

AMENDED IN SENATE MARCH 27, 1995

**SENATE BILL**

**No. 523**

**Introduced by Senator Kopp**

February 21, 1995

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An act to amend Sections 124, 4160, 10175.2, and 23083 of the Business and Professions Code, to amend ~~Section 232~~ Sections 232 and 94323 of, and to add Section 92001 to, the Education Code, to amend Section 755.5 of the Evidence Code, to amend Sections 3541.3, 3563, ~~41018~~, 8541, 11018, 11125.7, 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~~ 11529, 12935, 19582.5, 37624.2, and 68560.5 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, 1568.065, 1569.515, 1596.8875, 11834.37, 18949.6, 25149, 25229, 25299.59, 25375.5, 32154, and 40843~~ of the Health and Safety Code, to amend Sections ~~5811~~ 146, 4600, 5278, 5710, 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~~ to amend Sections 663.1, 40412, and 40413 of, and to add Sections

25513.3 and 30329 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 409 of the Unemployment Insurance Code, to amend Sections 3066, 11728, and 14112 of the Vehicle Code, and to amend Section ~~11350.6~~ 4689.5 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 amended, 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 124 of the Business and*  
 2 *Professions Code is amended to read:*  
 3 124. Notwithstanding subdivision (c) of Section 11505  
 4 of the Government Code, whenever written notice,  
 5 including a notice, order, or document served pursuant  
 6 to ~~the Administrative Procedure Act (Ch. Chapter 3.5~~  
 7 ~~(commencing with Sec. 11340), Ch. Chapter 4~~  
 8 ~~(commencing with Sec. 11370), and Ch. or Chapter 5~~  
 9 ~~(commencing with Sec. 11500), Gov. C.) of Part 1 of~~  
 10 *Division 3 of Title 2 of the Government Code*, is required  
 11 to be given by any board in the department, the notice  
 12 may be given by regular mail addressed to the last known  
 13 address of the licentiate or by personal service, at the  
 14 option of the board.



1    *SEC. 2.* Section 4160 of the Business and Professions  
2 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) of  
13 Part 1 of Division 3 of Title 2 of the Government Code).  
14 Board enforcement shall focus on those hazardous  
15 substances which relate significantly to or overlap the  
16 practice of pharmacy.

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

21    ~~SEC. 2.—~~

22    *SEC. 3.* Section 10175.2 of the Business and  
23 Professions Code is amended to read:

24    10175.2. (a) If the Real Estate Commissioner  
25 determines that the public interest and public welfare  
26 will be adequately served by permitting a real estate  
27 licensee to pay a monetary penalty to the department in  
28 lieu of an actual license suspension, the commissioner  
29 may, on the petition of the licensee, stay the execution of  
30 all or some part of the suspension on the condition that  
31 the licensee pay a monetary penalty and the further  
32 condition that the licensee incur no other cause for  
33 disciplinary action within a period of time specified by the  
34 commissioner.

35    (b) The commissioner may exercise the discretion  
36 granted to him under subdivision (a) either with respect  
37 to a suspension ordered by a decision after a contested  
38 hearing on an accusation against the licensee or by  
39 stipulation with the licensee after the filing of an  
40 accusation, but prior to the rendering of a decision based



1 upon the accusation. In either case, the terms and  
2 conditions of the disciplinary action against the licensee  
3 shall be made part of a formal decision of the  
4 commissioner ~~which satisfies the requirements of Section~~  
5 ~~11425.50 of the Government Code.~~

6 (c) If a licensee fails to pay the monetary penalty in  
7 accordance with the terms and conditions of the decision  
8 of the commissioner, the commissioner may, without a  
9 hearing, order the immediate execution of all or any part  
10 of the stayed suspension in which event the licensee shall  
11 not be entitled to any repayment nor credit, prorated or  
12 otherwise, for money paid to the department under the  
13 terms of the decision.

14 (d) The amount of the monetary penalty payable  
15 under this section shall not exceed two hundred fifty  
16 dollars (\$250) for each day of suspension stayed nor a total  
17 of ten thousand dollars (\$10,000) per decision regardless  
18 of the number of days of suspension stayed under the  
19 decision.

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

23 ~~SEC. 3.—~~

24 *SEC. 4.* Section 23083 of the Business and Professions  
25 Code is amended to read:

26 23083. (a) The board shall determine the appeal  
27 upon the record of the department and upon any briefs  
28 which may be filed by the parties. If any party to the  
29 appeal requests the right to appear before the board, the  
30 board shall fix a time and place for argument. The board  
31 shall not receive any evidence other than that contained  
32 in the record of the proceedings of the department.

33 ~~(b) The administrative adjudication provisions of the~~  
34 ~~Administrative Procedure Act (Chapter 4.5~~  
35 ~~(commencing with Section 11400) and Chapter 5~~  
36 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
37 ~~of Title 2 of the Government Code) do not apply to the~~

38 *(b) Notwithstanding Section 11425.10 of the*  
39 *Government Code, Chapter 4.5 (commencing with*



1 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
2 *Government Code does not apply to the determination.*

3 ~~SEC. 4.—~~

4 *SEC. 5.* Section 232 of the Education Code is amended  
5 to read:

6 232. The State Board of Education, the Board of  
7 Governors of the California Community Colleges, and  
8 the Trustees of the California State University shall issue  
9 regulations pursuant to Chapter 3.5 (commencing with  
10 Section 11340) of Part 1 of Division 3 of Title 2 of the  
11 Government Code, commonly referred to as the  
12 rulemaking provisions of the Administrative Procedure  
13 Act, to implement this chapter.

