.

23 (b) The administrative law judge at the settlement  
24 conference shall not preside as administrative law judge  
25 at the hearing unless otherwise stipulated by the parties.  
26 The administrative law judge may conduct all or part of  
27 the settlement conference by telephone, television, or  
28 other electronic means if each participant in the  
29 conference has an opportunity to participate in and to  
30 hear the entire proceeding while it is taking place.

31 SEC. 35. Section 11512 of the Government Code is  
32 amended to read:

33 11512. (a) Every hearing in a contested case shall be  
34 presided over by an administrative law judge. The agency  
35 itself shall determine whether the administrative law  
36 judge is to hear the case alone or whether the agency itself  
37 is to hear the case with the administrative law judge.

38 (b) When the agency itself hears the case, the  
39 administrative law judge shall preside at the hearing, rule  
40 on the admission and exclusion of evidence, and advise



1 the agency on matters of law; the agency itself shall  
2 exercise all other powers relating to the conduct of the  
3 hearing but may delegate any or all of them to the  
4 administrative law judge. When the administrative law  
5 judge alone hears a case, he or she shall exercise all powers  
6 relating to the conduct of the hearing. *A ruling of the*  
7 *administrative law judge admitting or excluding*  
8 *evidence is subject to review in the same manner and to*  
9 *the same extent as the administrative law judge's*  
10 *proposed decision in the proceeding.*

11 (c) An administrative law judge or agency member  
12 shall voluntarily disqualify himself or herself and  
13 withdraw from any case in which ~~he or she cannot accord~~  
14 ~~a fair and impartial hearing or consideration there are~~  
15 ~~grounds for disqualification, including disqualification~~  
16 ~~under Section 11425.40. The parties may waive the~~  
17 ~~disqualification by a writing that recites the grounds for~~  
18 ~~disqualification. A waiver is effective only when signed by~~  
19 ~~all parties, accepted by the administrative law judge or~~  
20 ~~agency member, and included in the record. Any party~~  
21 may request the disqualification of any administrative  
22 law judge or agency member by filing an affidavit, prior  
23 to the taking of evidence at a hearing, stating with  
24 particularity the grounds upon which it is claimed that  
25 ~~a fair and impartial hearing cannot be accorded the~~  
26 ~~administrative law judge or agency member is~~  
27 ~~disqualified.~~ Where the request concerns an agency  
28 member, the issue shall be determined by the other  
29 members of the agency. Where the request concerns the  
30 administrative law judge, the issue shall be determined  
31 by the agency itself if the agency itself hears the case with  
32 the administrative law judge, otherwise the issue shall be  
33 determined by the administrative law judge. No agency  
34 member shall withdraw voluntarily or be subject to  
35 disqualification if his or her disqualification would  
36 prevent the existence of a quorum qualified to act in the  
37 particular case, *except that a substitute qualified to act*  
38 *may be appointed by the appointing authority.*

39 (d) The proceedings at the hearing shall be reported  
40 by a ~~phonographic reporter. However, upon the consent~~



1 of all the parties, the proceedings may be reported  
2 electronically. *stenographic reporter or electronically, as*  
3 *determined by the administrative law judge. If the*  
4 *administrative law judge selects electronic reporting of*  
5 *proceedings, a party may at the party's own expense*  
6 *require stenographic reporting.*

7 (e) Whenever, after the agency itself has commenced  
8 to hear the case with an administrative law judge  
9 presiding, a quorum no longer exists, the administrative  
10 law judge who is presiding shall complete the hearing as  
11 if sitting alone and shall render a proposed decision in  
12 accordance with subdivision (b) of Section 11517 ~~of the~~  
13 ~~Government Code.~~

14 SEC. 36. Section 11513 of the Government Code is  
15 amended to read:

16 11513. (a) Oral evidence shall be taken only on oath  
17 or affirmation.

18 (b) Each party shall have these rights: to call and  
19 examine witnesses, to introduce exhibits; to  
20 cross-examine opposing witnesses on any matter relevant  
21 to the issues even though that matter was not covered in  
22 the direct examination; to impeach any witness  
23 regardless of which party first called him or her to testify;  
24 and to rebut the evidence against him or her. If  
25 respondent does not testify in his or her own behalf he or  
26 she may be called and examined as if under  
27 cross-examination.

28 (c) The hearing need not be conducted according to  
29 technical rules relating to evidence and witnesses, except  
30 as hereinafter provided. Any relevant evidence shall be  
31 admitted if it is the sort of evidence on which responsible  
32 persons are accustomed to rely in the conduct of serious  
33 affairs, regardless of the existence of any common law or  
34 statutory rule which might make improper the admission  
35 of the evidence over objection in civil actions. ~~Hearsay~~

36 (d) ~~Hearsay~~ evidence may be used for the purpose of  
37 supplementing or explaining other evidence but shall not  
38 be sufficient in itself to support a finding unless it would  
39 be admissible over objection in civil actions. ~~The~~ *On*  
40 *judicial review of the decision in the proceeding, a party*



1 *may object to a finding supported only by hearsay*  
2 *evidence in violation of this subdivision, whether or not*  
3 *the objection was previously raised in the adjudicative*  
4 *proceeding.*

5 (e) *The rules of privilege shall be effective to the*  
6 *extent that they are otherwise required by statute to be*  
7 *recognized at the hearing, and—irrelevant—and—unduly*  
8 *repetitious—evidence shall be excluded the presiding*  
9 *officer has discretion to exclude evidence if its probative*  
10 *value is substantially outweighed by the probability that*  
11 *its admission will necessitate undue consumption of time.*

12 ~~In any proceeding under subdivision (i) or (j) of~~  
13 ~~Section 12940, or Section 19572 or 19702, alleging conduct~~  
14 ~~which constitutes sexual harassment, sexual assault, or~~  
15 ~~sexual battery, evidence of specific instances of a~~  
16 ~~complainant's sexual conduct with individuals other than~~  
17 ~~the alleged perpetrator is not admissible at hearing unless~~  
18 ~~offered to attack the credibility of the complainant, as~~  
19 ~~provided for under subdivision (o). Reputation or~~  
20 ~~opinion evidence regarding the sexual behavior of the~~  
21 ~~complainant is not admissible for any purpose.~~

22 (d) ~~The hearing, or any medical examination~~  
23 ~~conducted for the purpose of determining compensation~~  
24 ~~or monetary award, shall be conducted in the English~~  
25 ~~language, except that a party who does not proficiently~~  
26 ~~speak or understand the English language and who~~  
27 ~~requests language assistance shall be provided an~~  
28 ~~interpreter. Except as provided in subdivision (k),~~  
29 ~~interpreters utilized in hearings shall be certified~~  
30 ~~pursuant to subdivision (e). Except as provided in~~  
31 ~~subdivision (k), interpreters utilized in medical~~  
32 ~~examinations shall be certified pursuant to subdivision~~  
33 ~~(f). The cost of providing the interpreter shall be paid by~~  
34 ~~the agency having jurisdiction over the matter if the~~  
35 ~~administrative law judge or hearing officer so directs,~~  
36 ~~otherwise the party for whom the interpreter is provided.~~

37 ~~The administrative law judge's or hearing officer's~~  
38 ~~decision to direct payment shall be based upon an~~  
39 ~~equitable consideration of all the circumstances in each~~  
40 ~~case, such as the ability of the party in need of the~~



1 interpreter to pay, except with respect to hearings before  
2 the Workers' Compensation Appeals Board or the  
3 Division of Workers' Compensation relating to workers'  
4 compensation claims. With respect to these hearings, the  
5 payment of the costs of providing an interpreter shall be  
6 governed by the rules and regulations promulgated by  
7 the Workers' Compensation Appeals Board or the  
8 Administrative Director of the Division of Workers'  
9 Compensation, as appropriate.

10 (e) The State Personnel Board shall establish,  
11 maintain, administer, and publish annually, an updated  
12 list of certified administrative hearing interpreters it has  
13 determined meet the minimum standards in interpreting  
14 skills and linguistic abilities in languages designated  
15 pursuant to subdivision (g). Any interpreter so listed may  
16 be examined by each employing agency to determine the  
17 interpreter's knowledge of the employing agency's  
18 technical program terminology and procedures. Court  
19 interpreters certified pursuant to Section 68562, and  
20 interpreters listed on the State Personnel Board's  
21 recommended lists of court and administrative hearing  
22 interpreters prior to July 1, 1993, shall be deemed  
23 certified for purposes of this subdivision.

24 (f) The State Personnel Board shall establish,  
25 maintain, administer, and publish annually, an updated  
26 list of certified medical examination interpreters it has  
27 determined meet the minimum standards in interpreting  
28 skills and linguistic abilities in languages designated  
29 pursuant to subdivision (g). Court interpreters certified  
30 pursuant to Section 68562 and administrative hearing  
31 interpreters certified pursuant to subdivision (e) shall be  
32 deemed certified for purposes of this subdivision.

33 (g) The State Personnel Board shall designate the  
34 languages for which certification shall be established  
35 under subdivisions (e) and (f). The languages designated  
36 shall include, but not be limited to, Spanish, Tagalog,  
37 Arabic, Cantonese, Japanese, Korean, Portuguese, and  
38 Vietnamese until the State Personnel Board finds that  
39 there is an insufficient need for interpreting assistance in



~~1 these languages. The language designations shall be based  
2 on the following:~~

~~3 (1) The language needs of non-English-speaking  
4 persons appearing before the administrative agencies, as  
5 determined by consultation with the agencies.~~

~~6 (2) The cost of developing a language examination.~~

~~7 (3) The availability of experts needed to develop a  
8 language examination.~~

~~9 (4) Other information the board deems relevant.~~

~~10 (h) Each certified administrative hearing interpreter  
11 and each certified medical examination interpreter shall  
12 pay a fee, due on July 1 of each year, for the renewal of  
13 his or her certification. Court interpreters certified under  
14 Section 68562 shall not pay any fees required by this  
15 section.~~

~~16 (i) The State Personnel Board shall establish and  
17 charge fees for applications to take interpreter  
18 examinations and for renewal of certifications. The  
19 purpose of these fees is to cover the annual projected costs  
20 of carrying out this section. The fees may be adjusted each  
21 fiscal year by a percent that is equal to or less than the  
22 percent change in the California Necessities Index  
23 prepared by the Commission on State Finance. If the  
24 amount of money collected in fees is not sufficient to  
25 cover the costs of carrying out this section, the board shall  
26 charge and be reimbursed a pro rata share of the  
27 additional costs by the state agencies that conduct  
28 administrative hearings.~~

~~29 (j) The State Personnel Board may remove the names  
30 of people from the list of certified interpreters if the  
31 following conditions occur:~~

~~32 (1) A person on the list is deceased.~~

~~33 (2) A person on the list notifies the board that he or she  
34 is unavailable for work.~~

~~35 (3) A person on the list does not submit a renewal fee  
36 as required by subdivision (h).~~

~~37 (k) In the event that interpreters certified pursuant to  
38 subdivision (e) cannot be present at the hearing, the  
39 hearing agency shall have discretionary authority to  
40 provisionally qualify and utilize other interpreters. In the~~



1 ~~event that interpreters certified pursuant to subdivision~~  
2 ~~(f) cannot be present at the medical examination, the~~  
3 ~~physician provisionally may utilize another interpreter if~~  
4 ~~that fact is noted in the record of the medical evaluation.~~

5 ~~(f) Every state agency affected by this section shall~~  
6 ~~advise each party of their right to an interpreter at the~~  
7 ~~same time that each party is advised of the hearing date~~  
8 ~~or medical examination. Each party in need of an~~  
9 ~~interpreter shall also be encouraged to give timely notice~~  
10 ~~to the agency conducting the hearing or medical~~  
11 ~~examination so that appropriate arrangements can be~~  
12 ~~made.~~

13 ~~(m) The rules of confidentiality of the agency, if any,~~  
14 ~~that may apply in an adjudicatory hearing, shall apply to~~  
15 ~~any interpreter in the hearing or medical examination,~~  
16 ~~whether or not the rules so state.~~

17 ~~(n) The interpreter shall not have had any~~  
18 ~~involvement in the issues of the case prior to the hearing.~~

19 ~~As used in subdivisions (d) and (e), the terms~~  
20 ~~“administrative law judge” and “hearing officer” shall~~  
21 ~~not be construed to require the use of an Office of~~  
22 ~~Administrative Hearings’ administrative law judge or~~  
23 ~~hearing officer.~~

24 ~~(e) Evidence of specific instances of a complainant’s~~  
25 ~~sexual conduct with individuals other than the alleged~~  
26 ~~perpetrator is presumed inadmissible absent an offer of~~  
27 ~~proof establishing its relevance and reliability and that its~~  
28 ~~probative value is not substantially outweighed by the~~  
29 ~~probability that its admission will create substantial~~  
30 ~~danger of undue prejudice or confuse the issue.~~

31 ~~(p) For purposes of this section “complainant” means~~  
32 ~~any person claiming to have been subjected to conduct~~  
33 ~~which constitutes sexual harassment, sexual assault, or~~  
34 ~~sexual battery.~~

35 ~~(q) This section shall become operative on July 1, 1995.~~

36 ~~SEC. 37. Section 11513.5 of the Government Code is~~  
37 ~~repealed.~~

38 ~~11513.5. (a) Except as required for the disposition of~~  
39 ~~ex parte matters specifically authorized by statute, a~~  
40 ~~presiding officer serving in an adjudicative proceeding~~



1 may not communicate, directly or indirectly, upon the  
2 merits of a contested matter while the proceeding is  
3 pending, with any party, including employees of the  
4 agency that filed the accusation, with any person who has  
5 a direct or indirect interest in the outcome of the  
6 proceeding, or with any person who presided at a  
7 previous stage of the proceeding, without notice and  
8 opportunity for all parties to participate in the  
9 communication.

10 (b) Unless required for the disposition of ex parte  
11 matters specifically authorized by statute, no party to an  
12 adjudicative proceeding, including employees of the  
13 agency that filed the accusation, and no person who has  
14 a direct or indirect interest in the outcome of the  
15 proceeding or who presided at a previous stage of the  
16 proceeding, may communicate directly or indirectly,  
17 upon the merits of a contested matter while the  
18 proceeding is pending, with any person serving as  
19 administrative law judge, without notice and opportunity  
20 for all parties to participate in the communication.

21 (c) If, before serving as administrative law judge in an  
22 adjudicative proceeding, a person receives an ex parte  
23 communication of a type that could not properly be  
24 received while serving, the person, promptly after  
25 starting to serve, shall disclose the communication in the  
26 manner prescribed in subdivision (d).

27 (d) An administrative law judge who receives an ex  
28 parte communication in violation of this section shall  
29 place on the record of the pending matter all written  
30 communications received, all written responses to the  
31 communications, and a memorandum stating the  
32 substance of all oral communications received, all  
33 responses made, and the identity of each person from  
34 whom the presiding officer received an ex parte  
35 communication, and shall advise all parties that these  
36 matters have been placed on the record. Any person  
37 desiring to rebut the ex parte communication shall be  
38 allowed to do so, upon requesting the opportunity for  
39 rebuttal within 10 days after notice of the  
40 communication.



1 ~~(c) The receipt by an administrative law judge of an~~  
 2 ~~ex parte communication in violation of this section may~~  
 3 ~~provide the basis for disqualification of that~~  
 4 ~~administrative law judge pursuant to subdivision (c) of~~  
 5 ~~Section 11512. If the administrative law judge is~~  
 6 ~~disqualified, the portion of the record pertaining to the ex~~  
 7 ~~parte communication may be sealed by protective order~~  
 8 ~~by the disqualified administrative law judge.~~

9 SEC. 38. Section 11517 of the Government Code is  
 10 amended to read:

11 11517. (a) If a contested case is heard before an  
 12 agency itself, ~~the~~ *all of the following provisions apply:*

13 (1) *The administrative law judge who presided at the*  
 14 *hearing shall be present during the consideration of the*  
 15 *case and, if requested, shall assist and advise the agency.*  
 16 ~~Where a contested case is heard before an agency itself,~~  
 17 ~~no~~

18 (2) *No member thereof who did not hear the evidence*  
 19 *shall vote on the decision.*

20 (3) *The agency shall issue its decision within 100 days*  
 21 *of submission of the case.*

22 (b) If a contested case is heard by an administrative  
 23 law judge alone, he or she shall prepare within 30 days  
 24 after the case is submitted a proposed decision in ~~such a~~  
 25 form that it may be adopted as the decision in the case.  
 26 ~~The agency itself may adopt the proposed decision in its~~  
 27 ~~entirety, or may reduce the proposed penalty and adopt~~  
 28 ~~the balance of the proposed decision.~~

29 ~~Thirty~~ *Failure of the administrative law judge to*  
 30 *deliver a proposed decision within the time required does*  
 31 *not prejudice the rights of the agency in the case. Thirty*  
 32 *days after receipt of the proposed decision, a copy of the*  
 33 *proposed decision shall be filed by the agency as a public*  
 34 *record and a copy shall be served by the agency on each*  
 35 *party and his or her attorney. The filing and service is not*  
 36 *an adoption of a proposed decision by the agency. The*  
 37 *agency itself may do any of the following:*

38 (1) *Adopt the proposed decision in its entirety.*

39 (2) *Reduce or otherwise mitigate the proposed*  
 40 *penalty and adopt the balance of the proposed decision.*



1 (3) *Make technical or other minor changes in the*  
2 *proposed decision and adopt it as the decision. Action by*  
3 *the agency under this paragraph is limited to a clarifying*  
4 *change or a change of a similar nature that does not affect*  
5 *the factual or legal basis of the proposed decision.*

6 (4) *Change the legal basis of the proposed decision and*  
7 *adopt the proposed decision with that change as the*  
8 *decision. Before acting under this paragraph the agency*  
9 *shall provide the parties an opportunity to comment on*  
10 *the proposed change in legal basis.*

11 (c) If the proposed decision is not adopted as provided  
12 in subdivision (b), the agency itself may decide the case  
13 upon the record, including the transcript, *or an agreed*  
14 *statement of the parties*, with or without taking additional  
15 evidence, or may refer the case to the same  
16 administrative law judge *if reasonably available,*  
17 *otherwise to another administrative law judge*, to take  
18 additional evidence. *A copy of the record shall be made*  
19 *available to the parties. The agency may require payment*  
20 *of fees covering direct costs of making the copy.* By  
21 stipulation of the parties, the agency may decide the case  
22 upon the record without including the transcript. If the  
23 case is assigned to an administrative law judge he or she  
24 shall prepare a proposed decision as provided in  
25 subdivision (b) upon the additional evidence and the  
26 transcript and other papers which are part of the record  
27 of the prior hearing. A copy of the proposed decision shall  
28 be furnished to each party and his or her attorney as  
29 prescribed in subdivision (b). The agency itself shall  
30 decide no case provided for in this subdivision without  
31 affording the parties the opportunity to present either  
32 oral or written argument before the agency itself. If  
33 additional oral evidence is introduced before the agency  
34 itself, no agency member may vote unless the member  
35 heard the additional oral evidence. *The authority of the*  
36 *agency itself to decide the case under this subdivision*  
37 *includes authority to decide some but not all issues in the*  
38 *case.*

39 (d) The proposed decision shall be deemed adopted  
40 by the agency 100 days after delivery to the agency by the



1 Office of Administrative Hearings, unless within that  
2 time *(i)* the agency *notifies the parties that the proposed*  
3 *decision is not adopted as provided in subdivision (b) and*  
4 commences proceedings to decide the case upon the  
5 record, including the transcript, or without the transcript  
6 where the parties have so stipulated, or *(ii)* the agency  
7 refers the case to the administrative law judge to take  
8 additional evidence. ~~In a case where the agency itself~~  
9 ~~hears the case, the agency shall issue its decision within~~  
10 ~~100 days of submission of the case.~~ In a case where the  
11 agency *commences proceedings to decide the case upon*  
12 *the record and* has ordered a transcript of the  
13 proceedings, the 100-day period shall begin upon delivery  
14 of the transcript. If the agency finds that a further delay  
15 is required by special circumstances, it shall issue an order  
16 delaying the decision for no more than 30 days and  
17 specifying the reasons therefor. The order shall be subject  
18 to judicial review pursuant to Section 11523.