14 The Regents of the University of California may issue  
15 regulations to implement this chapter. If the Regents of  
16 the University of California choose to issue regulations it  
17 may issue them pursuant to Chapter 3.5 (commencing  
18 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
19 Government Code, commonly referred to as the  
20 rulemaking provisions of the Administrative Procedure  
21 Act.

22 ~~SEC. 5.—~~

23 *SEC. 6.* Section 92001 is added to the Education Code,  
24 to read:

25 ~~92001. The administrative adjudication provisions of~~  
26 ~~the Administrative Procedure Act (Chapter 4.5~~  
27 ~~(commencing with Section 11400) and Chapter 5~~  
28 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
29 ~~of Title 2 of the Government Code) do not apply to a~~

30 *92001. Notwithstanding Section 11425.10 of the*  
31 *Government Code, Chapter 4.5 (commencing with*  
32 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
33 *Government Code does not apply to a hearing conducted*  
34 *by the University of California.*

35 ~~SEC. 6.—~~

36 *SEC. 7.* Section 94323 of the Education Code is  
37 amended to read:

38 94323. (a) This section establishes the procedure for  
39 notice and hearing required under this chapter and,  
40 except as provided in Sections 94319.12 and 94322, may be



1 used in lieu of other notice or hearing requirements  
2 provided in this chapter.

3 (b) If notice of administrative action is required by this  
4 chapter, the council shall serve notice stating the  
5 following:

6 (1) The action, including the penalties and  
7 administrative sanctions sought.

8 (2) The grounds for the action with sufficient  
9 particularity to give notice of the transactions,  
10 occurrences, violations, or other matters on which the  
11 action is based.

12 (3) The right to a hearing and the time period within  
13 which the party subject to the notice may request a  
14 hearing in writing. The time period shall not be less than  
15 15 days after service of the notice unless a longer period  
16 is provided by statute.

17 (4) The right to be present at the hearing, to be  
18 represented by counsel, to cross-examine witnesses, and  
19 to present evidence.

20 (5) The administrative action set forth in the notice  
21 will be taken and shall become final if the party subject  
22 to the notice does not request a hearing in writing within  
23 the time period expressed in the notice.

24 (c) If a party subject to a notice provided pursuant to  
25 subdivision (b) requests a hearing in writing within 10  
26 days of receiving the notice, the council shall schedule a  
27 hearing. The hearing shall be held in a location  
28 determined pursuant to Section 11508 of the Government  
29 Code. The council shall serve reasonable notice of the  
30 time and place for the hearing at least 10 days before the  
31 hearing. The council may continue the date of the  
32 hearing upon a showing of good cause.

33 (d) (1) Any party, including the council, may submit  
34 a written request to any other party before the hearing  
35 to obtain the names and addresses of any person who has  
36 personal knowledge, or who the party receiving the  
37 request claims to have personal knowledge, of any of the  
38 transactions, occurrences, violations, or other matters  
39 that are the bases of the administrative action. In  
40 addition, the requesting party shall have the right to



1 inspect and copy any written statement made by that  
2 person and any writing, as defined by Section 250 of the  
3 Evidence Code, or thing that is in the custody, or under  
4 the control, of the party receiving the request and that is  
5 relevant and not privileged. This subdivision shall  
6 constitute the exclusive method for prehearing  
7 discovery. However, nothing herein shall affect the  
8 council's authority, at any time, to investigate, inspect,  
9 monitor, or obtain and copy information under any  
10 provision of this chapter.

11 (2) The written request described in paragraph (1)  
12 shall be made before the hearing and within 30 days of the  
13 service of the notice described in subdivision (b). Each  
14 recipient of a request shall comply with the request  
15 within 15 days of its service by providing the names and  
16 addresses requested and by producing at a reasonable  
17 time at the council's office or another mutually agreed  
18 reasonable place the requested writings and things. The  
19 council may extend the time for response upon a showing  
20 of good cause.

21 (3) Except as provided in this paragraph, no party may  
22 introduce the testimony or statement of any person or  
23 any writing or thing into evidence at the hearing if that  
24 party failed to provide the name and address of the  
25 person or to produce the writing or thing for inspection  
26 and copying as provided by this subdivision. A party may  
27 introduce the testimony, statement, writing, or thing that  
28 was not identified or produced as required herein only if  
29 there is no objection or if the party establishes that the  
30 person, writing, or thing was unknown at the time when  
31 the response was made to the written request, the party  
32 could not have informed other parties within a reasonable  
33 time after learning of the existence of the person, writing,  
34 or thing, and no party would be prejudiced by the  
35 introduction of the evidence.

36 (e) Before the hearing has commenced, the council  
37 shall issue subpoenas at the written request of any party  
38 for the attendance of witnesses or the production of  
39 documents or other things in the custody or under the  
40 control of the person subject to the subpoena. Subpoenas



1 issued pursuant to this section shall be subject to ~~Section~~  
2 ~~11510~~ *Article 11 (commencing with Section 11450.10) of*  
3 *Chapter 4.5 of Part 1 of Division 3 of Title 2* of the  
4 Government Code.