19 (e) The decision of the agency shall be filed  
20 immediately by the agency as a public record and a copy  
21 shall be served by the agency on each party and his or her  
22 attorney.

23 SEC. 39. Section 11518 of the Government Code is  
24 amended to read:

25 11518. ~~The decision shall be in writing and shall~~  
26 ~~contain findings of fact, a determination of the issues~~  
27 ~~presented and the penalty, if any. The findings may be~~  
28 ~~stated in the language of the pleadings or by reference~~  
29 ~~thereto.~~ Copies of the decision shall be delivered to the  
30 parties personally or sent to them by registered mail.

31 SEC. 40. Section 11518.5 is added to the Government  
32 Code, to read:

33 11518.5. (a) Within 15 days after service of a copy of  
34 the decision on a party, but not later than the effective  
35 date of the decision, the party may apply to the agency for  
36 correction of a mistake or clerical error in the decision,  
37 stating the specific ground on which the application is  
38 made. Notice of the application shall be given to the other  
39 parties to the proceeding. The application is not a  
40 prerequisite for seeking judicial review.



1 (b) The agency may refer the application to the  
2 administrative law judge who formulated the proposed  
3 decision or may delegate its authority under this section  
4 to one or more persons.

5 (c) The agency may deny the application, grant the  
6 application and modify the decision, or grant the  
7 application and set the matter for further proceedings.  
8 The application is considered denied if the agency does  
9 not dispose of it within 15 days after it is made or a longer  
10 time that the agency provides by regulation.

11 (d) Nothing in this section precludes the agency, on its  
12 own motion or on motion of the administrative law judge,  
13 from modifying the decision to correct a mistake or  
14 clerical error. A modification under this subdivision shall  
15 be made within 15 days after issuance of the decision.

16 (e) The agency shall, within 15 days after correction of  
17 a mistake or clerical error in the decision, serve a copy of  
18 the correction on each party on which a copy of the  
19 decision was previously served.

20 SEC. 41. Section 11519 of the Government Code is  
21 amended to read:

22 11519. (a) The decision shall become effective 30  
23 days after it is delivered or mailed to respondent unless:  
24 a reconsideration is ordered within that time, or the  
25 agency itself orders that the decision shall become  
26 effective sooner, or a stay of execution is granted.

27 (b) A stay of execution may be included in the decision  
28 or if not included therein may be granted by the agency  
29 at any time before the decision becomes effective. The  
30 stay of execution provided herein may be accompanied  
31 by an express condition that respondent comply with  
32 specified terms of probation; provided, however, that the  
33 terms of probation shall be just and reasonable in the light  
34 of the findings and decision.

35 (c) If respondent was required to register with any  
36 public officer, a notification of any suspension or  
37 revocation shall be sent to ~~such~~ *the* officer after the  
38 decision has become effective.

39 (d) As used in subdivision (b), specified terms of  
40 probation may include an order of restitution ~~which~~



1 ~~requires the party or parties to a contract against whom~~  
 2 ~~the decision is rendered to compensate the other party or~~  
 3 ~~parties to a contract damaged as a result of a breach of~~  
 4 ~~contract by the party against whom the decision is~~  
 5 ~~rendered. In such case, the decision shall include findings~~  
 6 ~~that a breach of contract has occurred and shall specify~~  
 7 ~~the amount of actual damages sustained as a result of such~~  
 8 ~~breach.~~ Where restitution is ordered and paid pursuant  
 9 to the provisions of this subdivision, ~~such~~ *the* amount paid  
 10 shall be credited to any subsequent judgment in a civil  
 11 action ~~based on the same breach of contract.~~

12 *(e) The person to which the agency action is directed*  
 13 *may not be required to comply with a decision unless the*  
 14 *person has been served with the decision in the manner*  
 15 *provided in Section 11505, or has actual knowledge of the*  
 16 *decision.*

17 *(f) A nonparty may not be required to comply with a*  
 18 *decision unless the agency has made the decision*  
 19 *available for public inspection and copying or the*  
 20 *nonparty has actual knowledge of the decision.*

21 *(g) This section does not preclude an agency from*  
 22 *taking immediate action to protect the public interest in*  
 23 *accordance with Article 13 (commencing with Section*  
 24 *11460.10) of Chapter 4.5.*

25 SEC. 42. Section 11520 of the Government Code is  
 26 amended to read:

27 11520. (a) If the respondent *either* fails to file a  
 28 notice of defense or to appear at the hearing, the agency  
 29 may take action based upon the respondent's express  
 30 admissions or upon other evidence and affidavits may be  
 31 used as evidence without any notice to respondent; and  
 32 where the burden of proof is on the respondent to  
 33 establish that ~~he~~ *the respondent* is entitled to the agency  
 34 action sought, the agency may act without taking  
 35 evidence.

36 ~~(b) Nothing herein shall be construed to deprive the~~  
 37 ~~respondent of the right to make any showing by way of~~  
 38 ~~mitigation.~~ *Notwithstanding the default of the*  
 39 *respondent, the agency or the administrative law judge,*  
 40 *before a proposed decision is issued, has discretion to*



1 grant a hearing on reasonable notice to the parties. If the  
2 agency and administrative law judge make conflicting  
3 orders under this subdivision, the agency's order takes  
4 precedence. The administrative law judge may order the  
5 respondent, or the respondent's attorney or other  
6 authorized representative, or both, to pay reasonable  
7 expenses, including attorney's fees, incurred by another  
8 party as a result of the respondent's failure to appear at  
9 the hearing.

10 (c) Within seven days after service on the respondent  
11 of a decision based on the respondent's default, the  
12 respondent may serve a written motion requesting that  
13 the decision be vacated and stating the grounds relied on.  
14 The agency in its discretion may vacate the decision and  
15 grant a hearing on a showing of good cause. As used in this  
16 subdivision, good cause includes, but is not limited to, any  
17 of the following:

18 (1) Failure of the person to receive notice served  
19 pursuant to Section 11505.

20 (2) Mistake, inadvertence, surprise, or excusable  
21 neglect.

22 SEC. 43. Section 11523 of the Government Code is  
23 amended to read:

24 11523. Judicial review may be had by filing a petition  
25 for a writ of mandate in accordance with the provisions  
26 of the Code of Civil Procedure, subject, however, to the  
27 statutes relating to the particular agency. Except as  
28 otherwise provided in this section, the petition shall be  
29 filed within 30 days after the last day on which  
30 reconsideration can be ordered. The right to petition shall  
31 not be affected by the failure to seek reconsideration  
32 before the agency. ~~The~~ *On request of the petitioner for*  
33 *a record of the proceedings, the complete record of the*  
34 *proceedings, or the parts thereof as are designated by the*  
35 *petitioner in the request, shall be prepared by the Office*  
36 *of Administrative Hearings or the agency and shall be*  
37 *delivered to petitioner, within 30 days after the request,*  
38 *which time shall be extended for good cause shown, after*  
39 ~~a request therefor by him or her,~~ upon the payment of the  
40 fee specified in Section 69950 as ~~now or hereinafter~~



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

28 SEC. 44. Section 11524 of the Government Code is  
29 amended to read:

30 11524. (a) The agency may grant continuances.  
31 When an administrative law judge of the Office of  
32 Administrative Hearings has been assigned to the  
33 hearing, no continuance may be granted except by him  
34 or her or by the ~~administrative law judge in charge~~  
35 *presiding judge* of the appropriate regional office of the  
36 Office of Administrative Hearings, for good cause shown.

37 (b) When seeking a continuance, a party shall apply  
38 for the continuance within 10 working days following the  
39 time the party discovered or reasonably should have  
40 discovered the event or occurrence which establishes the

1 good cause for the continuance. A continuance may be  
2 granted for good cause after the 10 working days have  
3 lapsed if the party seeking the continuance is not  
4 responsible for and has made a good faith effort to  
5 prevent the condition or event establishing the good  
6 cause.

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

22 SEC. 45. Section 11525 of the Government Code is  
23 repealed.

24 ~~11525. If any person in proceedings before an agency  
25 disobeys or resists any lawful order or refuses to respond  
26 to a subpoena, or refuses to take the oath or affirmation as  
27 a witness or thereafter refuses to be examined, or is guilty  
28 of misconduct during a hearing or so near the place  
29 thereof as to obstruct the proceeding, the agency shall  
30 certify the facts to the superior court in and for the county  
31 where the proceedings are held. The court shall  
32 thereupon issue an order directing the person to appear  
33 before the court and show cause why he should not be  
34 punished as for contempt. The order and a copy of the  
35 certified statement shall be served on the person.  
36 Thereafter the court shall have jurisdiction of the matter.  
37 The same proceedings shall be had, the same penalties  
38 may be imposed and the person charged may purge  
39 himself of the contempt in the same way, as in the case~~



1 ~~of a person who has committed a contempt in the trial of~~  
2 ~~a civil action before a superior court.~~

3 SEC. 46. Section 11526 of the Government Code is  
4 amended to read:

5 11526. The members of an agency qualified to vote on  
6 any question may vote by mail *or another appropriate*  
7 *method.*

8 SEC. 47. Section 11529 of the Government Code is  
9 amended to read:

10 11529. (a) The administrative law judge of the  
11 Medical Quality Hearing Panel established pursuant to  
12 Section 11371 may issue an interim order suspending a  
13 license, or imposing drug testing, continuing education,  
14 supervision of procedures, or other license restrictions.  
15 Interim orders may be issued only if the affidavits in  
16 support of the petition show that the licensee has engaged  
17 in, or is about to engage in, acts or omissions constituting  
18 a violation of the Medical Practice Act or the appropriate  
19 practice act governing each allied health profession, and  
20 that permitting the licensee to continue to engage in the  
21 profession for which the license was issued will endanger  
22 the public health, safety, or welfare.

23 (b) All orders authorized by this section shall be issued  
24 only after a hearing conducted pursuant to subdivision  
25 (d), unless it appears from the facts shown by affidavit  
26 that serious injury would result to the public before the  
27 matter can be heard on notice. Except as provided in  
28 subdivision (c), the licensee shall receive at least 15 days'  
29 prior notice of the hearing, which notice shall include  
30 affidavits and all other information in support of the  
31 order.

32 (c) If an interim order is issued without notice, the  
33 administrative law judge who issued the order without  
34 notice shall cause the licensee to be notified of the order,  
35 including affidavits and all other information in support  
36 of the order by a 24-hour delivery service. That notice  
37 shall also include the date of the hearing on the order,  
38 which shall be conducted in accordance with the  
39 requirement of subdivision (d), not later than 20 days



1 from the date of issuance. The order shall be dissolved  
2 unless the requirements of subdivision (a) are satisfied.

3 (d) For the purposes of the hearing conducted  
4 pursuant to this section, the licentiate shall, at a  
5 minimum, have the following rights:

6 (1) To be represented by counsel.

7 (2) To have a record made of the proceedings, copies  
8 of which may be obtained by the licentiate upon payment  
9 of any reasonable charges associated with the record.

10 (3) To present written evidence in the form of  
11 relevant declarations, affidavits, and documents.

12 The discretion of the administrative law judge to  
13 permit testimony at the hearing conducted pursuant to  
14 this section shall be identical to the discretion of a  
15 superior court judge to permit testimony at a hearing  
16 conducted pursuant to Section 527 of the Code of Civil  
17 Procedure.

18 (4) To present oral argument.

19 (e) Consistent with the burden and standards of proof  
20 applicable to a preliminary injunction entered under  
21 Section 527 of the Code of Civil Procedure, the ~~court~~  
22 *administrative law judge* shall grant the interim order  
23 where, in the exercise of ~~its~~ discretion, ~~it~~ *the*  
24 *administrative law judge* concludes that:

25 (1) There is a reasonable probability that the  
26 petitioner will prevail in the underlying action.

27 (2) The likelihood of injury to the public in not issuing  
28 the order outweighs the likelihood of injury to the  
29 licensee in issuing the order.

30 (f) In all cases where an interim order is issued, and an  
31 accusation is not filed and served pursuant to Sections  
32 11503 and 11505 within 15 days of the date in which the  
33 parties to the hearing on the interim order have  
34 submitted the matter, the order shall be dissolved.

35 Upon service of the accusation the licensee shall have,  
36 in addition to the rights granted by this section, all of the  
37 rights and privileges available as specified in this chapter.  
38 If the licensee requests a hearing on the accusation, the  
39 board shall provide the licensee with a hearing within 30  
40 days of the request, unless the licensee stipulates to a later



1 hearing, and a decision within 15 days of the date that  
2 matter is submitted, or the board shall nullify the interim  
3 order previously issued, unless good cause can be shown  
4 by the ~~division~~ *Division of Medical Quality* for a delay.

5 (g) Where an interim order is issued, a written  
6 decision shall be prepared within 15 days of the hearing,  
7 by the administrative law judge, including findings of fact  
8 and a conclusion articulating the connection between the  
9 evidence produced at the hearing and the decision  
10 reached.

11 (h) Notwithstanding the fact that interim orders  
12 issued pursuant to this section are not issued after a  
13 hearing as otherwise required by this chapter, interim  
14 orders so issued shall be subject to judicial review  
15 pursuant to Section 1094.5 of the Code of Civil Procedure.  
16 The relief which may be ordered shall be limited to a stay  
17 of the interim order. Interim orders issued pursuant to  
18 this section are final interim orders and, if not dissolved  
19 pursuant to subdivision (c) or (f), may only be challenged  
20 administratively at the hearing on the accusation.

21 (i) The interim order provided for by this section shall  
22 be in addition to, and not a limitation on, the authority to  
23 seek injunctive relief provided for in the Business and  
24 Professions Code.

25 SEC. 48. Section 11530 of the Government Code is  
26 repealed.

27 ~~11530. (a) (1) The office shall hear and render a~~  
28 ~~decision on any appeal filed by a business, pursuant to~~  
29 ~~subdivision (c) of Section 14775, in the event the business~~  
30 ~~contests the certification by a state agency head that~~  
31 ~~reporting requirements meet established criteria and~~  
32 ~~shall not be eliminated.~~

33 ~~(2) Before a business may file an appeal with the office~~  
34 ~~pursuant to subdivision (c) of Section 14775, the business~~  
35 ~~shall file a challenge to a form or report required by a state~~  
36 ~~agency with that state agency. Within 60 days of filing the~~  
37 ~~challenge with a state agency, the state agency shall~~  
38 ~~either eliminate the form or report or provide written~~  
39 ~~justification for its continued use.~~



1 ~~(3) A business may appeal a state agency's written~~  
2 ~~justification for the continued use of a form or report with~~  
3 ~~the office.~~

4 ~~(4) If a state agency fails to respond within 60 days of~~  
5 ~~the filing of a challenge pursuant to paragraph (2), the~~  
6 ~~business shall have an immediate right to file an appeal~~  
7 ~~with the office.~~

8 ~~(b) No later than January 1, 1996, the office shall adopt~~  
9 ~~procedures governing the filing, hearing, and disposition~~  
10 ~~of appeals. The procedures shall include, but shall not be~~  
11 ~~limited to, provisions that assure that appeals are heard~~  
12 ~~and decisions rendered by the office in a fair, impartial,~~  
13 ~~and timely fashion.~~

14 ~~(c) The office may charge appellants a reasonable fee~~  
15 ~~to pay for costs it incurs in complying with this section.~~

16 ~~(d) For purposes of this section, "office" means the~~  
17 ~~Office of Administrative Hearings.~~

18 SEC. 49. Section 17533 is added to the Government  
19 Code, to read:

20 17533. The administrative adjudication provisions of  
21 the Administrative Procedure Act (Chapter 4.5  
22 (commencing with Section 11400) and Chapter 5  
23 (commencing with Section 11500) of Part 1 of Division 3)  
24 do not apply to a hearing by the commission under this  
25 part.

26 SEC. 50. Section 443.37 of the Health and Safety Code  
27 is amended to read:

28 443.37. Any health facility affected by any  
29 determination made under this part by the office may  
30 petition the office for review of the decision. This petition  
31 shall be filed with the office within 15 business days, or  
32 within such greater time as the office, with the advice of  
33 the commission, may allow, and shall specifically describe  
34 the matters which are disputed by the petitioner.

35 A hearing shall be commenced within 60 calendar days  
36 of the date on which the petition was filed. The hearing  
37 shall be held before an employee of the office, ~~a hearing~~  
38 ~~officer~~ *an administrative law judge* employed by the  
39 Office of Administrative Hearings, or a committee of the  
40 commission chosen by the chairperson for this purpose.



1 If held before an employee of the office or a committee  
2 of the commission, the hearing shall be held in  
3 accordance with such procedures as the office, with the  
4 advice of the commission, shall prescribe. If held before  
5 ~~a hearing officer~~ *an administrative law judge* employed  
6 by the Office of Administrative Hearings, the hearing  
7 shall be held in accordance with Chapter 5 (commencing  
8 with Section 11500) of *Part 1 of Division 3 of Title 2 of the*  
9 *Government Code*. The employee, ~~hearing officer~~  
10 *administrative law judge*, or committee shall prepare a  
11 recommended decision including findings of fact and  
12 conclusions of law and present it to the office for its  
13 adoption. The decision of the office shall be in writing and  
14 shall be final. The decision of the office shall be made  
15 within 60 calendar days after the conclusion of the  
16 hearing and shall be effective upon filing and service  
17 upon the petitioner.