5 (f) (1) The council shall designate an impartial  
6 hearing officer to conduct the hearing. The hearing  
7 officer may administer oaths and affirmations, regulate  
8 the course of the hearing, question witnesses, and  
9 otherwise investigate the issues, take official notice  
10 according to the procedure provided in Division 4  
11 (commencing with Section 450) of the Evidence Code of  
12 any technical or educational matter in the council's  
13 special field of expertise and of any matter that may be  
14 judicially noticed, set the time and place for continued  
15 hearings, fix the time for the filing of briefs and other  
16 documents, direct any party to appear and confer to  
17 consider the simplification of issues by consent, and  
18 prepare a statement of decision.

19 ~~(2) Neither a hearing officer nor any person who has~~  
20 ~~a direct or indirect interest in the outcome of the hearing~~  
21 ~~shall communicate directly or indirectly with each other~~  
22 ~~regarding any issue involved in the hearing while the~~  
23 ~~proceeding is pending without notice and opportunity for~~  
24 ~~all parties to participate in the communication. A hearing~~  
25 ~~officer who receives any ex parte communication shall~~  
26 ~~immediately disclose the communication to the council~~  
27 ~~and all other parties. The council may disqualify the~~  
28 ~~hearing officer if necessary to eliminate the effect of the~~  
29 ~~ex parte communication. If~~ *In addition to the sanctions*  
30 *provided in Article 7 (commencing with Section*  
31 *11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2*  
32 *of the Government Code, if* the council finds that any  
33 party willfully violated, or caused the violation of, ~~this~~  
34 ~~paragraph~~ *that article*, the council shall enter that party's  
35 default and impose the administrative sanction set forth  
36 in the notice provided pursuant to subdivision (b).

37 (g) (1) Each party at the hearing shall be afforded an  
38 opportunity to present evidence, respond to evidence  
39 presented by other parties, cross-examine, and present  
40 written argument or, if permitted by the hearing officer,



1 oral argument on the issues involved in the hearing. The  
2 council may call any party as a witness who may be  
3 examined as if under cross-examination.

4 (2) Each party may appear through its representative  
5 or through legal counsel.

6 (3) The technical rules relating to evidence and  
7 witnesses shall not apply. However, only relevant  
8 evidence is admissible.

9 (4) Oral evidence shall be taken only upon oath or  
10 affirmation. The hearing shall be conducted in the  
11 English language. The proponent of any testimony to be  
12 offered by a witness who is not proficient in English shall  
13 provide, at the proponent's cost, an interpreter proficient  
14 in English and the language in which the witness will  
15 testify.

16 (5) The hearing shall be recorded by tape recording or  
17 other phonographic means unless all parties agree to  
18 another method of recording the proceedings.

19 (6) (A) At any time 10 or more days before the  
20 hearing, any party may serve on the other parties a copy  
21 of any declaration which the party proposes to introduce  
22 in evidence.

23 (B) The declaration shall be accompanied by a notice  
24 indicating the date of service of the notice and stating that  
25 the declarations will be offered into evidence, the  
26 declarants will not be called as witnesses, and there will  
27 be no right of cross-examination unless the party  
28 receiving the notice requests the right to cross-examine,  
29 in writing, within seven days of the service of the  
30 declarations and notice.

31 (C) If no request for cross-examination is served  
32 within seven days of the service of the declarations and  
33 notice described in subparagraph (B), the right to  
34 cross-examination is deemed waived and the declaration  
35 shall have the same effect as if the declarant testified  
36 orally. Notwithstanding this paragraph, a declaration may  
37 be admitted as hearsay evidence without  
38 cross-examination.

39 (7) Disposition of any issues involved in the hearing  
40 may be made by stipulation or settlement.



1 (8) If a party fails to appear at a hearing, that party's  
2 default shall be taken and the party shall be deemed to  
3 have waived the hearing and agreed to the administrative  
4 action and the grounds for that action described in the  
5 notice given pursuant to subdivision (b). The council  
6 shall serve the party with an order of default including the  
7 administrative action ordered. The order shall be  
8 effective upon service or at any other time designated by  
9 the council. The council may relieve a party from an  
10 order of default if the party applies for relief within 15  
11 days after the service of an order of default and establishes  
12 good cause for relief. An application for relief from  
13 default shall not stay the effective date of the order unless  
14 expressly provided by the council.

15 (h) (1) At any time before the matter is submitted for  
16 decision, the council may amend the notice provided  
17 pursuant to subdivision (b) to set forth any further  
18 grounds for the originally noticed administrative action  
19 or any additional administrative action and the grounds  
20 therefor. The statement of the further grounds for the  
21 originally noticed administrative action, or of the grounds  
22 for any additional administrative action, shall be made  
23 with sufficient particularity to give notice of the  
24 transactions, occurrences, violations, or other matters on  
25 which the action or additional action is based. The  
26 amended notice shall be served on all parties. All parties  
27 affected by the amended notice shall be given reasonable  
28 opportunity to respond to the amended notice as  
29 provided in this section.

30 (2) The council may amend the notice after the case  
31 is submitted for decision. The council shall serve each  
32 party with notice of the intended amendment and shall  
33 provide the party with an opportunity to show that the  
34 party will be prejudiced by the amendment unless the  
35 case is reopened to permit the party to introduce  
36 additional evidence. If prejudice is shown, the council  
37 shall reopen the case to permit the introduction of  
38 additional evidence.

39 (i) (1) Within 30 days after the conclusion of the  
40 hearing or at another time established by the council, the



1 hearing officer shall submit a written statement of  
2 decision setting forth a recommendation for a final  
3 decision ~~and explaining the factual and legal basis for the~~  
4 ~~decision as to each of the grounds for the administrative~~  
5 ~~action set forth in the notice or amended notice. The~~  
6 *written statement of decision shall be made as provided*  
7 *in Section 11425.50 of the Government Code.* The council  
8 shall serve the hearing officer's statement of decision on  
9 each party and its counsel within 10 days of its submission  
10 by the hearing officer.