18 Judicial review of any final action, determination, or  
19 decision may be had by any party to the proceedings as  
20 provided in Section 1094.5 of the Code of Civil Procedure.  
21 The decision of the office shall be upheld against a claim  
22 that its findings are not supported by the evidence unless  
23 the court determines that the findings are not supported  
24 by substantial evidence.

25 The employee of the office, the ~~hearing officer~~  
26 *administrative law judge* employed by the Office of  
27 Administrative Hearings, the Office of Administrative  
28 Hearings, or the committee of the commission, may issue  
29 subpoenas and subpoenas duces tecum in a manner and  
30 subject to the conditions established by ~~Section 11510~~  
31 *Article 11 (commencing with Section 11450.10) of*  
32 *Chapter 4.5 of Part 1 of Division 3 of Title 2 of the*  
33 *Government Code*.

34 SEC. 51. Section 1551.5 of the Health and Safety Code  
35 is amended to read:

36 1551.5. Notwithstanding Section ~~11510~~ *11450.40* of the  
37 Government Code, witnesses subpoenaed at the request  
38 of the department for a hearing conducted pursuant to  
39 this article who attend a hearing may be paid by the  
40 department witness fees and mileage as provided by



1 Section 68093 of the Government Code. In addition, the  
2 department may pay actual, necessary, and reasonable  
3 expenses in an amount not to exceed the per diem  
4 allowance payable to a nonrepresented state employee  
5 on travel status. The department may pay witness  
6 expenses pursuant to this section in advance of the  
7 hearing.

8 SEC. 52. Section 11834.37 of the Health and Safety  
9 Code is amended to read:

10 11834.37. (a) Proceedings for the suspension,  
11 revocation, or denial of a license under this chapter shall  
12 be conducted in accordance with the provisions of  
13 Chapter 5 (commencing with Section 11500) of Part 1 of  
14 Division 3 of Title 2 of the Government Code, and the  
15 department shall have all the powers granted by those  
16 provisions. In the event of conflict between this chapter  
17 and the Government Code, the Government Code shall  
18 prevail.

19 (b) In all proceedings conducted in accordance with  
20 this section, the standard of proof to be applied shall be  
21 by the preponderance of the evidence.

22 (c) The department shall commence and process  
23 licensure revocations under this chapter in a timely and  
24 expeditious manner. ~~Notwithstanding Section 11502.1 of~~  
25 ~~the Government Code, the~~ *The* Office of Administrative  
26 Hearings shall give priority calendar preference to  
27 licensure revocation hearings pursuant to this chapter,  
28 particularly revocations where the health and safety of  
29 the residents are in question.

30 SEC. 53. Section 18949.6 of the Health and Safety  
31 Code is amended to read:

32 18949.6. (a) The commission shall adopt regulations  
33 setting forth the procedure for the adoption of building  
34 standards and administrative regulations that apply  
35 directly to the implementation or enforcement of  
36 building standards.

37 (b) Regulatory adoption shall be accomplished so as to  
38 facilitate the triennial adoption of the specified model  
39 codes pursuant to Section 18928.



1 (c) The regulations shall allow for the distribution of  
2 proposed building standards and regulatory changes to  
3 the public for review in compliance with the  
4 requirements of the *rulemaking provisions of the*  
5 *Administrative Procedure Act* (Chapter 3.5  
6 (commencing with Section 11340), ~~Chapter 4~~  
7 ~~(commencing with Section 11370), and Chapter 5~~  
8 ~~(commencing with Section 11500)~~ of Part 1 of Division 3  
9 of Title 2 of the Government Code) and for the  
10 acceptance of responses from the public.

11 SEC. 54. Section 25149 of the Health and Safety Code  
12 is amended to read:

13 25149. (a) Notwithstanding any other provision of  
14 law, except as provided in Section 25149.5 or 25181 of this  
15 code or Section 731 of the Code of Civil Procedure, no city  
16 or county, whether chartered or general law, or district  
17 may enact, issue, enforce, suspend, revoke, or modify any  
18 ordinance, regulation, law, license, or permit relating to  
19 an existing hazardous waste facility so as to prohibit or  
20 unreasonably regulate the disposal, treatment, or  
21 recovery of resources from hazardous waste or a mix of  
22 hazardous and solid wastes at that facility, unless, after  
23 public notice and hearing, the director determines that  
24 the operation of the facility may present an imminent and  
25 substantial endangerment to health and the  
26 environment. However, nothing in this section  
27 authorizes an operator of that facility to violate any term  
28 or condition of a local land use permit or any other  
29 provision of law not in conflict with this section.

30 (b) The director shall, pursuant to subdivision (c),  
31 conduct the hearing specified in subdivision (a) to  
32 determine whether the operation of an existing  
33 hazardous waste facility may present an imminent and  
34 substantial endangerment to health and the environment  
35 whenever any of the following occurs:

36 (1) A state or federal public agency requires any  
37 person to evacuate a residence or requires the evacuation  
38 of a school, place of employment, commercial  
39 establishment, or other facility to which the public has



1 access, because of the release of a hazardous substance  
2 from the facility.

3 (2) For more than five days in any month, the air  
4 emissions from the facility result in the violation of an  
5 emission standard for a hazardous air pollutant  
6 established pursuant to Section 7412 of Title 42 of the  
7 United States Code or the threshold exposure level for a  
8 toxic air contaminant, as defined in Section 39655.

9 (3) A state or federal public agency requires that the  
10 use of a source of drinking water be discontinued because  
11 of the contamination of the source by a release of  
12 hazardous waste, hazardous substances, or leachate from  
13 the facility.

14 (4) A state agency, or the board of supervisors of the  
15 county in which the facility is located, upon  
16 recommendation of its local health officer, makes a  
17 finding that the public health has been affected by a  
18 release of hazardous wastes from the facility. The finding  
19 shall be based on statistically significant data developed  
20 in a health effects study conducted according to a study  
21 design, and using a methodology, which are developed  
22 after considering the suggestions on study design and  
23 methodology made by interested parties and which are  
24 approved by the Epidemiological Studies Section in the  
25 Epidemiology and Toxicology Branch of the department  
26 before beginning the study.

27 (5) The owner or operator of the facility is in violation  
28 of an order issued pursuant to Section 25187 which  
29 requires one or both of the following:

30 (A) The correction of a violation or condition that has  
31 resulted, or threatens to result, in an unauthorized release  
32 of hazardous waste or a constituent of hazardous waste  
33 from the facility into either the onsite or offsite  
34 environment.

35 (B) The cleanup of a release of hazardous waste or a  
36 constituent of hazardous waste, the abatement of the  
37 effects of the release, and any other necessary remedial  
38 action.

39 (6) The facility is in violation of an order issued  
40 pursuant to Article 1 (commencing with Section 13300)



1 of, or Article 2 (commencing with Section 13320) of,  
2 Chapter 5 of Division 7 of the Water Code or in violation  
3 of a temporary restraining order, preliminary injunction,  
4 or permanent injunction issued pursuant to Article 4  
5 (commencing with Section 13340) of Chapter 5 of  
6 Division 7 of the Water Code.

7 (c) Whenever the director determines that a hearing  
8 is required, as specified in subdivision (b), the director  
9 shall immediately request the Office of Administrative  
10 Hearings to assign a ~~hearing officer~~ *an administrative law*  
11 *judge* to conduct the hearing, pursuant to this subdivision.

12 (1) After a ~~hearing officer~~ *an administrative law judge*  
13 is assigned by the Office of Administrative Hearings, the  
14 director shall transmit to the ~~hearing officer~~  
15 *administrative law judge* and to the operator of the  
16 existing hazardous waste facility, all relevant documents,  
17 information, and data that were the basis for the  
18 director's determination. The director shall also prepare  
19 a notice specifying the time and place of the hearing. The  
20 notice shall also include a clear statement of the reasons  
21 for conducting the hearing, a description of the facts,  
22 data, circumstances, or occurrences that are the cause for  
23 conducting the hearing, and the issues to be addressed at  
24 the hearing. The hearing shall be held as close to the  
25 location of the existing hazardous waste facility as is  
26 practicable and shall commence no later than 30 days  
27 following the director's request to the Office of  
28 Administrative Hearings to assign a ~~hearing officer~~ *an*  
29 *administrative law judge* to the case.

30 (2) The hearing specified in paragraph (1) shall be  
31 conducted in accordance with Sections ~~11510~~ *11511* to  
32 *11515*, inclusive, ~~and Section 11525~~, of the Government  
33 Code. The hearing officer's proposed decision shall be  
34 transmitted to the director within 30 days after the case  
35 is submitted.

36 (3) The director may adopt the proposed decision of  
37 the hearing officer in its entirety or may decide the case  
38 upon the record, as provided in Section 11517 of the  
39 Government Code. The director's decision shall be in  
40 writing and shall contain findings of fact and a



1 determination of the issues presented. The decision is  
2 subject to judicial review in accordance with Section  
3 11523 of the Government Code.

4 SEC. 55. Section 32154 of the Health and Safety Code  
5 is amended to read:

6 32154. The board or the hearing officer, if one is  
7 appointed, shall have the same power with respect to the  
8 issuance of subpoenas and subpoenas duces tecum as that  
9 granted to any agency or ~~hearing~~ *presiding* officer  
10 pursuant to ~~Section 11510~~ *Article 11 (commencing with*  
11 *Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of*  
12 *Title 2 of the Government Code. Any ~~such~~ subpoena or*  
13 *subpoena duces tecum issued pursuant to this section*  
14 *shall have the same force and effect and impose the same*  
15 *obligations upon witnesses as that provided in ~~Section~~*  
16 *~~11510~~ Article 11 (commencing with Section 11450.10) of*  
17 *Chapter 4.5 of Part 1 of Division 3 of Title 2 of the*  
18 *Government Code.*

19 SEC. 56. Section 40843 of the Health and Safety Code  
20 is amended to read:

21 40843. Upon receipt of a report submitted pursuant to  
22 Section 40842, the superior court shall proceed as  
23 specified in Section ~~11525~~ *11455.20* of the Government  
24 Code.

25 SEC. 57. Section 1144.5 is added to the Labor Code, to  
26 read:

27 1144.5. (a) The administrative adjudication  
28 provisions of the Administrative Procedure Act (Chapter  
29 4.5 (commencing with Section 11400) and Chapter 5  
30 (commencing with Section 11500) of Part 1 of Division 3  
31 of Title 2 of the Government Code) do not apply to a  
32 hearing by the board under this part, except that Chapter  
33 4.5 applies to a hearing to determine an unfair labor  
34 practice charge.

35 (b) Notwithstanding Sections 11425.30 and 11430.10 of  
36 the Government Code, in a hearing to determine an  
37 unfair labor practice charge, a person who has  
38 participated in a determination of probable cause,  
39 injunctive or other pre-hearing relief, or other equivalent  
40 preliminary determination in an adjudicative proceeding



1 may serve as presiding officer or as a supervisor of the  
2 presiding officer or may assist or advise the presiding  
3 officer in the same proceeding.

4 SEC. 58. Section 5811 of the Labor Code is amended  
5 to read:

6 5811. (a) No fees shall be charged by the clerk of any  
7 court for the performance of any official service required  
8 by this division, except for the docketing of awards as  
9 judgments and for certified copies of transcripts thereof.  
10 In all proceedings under this division before the appeals  
11 board, costs as between the parties may be allowed by the  
12 appeals board.

13 (b) It shall be the responsibility of any party producing  
14 a witness requiring an interpreter to arrange for the  
15 presence of a qualified interpreter. A qualified  
16 interpreter is a language interpreter who is certified, or  
17 deemed certified, pursuant to *Article 8 (commencing*  
18 *with Section 11435.05) of Chapter 4.5 of Part 1 of Division*  
19 *3 of Title 2 of, and Section—11513—*or 68566 of, the  
20 Government Code.

21 Interpreter fees which are reasonably, actually, and  
22 necessarily incurred shall be allowed as cost under this  
23 section, provided they are in accordance with the fee  
24 schedule set by the administrative director.

25 A qualified interpreter may render services during the  
26 following:

27 (1) A deposition.

28 (2) An appeals board hearing.

29 (3) During those settings which the administrative  
30 director determines are reasonably necessary to ascertain  
31 the validity or extent of injury to an employee who cannot  
32 communicate in English.

33 SEC. 59. Section 6603 of the Labor Code is amended  
34 to read:

35 6603. (a) The rules of practice and procedure  
36 adopted by the appeals board shall be consistent with  
37 Sections 11507, 11507.6, 11507.7, ~~11510~~, 11513, 11514,  
38 11515, and 11516, ~~and 11525~~ of the Government Code, and  
39 shall provide affected employees or representatives of



1 affected employees an opportunity to participate as  
2 parties to a hearing under Section 6602.

3 (b) The superior courts shall have jurisdiction over  
4 contempt proceedings, as provided in ~~Section 11525~~  
5 *Article 12 (commencing with Section 11455.10) of*  
6 *Chapter 4.5 of Part 1 of Division 3 of Title 2* of the  
7 Government Code.

8 SEC. 60. Section 105 is added to the Military and  
9 Veterans Code, to read:

10 105. The administrative adjudication provisions of the  
11 Administrative Procedure Act (Chapter 4.5  
12 (commencing with Section 11400) and Chapter 5  
13 (commencing with Section 11500) of Part 1 of Division 3  
14 of Title 2 of the Government Code) do not apply to a  
15 hearing conducted by the Military Department under  
16 this code.

17 SEC. 61. Section 3066 is added to the Penal Code, to  
18 read:

19 3066. The administrative adjudication provisions of  
20 the Administrative Procedure Act (Chapter 4.5  
21 (commencing with Section 11400) and Chapter 5  
22 (commencing with Section 11500) of Part 1 of Division 3  
23 of Title 2 of the Government Code) do not apply to a  
24 parole hearing or other adjudication concerning rights of  
25 an inmate or parolee conducted by the Department of  
26 Corrections or the Board of Prison Terms.

27 SEC. 62. Section 25513.3 is added to the Public  
28 Resources Code, to read:

29 25513.3. Notwithstanding Sections 11425.30 and  
30 11430.10 of the Government Code, unless a party  
31 demonstrates other statutory grounds for disqualification,  
32 a person who has served as investigator or advocate in an  
33 adjudicative proceeding of the commission under this  
34 code may serve as a supervisor of the presiding officer or  
35 assist or advise the presiding officer in the same  
36 proceeding if the service, assistance, or advice occurs  
37 more than one year after the time the person served as  
38 investigator or advocate, provided the content of any  
39 advice is disclosed on the record and all parties have an  
40 opportunity to comment on the advice.



1 SEC. 63. Section 1701 of the Public Utilities Code is  
2 amended to read:

3 1701. (a) All hearings, investigations, and  
4 proceedings shall be governed by this part and by rules  
5 of practice and procedure adopted by the commission,  
6 and in the conduct thereof the technical rules of evidence  
7 need not be applied. No informality in any hearing,  
8 investigation, or proceeding or in the manner of taking  
9 testimony shall invalidate any order, decision or rule  
10 made, approved, or confirmed by the commission.

11 (b) *The administrative adjudication provisions of the*  
12 *Administrative Procedure Act (Chapter 4.5*  
13 *(commencing with Section 11400) and Chapter 5*  
14 *(commencing with Section 11500) of Part 1 of Division 3*  
15 *of Title 2 of the Government Code) do not apply to a*  
16 *hearing by the commission under this part.*

17 SEC. 64. Section 1636 of the Revenue and Taxation  
18 Code is amended to read:

19 1636. The county board of supervisors may appoint  
20 one or more assessment hearing officers or contract with  
21 the Office of Administrative ~~Procedure~~ *Hearings* for the  
22 services of a ~~hearing officer~~ *an administrative law judge*  
23 pursuant to Chapter 14 (commencing with Section  
24 27720) of Part 3 of Division 2 of Title 3 of the Government  
25 Code to conduct hearings on any assessment protests filed  
26 under Article 1 (commencing with Section 1601) of this  
27 chapter and to make recommendations to the county  
28 board of equalization or assessment appeals board  
29 concerning ~~such~~ *the* protests. Only persons meeting the  
30 qualifications prescribed by Section 1624 may be  
31 appointed as an assessment hearing officer.

32 SEC. 65. Section 14112 of the Vehicle Code is  
33 amended to read:

34 14112. (a) All matters in a hearing not covered by  
35 this chapter shall be governed, as far as applicable, by  
36 Chapter 5 (commencing with Section 11500) of Part 1 of  
37 Division 3 of Title 2 of the Government Code.

38 (b) *Subdivision (a) of Section 11425.30 of the*  
39 *Government Code does not apply to a proceeding for*  
40 *issuance, denial, revocation, or suspension of a driver's*



1 *license pursuant to this division. The Department of*  
2 *Motor Vehicles shall study the effect of that subdivision*  
3 *on proceedings involving vehicle operation certificates*  
4 *and shall report to the Legislature by December 31, 1999,*  
5 *with recommendations concerning experience with its*  
6 *application in those proceedings.*

7 SEC. 66. Section 1778 is added to the Welfare and  
8 Institutions Code, to read:

9 1778. The administrative adjudication provisions of  
10 the Administrative Procedure Act (Chapter 4.5  
11 (commencing with Section 11400) and Chapter 5  
12 (commencing with Section 11500) of Part 1 of Division 3  
13 of Title 2 of the Government Code) do not apply to a  
14 parole hearing or other adjudication concerning rights of  
15 a person committed to the control of the Youth Authority  
16 conducted by the Youth Authority or the Youthful  
17 Offender Parole Board.

18 SEC. 67. Section 3158 is added to the Welfare and  
19 Institutions Code, to read:

20 3158. The administrative adjudication provisions of  
21 the Administrative Procedure Act (Chapter 4.5  
22 (commencing with Section 11400) and Chapter 5  
23 (commencing with Section 11500) of Part 1 of Division 3  
24 of Title 2 of the Government Code) do not apply to a  
25 release hearing or other adjudication concerning rights of  
26 a person committed to the custody of the Director of  
27 Corrections conducted by the Narcotic Addiction  
28 Evaluation Authority.

29 SEC. 68. Section 11350.6 of the Welfare and  
30 Institutions Code is amended to read:

31 11350.6. (a) As used in this section:

32 (1) "Applicant" means any person applying for  
33 issuance or renewal of a license.

34 (2) "Board" means any entity specified in Section 101  
35 of the Business and Professions Code, the entities referred  
36 to in Sections 1000 and 3600 of the Business and  
37 Professions Code, the State Bar, the Department of Real  
38 Estate, and any other state commission, department,  
39 committee, examiner, or agency that issues a license,



1 certificate, credential, or registration authorizing a  
2 person to engage in a business, occupation, or profession.

3 (3) “Certified list” means a list provided by the district  
4 attorney to the State Department of Social Services in  
5 which the district attorney verifies, under penalty of  
6 perjury, that the names contained therein are support  
7 obligors found to be out of compliance with a judgment  
8 or order for support in a case being enforced under Title  
9 IV-D of the Social Security Act.