11 (2) The council shall make the final decision which  
12 shall be based exclusively on evidence introduced at the  
13 hearing. The final decision shall be supported by  
14 substantial evidence in the record. The council also shall  
15 issue a statement of decision ~~explaining the factual and~~  
16 ~~legal basis for the final decision as to each of the grounds~~  
17 ~~for the administrative action set forth in the notice or~~  
18 ~~amended notice as provided in Section 11425.50 of the~~  
19 *Government Code.* The council shall issue an order based  
20 on its decision which shall be effective upon service or at  
21 any other time designated by the council. The council  
22 shall serve a copy of the final decision and order, within  
23 10 days of their issuance, on each party and its counsel.

24 (3) The council may hold a closed session to deliberate  
25 on a decision to be reached based upon evidence  
26 introduced at the hearing.

27 (4) The council shall serve a certified copy of the  
28 complete record of the hearing, or any part thereof  
29 designated by a party, within 30 days after receiving the  
30 party's written request and payment of the cost of  
31 preparing the requested portions of the record. The  
32 complete record shall include all notices and orders  
33 issued by the council, a transcript of the hearing, the  
34 exhibits admitted or rejected, the written evidence and  
35 any other papers in the case, the hearing officer's  
36 statement of decision, and the final decision and order.

37 (j) The council shall serve all notices and other  
38 documents that are required to be served by this section  
39 on each party by personal delivery, by certified mail,



1 return receipt requested, or by any other means  
2 designated by the council.

3 (k) (1) Any party aggrieved by the council's final  
4 decision and order may seek judicial review by filing a  
5 petition for a writ of mandate pursuant to Section 1085 of  
6 the Code of Civil Procedure within 30 days of the issuance  
7 of the final decision and order. If review is not sought  
8 within that period, the party's right to review shall be  
9 deemed waived.

10 (2) The aggrieved party shall present the complete  
11 record of the hearing or all portions of the record  
12 necessary for the court's review of the council's final  
13 decision and order. The court shall deny the petition for  
14 a writ of mandate if the record submitted by the party is  
15 incomplete. The court shall not consider any matter not  
16 contained in the record. The factual bases supporting the  
17 final decision set forth in the council's statement of  
18 decision shall be conclusive if supported by substantial  
19 evidence on the record considered as a whole.

20 (3) The final order shall not be stayed or enjoined  
21 during review except upon the court's grant of an order  
22 on a party's application after due notice to the council and  
23 the Attorney General. The order shall be granted only if  
24 the party establishes the substantial likelihood that it will  
25 prevail on the merits and posts a bond sufficient to  
26 protect fully the interests of the students, the council, and  
27 the Student Tuition Recovery Fund, from any loss.

28 (l) The council may adopt regulations establishing  
29 alternative means of providing notice and an opportunity  
30 to be heard in circumstances in which a full hearing is not  
31 required by law.

32 (m) For purposes of this section, "good cause" shall  
33 require sufficient ground or reason for the determination  
34 to be made by the council.

35 *SEC. 8. Section 755.5 of the Evidence Code is*  
36 *amended to read:*

37 755.5. (a) During any medical examination,  
38 requested by an insurer or by the defendant, of a person  
39 who is a party to a civil action and who does not  
40 proficiently speak or understand the English language,



1 conducted for the purpose of determining damages in a  
 2 civil action, an interpreter shall be present to interpret  
 3 the examination in a language that the person  
 4 understands. ~~Commencing January 1, 1994, the~~ *The*  
 5 interpreter shall be certified pursuant to ~~Section 11513~~  
 6 *Article 8 (commencing with Section 11435.05) of Chapter*  
 7 *4.5 of Part 1 of Division 3 of Title 2* of the Government  
 8 Code.

9 (b) The fees of interpreters ~~utilized~~ *used* under  
 10 subdivision (a) shall be paid by the insurer or defendant  
 11 requesting the medical examination.

12 (c) The record of, or testimony concerning, any  
 13 medical examination conducted in violation of  
 14 subdivision (a) shall be inadmissible in the civil action for  
 15 which it was conducted or any other civil action.

16 (d) This section does not prohibit the presence of any  
 17 other person to assist a party.

18 (e) In the event that interpreters certified pursuant to  
 19 ~~Section 11513~~ *Article 8 (commencing with Section*  
 20 *11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2*  
 21 of the Government Code cannot be present at the  
 22 medical examination, upon stipulation of the parties the  
 23 requester specified in subdivision (a) shall have the  
 24 discretionary authority to provisionally qualify and utilize  
 25 other interpreters.

26 *SEC. 9.* Section 3541.3 of the Government Code is  
 27 amended to read:

28 3541.3. ~~The board shall have all of the following~~  
 29 ~~powers and duties:~~

30 (a) ~~To determine in disputed cases, or otherwise~~  
 31 ~~approve, appropriate units.~~

32 (b) ~~To determine in disputed cases whether a~~  
 33 ~~particular item is within or without the scope of~~  
 34 ~~representation.~~

35 (c) ~~To arrange for and supervise representation~~  
 36 *Notwithstanding Section 11425.10, Chapter 4.5*  
 37 *(commencing with Section 11400) of Part 1 of Division 3*  
 38 *of Title 2 does not apply to a hearing by the board under*  
 39 *this chapter, except a hearing to determine an unfair*



1 elections which shall be conducted by means of secret  
2 ballot elections, and certify the results of the elections.