10 (4) “Compliance with a judgment or order for  
11 support” means that, as set forth in a judgment or order  
12 for child or family support, the obligor is no more than 30  
13 calendar days in arrears in making payments in full for  
14 current support, in making periodic payments in full,  
15 whether court-ordered or by agreement with the district  
16 attorney, on a support arrearage, or in making periodic  
17 payments in full, whether court-ordered or by agreement  
18 with the district attorney, on a judgment for  
19 reimbursement for public assistance, or has obtained a  
20 judicial finding that equitable estoppel as provided in  
21 statute or case law precludes enforcement of the order.  
22 The district attorney is authorized to use this section to  
23 enforce orders for spousal support only when the district  
24 attorney is also enforcing a related child support  
25 obligation owed to the obligee parent by the same  
26 obligor, pursuant to Sections 11475.1 and 11475.2.

27 (5) “License” includes membership in the State Bar,  
28 and a certificate, permit, registration, or any other  
29 authorization issued by a board that allows a person to  
30 engage in a business, occupation, or profession, or to  
31 operate a commercial motor vehicle.

32 (6) “Licensee” means any person holding a license,  
33 certificate, permit, registration, or other authorization  
34 issued by a board, to engage in a business, occupation, or  
35 profession, or a commercial driver’s license as defined in  
36 Section 15210 of the Vehicle Code.

37 (b) The district attorney shall maintain a list of those  
38 persons included in a case being enforced under Title  
39 IV-D of the Social Security Act against whom a support  
40 order or judgment has been rendered by, or registered in,



1 a court of this state, and who are not in compliance with  
2 that order or judgment. The district attorney shall submit  
3 a certified list with the names, social security numbers,  
4 and last known addresses of these persons and the name,  
5 address, and telephone number of the district attorney  
6 who certified the list to the State Department of Social  
7 Services. The district attorney shall verify, under penalty  
8 of perjury, that the persons listed are subject to an order  
9 or judgment for the payment of support and that these  
10 persons are not in compliance with the order or  
11 judgment. The district attorney shall submit to the State  
12 Department of Social Services an updated certified list on  
13 a monthly basis.

14 (c) The State Department of Social Services shall  
15 consolidate the certified lists received from the district  
16 attorneys and, within 30 calendar days of receipt, shall  
17 provide a copy of the consolidated list to each board  
18 which is responsible for the regulation of licenses, as  
19 specified in this section.

20 (d) On or before November 1, 1992, or as soon  
21 thereafter as economically feasible, as determined by the  
22 State Department of Social Services, all boards subject to  
23 this section shall implement procedures to accept and  
24 process the list provided by the State Department of  
25 Social Services, in accordance with this section.

26 (e) (1) Promptly after receiving the certified  
27 consolidated list from the State Department of Social  
28 Services, and prior to the issuance or renewal of a license,  
29 each board shall determine whether the applicant is on  
30 the most recent certified consolidated list provided by the  
31 State Department of Social Services. The board shall have  
32 the authority to withhold issuance or renewal of the  
33 license of any applicant on the list.

34 (2) If an applicant is on the list, the board shall  
35 immediately serve notice as specified in subdivision (f)  
36 on the applicant of the board's intent to withhold issuance  
37 or renewal of the license. The notice shall be made  
38 personally or by mail to the applicant's last known mailing  
39 address on file with the board. Service by mail shall be



1 complete in accordance with Section 1013 of the Code of  
2 Civil Procedure.

3 (A) The board shall issue a temporary license valid for  
4 a period of 150 days to any applicant whose name is on the  
5 certified list if the applicant is otherwise eligible for a  
6 license.

7 (B) The 150-day time period for a temporary license  
8 shall not be extended. Only one temporary license shall  
9 be issued during a regular license term and it shall  
10 coincide with the first 150 days of that license term. As this  
11 paragraph applies to commercial driver licenses, “license  
12 term” shall be deemed to be 12 months from the date the  
13 application fee is received by the Department of Motor  
14 Vehicles. A license for the full or remainder of the license  
15 term shall be issued or renewed only upon compliance  
16 with this section.

17 (C) In the event that a license or application for a  
18 license or the renewal of a license is denied pursuant to  
19 this section, any funds paid by the applicant or licensee  
20 shall not be refunded by the board.

21 (3) (A) The State Department of Social Services may,  
22 when it is economically feasible for the department and  
23 the boards to do so as determined by the department, in  
24 cases where the department is aware that certain child  
25 support obligors listed on the certified lists have been out  
26 of compliance with a judgment or order for support for  
27 more than four months, provide a supplemental list of  
28 these obligors to each board with which the department  
29 has an interagency agreement to implement this  
30 paragraph. Upon request by the department, the licenses  
31 of these obligors shall be subject to suspension, provided  
32 that the licenses would not otherwise be eligible for  
33 renewal within six months from the date of the request by  
34 the department. The board shall have the authority to  
35 suspend the license of any licensee on this supplemental  
36 list.

37 (B) If a licensee is on a supplemental list, the board  
38 shall immediately serve notice as specified in subdivision  
39 (f) on the licensee that his or her license will be  
40 automatically suspended 150 days after notice is served,



1 unless compliance with this section is achieved. The  
2 notice shall be made personally or by mail to the licensee's  
3 last known mailing address on file with the board. Service  
4 by mail shall be complete in accordance with Section 1013  
5 of the Code of Civil Procedure.

6 (C) The 150-day notice period shall not be extended.

7 (D) In the event that any license is suspended  
8 pursuant to this section, any funds paid by the licensee  
9 shall not be refunded by the board.

10 (E) This paragraph shall not apply to licenses subject  
11 to annual renewal or annual fee.

12 (f) Notices shall be developed by each board in  
13 accordance with guidelines provided by the State  
14 Department of Social Services and subject to approval by  
15 the State Department of Social Services. The notice shall  
16 include the address and telephone number of the district  
17 attorney who submitted the name on the certified list,  
18 and shall emphasize the necessity of obtaining a release  
19 from that district attorney's office as a condition for the  
20 issuance, renewal, or continued valid status of a license or  
21 licenses.

22 (1) In the case of applicants not subject to paragraph  
23 (3) of subdivision (e), the notice shall inform the  
24 applicant that the board shall issue a temporary license,  
25 as provided in subparagraph (A) of paragraph (2) of  
26 subdivision (e), for 150 calendar days if the applicant is  
27 otherwise eligible and that upon expiration of that time  
28 period the license will be denied unless the board has  
29 received a release from the district attorney who  
30 submitted the name on the certified list.

31 (2) In the case of licensees named on a supplemental  
32 list, the notice shall inform the licensee that his or her  
33 license will continue in its existing status for no more than  
34 150 calendar days from the date of mailing or service of  
35 the notice and thereafter will be suspended indefinitely  
36 unless, during the 150-day notice period, the board has  
37 received a release from the district attorney who  
38 submitted the name on the certified list. Additionally, the  
39 notice shall inform the licensee that any license  
40 suspended under this section will remain so until the



1 expiration of the remaining license term, unless the board  
2 receives a release along with applications and fees, if  
3 applicable, to reinstate the license during the license  
4 term.

5 (3) The notice shall also inform the applicant that if an  
6 application is denied or a license is suspended pursuant  
7 to this section, any funds paid by the applicant or licensee  
8 shall not be refunded by the board. The State  
9 Department of Social Services shall also develop a form  
10 that the applicant shall use to request a review by the  
11 district attorney. A copy of this form shall be included  
12 with every notice sent pursuant to this subdivision.

13 (g) Each district attorney shall maintain review  
14 procedures consistent with this section to allow an  
15 applicant to have the underlying arrearage and any  
16 relevant defenses investigated, to provide an applicant  
17 information on the process of obtaining a modification of  
18 a support order, or to provide an applicant assistance in  
19 the establishment of a payment schedule on arrearages if  
20 the circumstances so warrant.

21 (h) If the applicant wishes to challenge the submission  
22 of his or her name on the certified list, the applicant shall  
23 make a timely written request for review on the form  
24 specified in subdivision (f) to the district attorney who  
25 certified the applicant's name. The district attorney shall,  
26 within 75 days of receipt of the written request, inform  
27 the applicant in writing of his or her findings upon  
28 completion of the review. The district attorney shall  
29 immediately send a release to the appropriate board and  
30 the applicant, if any of the following conditions are met:

31 (1) The applicant is found to be in compliance or  
32 negotiates an agreement with the district attorney for a  
33 payment schedule on arrearages or reimbursement.

34 (2) The applicant has submitted a request for review,  
35 but the district attorney will be unable to complete the  
36 review and send notice of his or her findings to the  
37 applicant within 75 days. This paragraph applies only if  
38 the delay in completing the review process is not the  
39 result of the applicant's failure to act in a reasonable,



1 timely, and diligent manner upon receiving notice from  
2 the board that his or her name is on the list.

3 (3) The applicant has filed and served a request for  
4 judicial review pursuant to this section, but a resolution  
5 of that review will not be made within 150 days of the date  
6 of service of notice pursuant to subdivision (f). This  
7 paragraph applies only if the delay in completing the  
8 judicial review process is not the result of the applicant's  
9 failure to act in a reasonable, timely, and diligent manner  
10 upon receiving the district attorney's notice of his or her  
11 findings.

12 (4) The applicant has obtained a judicial finding of  
13 compliance as defined in this section.