3 (d) To establish lists of persons broadly representative  
4 of the public and qualified by experience to be available  
5 to serve as mediators, arbitrators, or factfinders. In no  
6 case shall these lists include persons who are on the staff  
7 of the board.

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

10 (f) Within its discretion, to conduct studies relating to  
11 employer-employee relations, including the collection,  
12 analysis, and making available of data relating to wages,  
13 benefits, and employment practices in public and private  
14 employment, and, when it appears necessary in its  
15 judgment to the accomplishment of the purposes of this  
16 chapter, recommend legislation. The board shall report  
17 to the Legislature by October 15 of each year on its  
18 activities during the immediately preceding fiscal year.  
19 The board may enter into contracts to develop and  
20 maintain research and training programs designed to  
21 assist public employers and employee organizations in  
22 the discharge of their mutual responsibilities under this  
23 chapter.

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

28 (h) To hold hearings, subpoena witnesses, administer  
29 oaths, take the testimony or deposition of any person, and,  
30 in connection therewith, to issue subpoenas duces tecum  
31 to require the production and examination of any  
32 employer's or employee organization's records, books, or  
33 papers relating to any matter within its jurisdiction. The  
34 administrative adjudication provisions of the  
35 Administrative Procedure Act (Chapter 4.5  
36 (commencing with Section 11400) and Chapter 5  
37 (commencing with Section 11500) of Part 1 of Division 3  
38 of Title 2) do not apply to a hearing by the board under  
39 this chapter, except that Chapter 4.5 (commencing with



1 Section 11400) applies to a hearing to determine an unfair  
2 practice charge.

3 (i) To investigate unfair practice charges or alleged  
4 violations of this chapter, and take any action and make  
5 any determinations in respect of these charges or alleged  
6 violations as the board deems necessary to effectuate the  
7 policies of this chapter.

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

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

23 (l) To decide contested matters involving recognition,  
24 certification, or decertification of employee  
25 organizations.

26 (m) To consider and decide issues relating to rights,  
27 privileges, and duties of an employee organization in the  
28 event of a merger, amalgamation, or transfer of  
29 jurisdiction between two or more employee  
30 organizations.

31 (n) To take any other action as the board deems  
32 necessary to discharge its powers and duties and  
33 otherwise to effectuate the purposes of this chapter.

34 ~~SEC. 7.—~~

35 *SEC. 10.* Section 3563 of the Government Code is  
36 amended to read:

37 3563. This chapter shall be administered by the Public  
38 Employment Relations Board. In administering this  
39 chapter the board shall have all of the following rights,  
40 powers, duties and responsibilities:



1 (a) To determine in disputed cases, or otherwise  
2 approve, appropriate units.

3 (b) To determine in disputed cases whether a  
4 particular item is within or without the scope of  
5 representation.

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

9 (d) To establish lists of persons broadly representative  
10 of the public and qualified by experience to be available  
11 to serve as mediators, arbitrators, or factfinders. In no  
12 case shall the lists include persons who are on the staff of  
13 the board.

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

16 (f) To adopt, pursuant to Chapter 3.5 (commencing  
17 with Section 11340) of Part 1 of Division 3 of Title 2, rules  
18 and regulations to carry out the provisions and effectuate  
19 the purposes and policies of this chapter.

20 (g) To hold hearings, subpoena witnesses, administer  
21 oaths, take the testimony or deposition of any person, and,  
22 in connection therewith, to issue subpoenas duces tecum  
23 to require the production and examination of any  
24 employer's or employee organization's records, books, or  
25 papers relating to any matter within its jurisdiction,  
26 except for those records, books, or papers confidential  
27 ~~under statute. The administrative adjudication provisions~~  
28 ~~of the Administrative Procedure Act (Chapter 4.5~~  
29 ~~(commencing with Section 11400) and Chapter 5~~  
30 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
31 ~~of Title 2) do not apply to a hearing conducted by the~~  
32 ~~board under this section, except that Chapter 4.5~~  
33 ~~(commencing with Section 11400) applies to a hearing~~  
34 ~~conducted to determine an unfair practice charge. *under*~~  
35 ~~*statute. Notwithstanding Section 11425.10, Chapter 4.5*~~  
36 ~~*(commencing with Section 11400) of Part 1 of Division 3*~~  
37 ~~*of Title 2 does not apply to a hearing by the board under*~~  
38 ~~*this section, except a hearing to determine an unfair*~~  
39 ~~*practice charge.*~~



1 (h) To investigate unfair practice charges or alleged  
2 violations of this chapter, and to take any action and make  
3 any determinations in respect of ~~such~~ *these* charges or  
4 alleged violations as the board deems necessary to  
5 effectuate the policies of this chapter.

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

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

21 (k) To decide contested matters involving  
22 recognition, certification, or decertification of employee  
23 organizations.

24 (l) To consider and decide issues relating to rights,  
25 privileges, and duties of an employee organization in the  
26 event of a merger, amalgamation, or transfer of  
27 jurisdiction between two or more employee  
28 organizations.

29 (m) To take any other action as the board deems  
30 necessary to discharge its powers and duties and  
31 otherwise to effectuate the purposes of this chapter.