14 (i) An applicant is required to act with diligence in  
15 responding to notices from the board and the district  
16 attorney with the recognition that the temporary license  
17 will lapse or the license suspension will go into effect after  
18 150 days and that the district attorney and, where  
19 appropriate, the court must have time to act within that  
20 period. An applicant's delay in acting, without good  
21 cause, which directly results in the inability of the district  
22 attorney to complete a review of the applicant's request  
23 or the court to hear the request for judicial review within  
24 the 150-day period shall not constitute the diligence  
25 required under this section which would justify the  
26 issuance of a release.

27 (j) Except as otherwise provided in this section, the  
28 district attorney shall not issue a release if the applicant  
29 is not in compliance with the judgment or order for  
30 support. The district attorney shall notify the applicant in  
31 writing that the applicant may, by filing an order to show  
32 cause or notice of motion, request any or all of the  
33 following:

34 (1) Judicial review of the district attorney's decision  
35 not to issue a release.

36 (2) A judicial determination of compliance.

37 (3) A modification of the support judgment or order.

38 The notice shall also contain the name and address of  
39 the court in which the applicant shall file the order to  
40 show cause or notice of motion and inform the applicant



1 that his or her name shall remain on the certified list if the  
2 applicant does not timely request judicial review. The  
3 applicant shall comply with all statutes and rules of court  
4 regarding orders to show cause and notices of motion.

5 Nothing in this section shall be deemed to limit an  
6 applicant from filing an order to show cause or notice of  
7 motion to modify a support judgment or order or to fix a  
8 payment schedule on arrearages accruing under a  
9 support judgment or order or to obtain a court finding of  
10 compliance with a judgment or order for support.

11 (k) The request for judicial review of the district  
12 attorney's decision shall state the grounds for which  
13 review is requested and judicial review shall be limited to  
14 those stated grounds. The court shall hold an evidentiary  
15 hearing within 20 calendar days of the filing of the request  
16 for review. Judicial review of the district attorney's  
17 decision shall be limited to a determination of each of the  
18 following issues:

19 (1) Whether there is a support judgment, order, or  
20 payment schedule on arrearages or reimbursement.

21 (2) Whether the petitioner is the obligor covered by  
22 the support judgment or order.

23 (3) Whether the support obligor is or is not in  
24 compliance with judgment or order of support.

25 (4) The extent to which the needs of the obligor,  
26 taking into account the obligor's payment history and the  
27 current circumstances of both the obligor and the  
28 obligee, warrant a conditional release as described in this  
29 subdivision.

30 The request for judicial review shall be served by the  
31 applicant upon the district attorney who submitted the  
32 applicant's name on the certified list within seven  
33 calendar days of the filing of the petition. The court has  
34 the authority to uphold the action, unconditionally  
35 release the license, or conditionally release the license.

36 If the judicial review results in a finding by the court  
37 that the obligor is in compliance with the judgment or  
38 order for support, the district attorney shall immediately  
39 send a release in accordance with subdivision (h) to the  
40 appropriate board and the applicant. If the judicial



1 review results in a finding by the court that the needs of  
2 the obligor warrant a conditional release, the court shall  
3 make findings of fact stating the basis for the release and  
4 the payment necessary to satisfy the unrestricted  
5 issuance or renewal of the license without prejudice to a  
6 later judicial determination of the amount of support  
7 arrearages, including interest, and shall specify payment  
8 terms, compliance with which are necessary to allow the  
9 release to remain in effect.

10 (I) The State Department of Social Services shall  
11 prescribe release forms for use by district attorneys.  
12 When the obligor is in compliance, the district attorney  
13 shall mail to the applicant and the appropriate board a  
14 release stating that the applicant is in compliance. The  
15 receipt of a release shall serve to notify the applicant and  
16 the board that, for the purposes of this section, the  
17 applicant is in compliance with the judgment or order for  
18 support.

19 If the district attorney determines subsequent to the  
20 issuance of a release that the applicant is once again not  
21 in compliance with a judgment or order for support, or  
22 with the terms of repayment as described in this  
23 subdivision, the district attorney may notify the board,  
24 the obligor, and the State Department of Social Services  
25 in a format prescribed by the State Department of Social  
26 Services that the obligor is not in compliance.

27 The State Department of Social Services may, when it  
28 is economically feasible for the department and the  
29 boards to develop an automated process for complying  
30 with this subdivision, notify the boards in a manner  
31 prescribed by the department, that the obligor is once  
32 again not in compliance. Upon receipt of this notice, the  
33 board shall immediately notify the obligor on a form  
34 prescribed by the department that the obligor's license  
35 will be suspended on a specific date, and this date shall be  
36 no longer than 30 days from the date the form is mailed.  
37 The obligor shall be further notified that the license will  
38 remain suspended until such time a new release is issued  
39 in accordance with subdivision (h). Nothing in this  
40 section shall be deemed to limit the obligor from seeking



1 judicial review of suspension pursuant to the procedures  
2 described in this subdivision.

3 (m) The State Department of Social Services may  
4 enter into interagency agreements with the state  
5 agencies that have responsibility for the administration of  
6 boards necessary to implement this section, to the extent  
7 that it is cost-effective to implement this section. These  
8 agreements shall provide for the receipt by the other  
9 state agencies and boards of federal funds to cover that  
10 portion of costs allowable in federal law and regulation  
11 and incurred by the state agencies and boards in  
12 implementing this section. Notwithstanding any other  
13 provision of law, revenue generated by a board or state  
14 agency shall be used to fund the nonfederal share of costs  
15 incurred pursuant to this section. These agreements shall  
16 provide that boards shall reimburse the State  
17 Department of Social Services for the nonfederal share of  
18 costs incurred by the department in implementing this  
19 section. The boards shall reimburse the State  
20 Department of Social Services for the nonfederal share of  
21 costs incurred pursuant to this section from moneys  
22 collected from applicants.

23 (n) Notwithstanding any other provision of law, in  
24 order for the boards subject to this section to be  
25 reimbursed for the costs incurred in administering its  
26 provisions, the boards may, with the approval of the  
27 appropriate department director, levy on all licensees  
28 and applicants a surcharge on any fee or fees collected  
29 pursuant to law, or, alternatively, with the approval of the  
30 appropriate department director, levy on the applicants  
31 or licensees named on a certified list or supplemental list,  
32 a special fee.

33 (o) The process described in subdivision (h) shall  
34 constitute the sole administrative remedy for contesting  
35 the issuance of a temporary license or the denial or  
36 suspension of a license under this section. The procedures  
37 specified in the *administrative adjudication provisions of*  
38 *the Administrative Procedure Act (Chapter 4.5*  
39 *(commencing with Section 11400) and Chapter 5*  
40 *(commencing with Section 11500) of Part 1 of Division 3*

1 of Title 2 of the Government Code) shall not apply to the  
2 denial, suspension, or failure to issue or renew a license or  
3 the issuance of a temporary license pursuant to this  
4 section.

5 (p) In furtherance of the public policy of increasing  
6 child support enforcement and collections, on or before  
7 November 1, 1995, the State Department of Social  
8 Services shall make a report to the Legislature and the  
9 Governor based on data collected by the boards and the  
10 district attorneys in a format prescribed by the State  
11 Department of Social Services. The report shall contain  
12 all of the following:

13 (1) The number of delinquent obligors certified by  
14 district attorneys under this section.

15 (2) The number of support obligors who also were  
16 applicants or licensees subject to this section.

17 (3) The number of new licenses and renewals that  
18 were delayed, temporary licenses issued, and licenses  
19 suspended subject to this section and the number of new  
20 licenses and renewals granted and licenses reinstated  
21 following board receipt of releases as provided by  
22 subdivision (h) by May 1, 1995.

23 (4) The costs incurred in the implementation and  
24 enforcement of this section.

25 (q) Any board receiving an inquiry as to the licensed  
26 status of an applicant who has had a license denied or  
27 suspended under this section or has been granted a  
28 temporary license under this section shall respond only  
29 that the license was denied or suspended or the  
30 temporary license was issued pursuant to this section.  
31 Information collected pursuant to this section shall be  
32 subject to the Information Practices Act (Section 1798.76  
33 of the Civil Code).

34 (r) Any rules and regulations issued pursuant to this  
35 section may be adopted as emergency regulations in  
36 accordance with the *rulemaking provisions of the*  
37 *Administrative Procedure Act* (Chapter 3.5  
38 (commencing with Section 11340) of Part 1 of Division 3  
39 of Title 2 of the Government Code). The adoption of  
40 these regulations shall be deemed an emergency and



1 necessary for the immediate preservation of the public  
2 peace, health, and safety, or general welfare. The  
3 regulations shall become effective immediately upon  
4 filing with the Secretary of State.

5 (s) The State Department of Social Services and  
6 boards, as appropriate, shall adopt regulations necessary  
7 to implement this section.

8 (t) The Judicial Council shall develop the forms  
9 necessary to implement this section, except as provided  
10 in subdivisions (f) and (l).

11 (u) The release or other use of information received  
12 by a board pursuant to this section, except as authorized  
13 by this section, is punishable as a misdemeanor.

14 (v) If any provision of this section or the application  
15 thereof to any person or circumstance is held invalid, that  
16 invalidity shall not affect other provisions or applications  
17 of this section which can be given effect without the  
18 invalid provision or application, and to this end the  
19 provisions of this section are severable.

20 (w) All rights to administrative and judicial review  
21 afforded by this section to an applicant shall also be  
22 afforded to a licensee.

23 SEC. 69. (a) Except as provided in subdivision (b),  
24 this act shall be operative on July 1, 1997.

25 (b) If Section 443.37 of the Health and Safety Code is  
26 repealed before July 1, 1997, then Section 50 of this act  
27 shall not become operative.