32 ~~SEC. 8.—~~

33 *SEC. 11. Section 8541 of the Government Code is*  
34 *amended to read:*

35 8541. In carrying out its duties and responsibilities,  
36 the commission shall have all of the following powers:

37 (a) To meet at ~~such times and places~~ *any time and*  
38 *place* as it may deem proper.

39 (b) As a body or, on the authorization of the  
40 commission, as a subcommittee composed of one or more



1 members, to hold hearings at ~~such times and places~~ *any*  
2 *time and place* as it may deem proper.

3 (c) To issue subpoenas to compel the attendance of  
4 witnesses and the production of books, records, papers,  
5 accounts, reports, and documents.

6 (d) To administer oaths.

7 (e) To employ, pursuant to laws and regulations  
8 governing state civil service, a secretary and ~~such any~~  
9 clerical, legal, and technical assistants as may appear  
10 necessary.

11 (f) To contract with ~~such any~~ other agencies, public or  
12 private, as it deems necessary, for the rendition and  
13 affording of ~~such any~~ services, facilities, studies and  
14 reports to the commission as will best assist it to carry out  
15 its duties and responsibilities.

16 (g) To cooperate with and to secure the cooperation  
17 of county, city, city and county, and other local law  
18 enforcement agencies in investigating any matter within  
19 the scope of its duties and responsibilities, and to direct  
20 the sheriff of any county or any marshal to serve  
21 subpoenas, orders, and other process.

22 (h) To certify to the superior court of any county in  
23 which proceedings are held, the facts concerning the  
24 disobedience or resistance, by any person, of any lawful  
25 order, or the refusal of any person to respond to a  
26 subpoena, to take the oath or affirmation as a witness, or  
27 to be examined, or the misconduct of any person during  
28 a hearing; and to receive the assistance of the court in  
29 enforcing orders and process, in the manner prescribed  
30 by ~~Section 11525 of this code~~ *Article 12 (commencing*  
31 *with Section 11455.10) of Chapter 4.5 of Part 1 of Division*  
32 *3.*

33 (i) To cooperate with every department, agency, or  
34 instrumentality in the state government; and to secure  
35 directly from every department, agency, or  
36 instrumentality full cooperation, access to its records, and  
37 access to any information, suggestions, estimates, data,  
38 and statistics it may have available.



1 (j) To authorize its agents and employees to absent  
2 themselves from the state where necessary for the  
3 performance of their duties.

4 (k) To do any and all other things necessary or  
5 convenient to enable it fully and adequately to perform  
6 its duties and to exercise the powers expressly granted it,  
7 notwithstanding any authority expressly granted to any  
8 officer or employee of the executive branch of state  
9 government.

10 *SEC. 12.* Section 11018 of the Government Code is  
11 amended to read:

12 11018. Every state agency which is authorized by any  
13 law to conduct administrative hearings but is not subject  
14 to Chapter 5 (commencing with Section 11500) shall  
15 nonetheless comply with Sections 11435.20 ~~and 11435.25~~  
16 , 11435.25, and 11435.55 relative to the furnishing of  
17 language assistance at the hearing.

18 ~~SEC. 9.—~~

19 *SEC. 13.* Section 11125.7 of the Government Code is  
20 amended to read:

21 11125.7. (a) Except as otherwise provided in this  
22 section, the state body shall provide an opportunity for  
23 members of the public to directly address the state body  
24 on each agenda item before or during the state body's  
25 discussion or consideration of the item. This section is not  
26 applicable if the agenda item has already been considered  
27 by a committee composed exclusively of members of the  
28 state body at a public meeting where interested members  
29 of the public were afforded the opportunity to address the  
30 committee on the item, before or during the committee's  
31 consideration of the item, unless the item has been  
32 substantially changed since the committee heard the  
33 item, as determined by the state body.

34 (b) The state body may adopt reasonable regulations  
35 to ensure that the intent of subdivision (a) is carried out,  
36 including, but not limited to, regulations limiting the total  
37 amount of time allocated for public comment on  
38 particular issues and for each individual speaker.

39 (c) This section is not applicable to closed sessions held  
40 pursuant to Section 11126.



1 (d) This section is not applicable to decisions  
2 regarding proceedings held pursuant to Chapter 5  
3 (commencing with Section 11500), relating to  
4 administrative adjudication, or to the conduct of those  
5 proceedings.

6 (e) This section is not applicable to hearings  
7 conducted by the State Board of Control pursuant to  
8 Sections 13963 and 13963.1.

9 (f) This section is not applicable to agenda items which  
10 involve decisions of the Public Utilities Commission  
11 regarding adjudicatory hearings held pursuant to  
12 Chapter 9 (commencing with Section 1701) of Part 1 of  
13 Division 1 of the Public Utilities Code. ~~For the purposes~~  
14 ~~of this subdivision, “adjudicatory hearing” has the same~~  
15 ~~meaning as defined in subdivision (f) of Section 11500 of~~  
16 ~~the Government Code.~~ For all other agenda items, the  
17 commission shall provide members of the public, other  
18 than those who have already participated in the  
19 proceedings underlying the agenda item, an opportunity  
20 to directly address the commission before or during the  
21 commission’s consideration of the item.

22 *SEC. 14.* Section 11340.4 is added to the Government  
23 Code, to read:

24 11340.4. (a) The office is authorized and directed to  
25 do the following:

26 (1) Study the subject of administrative rulemaking in  
27 all its aspects.

28 (2) In the interest of fairness, uniformity, and the  
29 expedition of business, submit its suggestions to the  
30 various agencies.

31 (3) Report its recommendations to the Governor and  
32 Legislature at the commencement of each general  
33 session.

34 (b) All agencies of the state shall give the office ready  
35 access to their records and full information and  
36 reasonable assistance in any matter of research requiring  
37 recourse to them or to data within their knowledge or  
38 control. Nothing in this subdivision authorizes an agency  
39 to provide access to records required by statute to be kept  
40 confidential.



1 ~~SEC. 10.—~~

2 *SEC. 15.* An article heading is added immediately  
3 preceding Section 11370 to Chapter 4 of Part 1 of Division  
4 3 of Title 2 of the Government Code, to read:

5

6 Article 1. General Provisions

7

8 ~~SEC. 11.—~~

9 *SEC. 16.* Section 11370 of the Government Code is  
10 amended to read:

11 11370. Chapter 3.5 (commencing with Section  
12 11340), Chapter 4 (commencing with Section 11370),  
13 Chapter 4.5 (commencing with Section 11400), and  
14 Chapter 5 (commencing with Section 11500) constitute,  
15 and may be cited as, the Administrative Procedure Act.

16 ~~SEC. 12.—~~

17 *SEC. 17.* Section 11370.3 of the Government Code is  
18 amended to read:

19 11370.3. The director shall appoint and maintain a  
20 staff of full-time, and may appoint pro tempore part-time,  
21 administrative law judges qualified under Section 11502  
22 which is sufficient to fill the needs of the various state  
23 agencies. The director shall also appoint any other  
24 technical and clerical personnel as may be required to  
25 perform the duties of the office. The director shall assign  
26 an administrative law judge for any proceeding arising  
27 under Chapter 5 (commencing with Section 11500) and,  
28 upon request from any agency, may assign an  
29 administrative law judge to conduct other administrative  
30 proceedings not arising under that chapter and shall  
31 assign hearing reporters as required. Any administrative  
32 law judge or other employee so assigned shall be deemed  
33 an employee of the office and not of the agency to which  
34 he or she is assigned. When not engaged in hearing cases,  
35 administrative law judges may be assigned by the director  
36 to perform other duties vested in or required of the office,  
37 including those provided for in Section 11370.5.

38 ~~SEC. 13.—~~

39 *SEC. 18.* Section 11370.5 of the Government Code is  
40 amended to read:



1 11370.5. The office is authorized and directed to study  
 2 the subject of administrative adjudication in all its  
 3 aspects; to submit its suggestions to the various agencies  
 4 in the interests of fairness, uniformity and the expedition  
 5 of business; and to report its recommendations to the  
 6 Governor and Legislature at the commencement of each  
 7 general session. All departments, agencies, officers, and  
 8 employees of the—*State state* shall give the office ready  
 9 access to their records and full information and  
 10 reasonable assistance in any matter of research requiring  
 11 recourse to them or to data within their knowledge or  
 12 control. Nothing in this section authorizes an agency to  
 13 provide access to records required by statute to be kept  
 14 confidential.

15 ~~SEC. 14.—~~

16 *SEC. 19.* An article heading is added immediately  
 17 preceding Section 11371 to Chapter 4 of Part 1 of Division  
 18 3 of Title 2 of the Government Code, to read:

19

20 Article 2. Medical Quality Hearing Panel

21

22 ~~SEC. 15.—~~

23 *SEC. 20.* Article 3 (commencing with Section 11380)  
 24 is added to Chapter 4 of Part 1 of Division 3 of Title 2 of  
 25 the Government Code, to read:

26

27 Article 3. State Agency Reports and Forms Appeals

28

29 11380. (a) (1) The office shall hear and render a  
 30 decision on any appeal filed by a business, pursuant to  
 31 subdivision (c) of Section 14775, in the event the business  
 32 contests the certification by a state agency head that  
 33 reporting requirements meet established criteria and  
 34 shall not be eliminated.

35 (2) Before a business may file an appeal with the office  
 36 pursuant to subdivision (c) of Section 14775, the business  
 37 shall file a challenge to a form or report required by a state  
 38 agency with that state agency. Within 60 days of filing the  
 39 challenge with a state agency, the state agency shall



1 either eliminate the form or report or provide written  
2 justification for its continued use.

3 (3) A business may appeal a state agency’s written  
4 justification for the continued use of a form or report with  
5 the office.

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

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

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

18 ~~SEC. 16.—~~

19 *SEC. 21.* Chapter 4.5 (commencing with Section  
20 11400) is added to Part 1 of Division 3 of Title 2 of the  
21 Government Code, to read:

22  
23 CHAPTER 4.5. ADMINISTRATIVE ADJUDICATION: GENERAL  
24 PROVISIONS

25  
26 Article 1. Preliminary Provisions

27  
28 11400. (a) This chapter and Chapter 5 (commencing  
29 with Section 11500) constitute the administrative  
30 adjudication provisions of the Administrative Procedure  
31 Act.

32 (b) A reference in any other statute or in a rule of  
33 court, executive order, or regulation, to a provision  
34 formerly found in Chapter 5 (commencing with Section  
35 11500) that is superseded by a provision of this chapter,  
36 means the applicable provision of this chapter.

37 11400.10. (a) This chapter is operative on July 1, 1997.

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



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

5 11400.20. (a) Before, on, or after July 1, 1997, an  
6 agency may adopt interim or permanent regulations to  
7 govern an adjudicative proceeding under this chapter.

8 (b) Except as provided in Section 11351:

9 (1) Interim regulations need not comply with Article  
10 5 (commencing with Section 11346) or Article 6  
11 (commencing with Section 11349) of Chapter 3.5, but are  
12 governed by Chapter 3.5 (commencing with Section  
13 11340) in all other respects.

14 (2) Interim regulations expire on December 31, 1998,  
15 unless earlier terminated, ~~replaced,~~ *or replaced by* or  
16 readopted as permanent regulations under paragraph  
17 (3). If on December 31, 1998, an agency has completed  
18 proceedings to replace or readopt interim regulations  
19 and has submitted permanent regulations for review by  
20 the Office of Administrative Law, but permanent  
21 regulations have not yet been filed with the Secretary of  
22 State, the interim regulations are extended until the date  
23 permanent regulations are filed with the Secretary of  
24 State or March 31, 1999, whichever is earlier.

25 (3) Permanent regulations are subject to all the  
26 provisions of Chapter 3.5 (commencing with Section  
27 11340), except that if by December 31, 1998, an agency  
28 has submitted the regulations for review by the Office of  
29 Administrative Law, the regulations are not subject to  
30 review for necessity under Section 11349.1 or 11350.

31

32

## Article 2. Definitions

33

34 11405.10. Unless the provision or context requires  
35 otherwise, the definitions in this article govern the  
36 construction of this chapter.

37 11405.20. “Adjudicative proceeding” means an  
38 evidentiary hearing for determination of facts pursuant  
39 to which an agency formulates and issues a decision.



1 11405.30. “Agency” means a board, bureau,  
2 commission, department, division, office, officer, or other  
3 administrative unit, including the agency head, and one  
4 or more members of the agency head or agency  
5 employees or other persons directly or indirectly  
6 purporting to act on behalf of or under the authority of  
7 the agency head. To the extent it purports to exercise  
8 authority pursuant to this chapter, an administrative unit  
9 otherwise qualifying as an agency shall be treated as a  
10 separate agency even if the unit is located within or  
11 subordinate to another agency.

12 11405.40. “Agency head” means a person or body in  
13 which the ultimate legal authority of an agency is vested,  
14 and includes a person or body to which the power to act  
15 is delegated pursuant to authority to delegate the  
16 agency’s power to hear and decide.

17 11405.50. (a) “Decision” means an agency action of  
18 specific application that determines a legal right, duty,  
19 privilege, immunity, or other legal interest of a particular  
20 person.

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

22 (1) The precedential effect of a decision under Section  
23 11425.60.

24 (2) The authority of an agency to make a declaratory  
25 decision pursuant to Article 14 (commencing with  
26 Section 11465.10).

27 11405.60. “Party” includes the agency that is taking  
28 action, the person to which the agency action is directed,  
29 and any other person named as a party or allowed to  
30 appear or intervene in the proceeding. If the agency that  
31 is taking action and the agency that is conducting the  
32 adjudicative proceeding are separate agencies, the  
33 agency that is taking action is a party and the agency that  
34 is conducting the adjudicative proceeding is not a party.

35 11405.70. “Person” includes an individual,  
36 partnership, corporation, governmental subdivision or  
37 unit of a governmental subdivision, or public or private  
38 organization or entity of any character.

39 11405.80. “Presiding officer” means the agency head,  
40 member of the agency head, administrative law judge,



1 hearing officer, or other person who presides in an  
2 adjudicative proceeding.

3

4

Article 3. Application of Chapter

5

6 11410.10. This chapter applies to a decision by an  
7 agency if, under the federal or state Constitution or a  
8 federal or state statute, an evidentiary hearing for  
9 determination of facts is required for formulation and  
10 issuance of the decision.

11 11410.20. Except as otherwise expressly provided by  
12 statute:

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

14 (b) This chapter does not apply to the Legislature, the  
15 courts or judicial branch, or the Governor or office of the  
16 Governor.

17 11410.30. (a) As used in this section, “local agency”  
18 means a county, city, district, public authority, public  
19 agency, or other political subdivision or public  
20 corporation in the state other than the state.

21 (b) This chapter does not apply to a local agency  
22 except to the extent the provisions are made applicable  
23 by statute.

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

27 11410.40. *Notwithstanding any other provision of this*  
28 *article, by regulation, ordinance, or other appropriate*  
29 *action, an agency may adopt this chapter or any of its*  
30 *provisions for the formulation and issuance of a decision,*  
31 *even though the agency or decision is exempt from*  
32 *application of this chapter.*

33 11410.50. This chapter applies to an adjudicative  
34 proceeding required to be conducted under Chapter 5  
35 (commencing with Section 11500) unless the statutes  
36 relating to the proceeding provide otherwise.

37



1 Article 4. Governing Procedure

2  
3 11415.10. (a) The governing procedure by which an  
4 agency conducts an adjudicative proceeding is  
5 determined by the statutes and regulations applicable to  
6 that proceeding. If no other governing procedure is  
7 provided by statute or regulation, an agency may conduct  
8 an adjudicative proceeding under the administrative  
9 adjudication provisions of the Administrative Procedure  
10 Act.

11 (b) This chapter supplements the governing  
12 procedure by which an agency conducts an adjudicative  
13 proceeding.

14 11415.20. A state statute or a federal statute or  
15 regulation applicable to a particular agency or decision  
16 prevails over a conflicting or inconsistent provision of this  
17 chapter.

18 11415.30. (a) To the extent necessary to avoid a loss  
19 or delay of funds or services from the federal government  
20 that would otherwise be available to the state, the  
21 Governor may do any of the following by executive order:

22 (1) Suspend, in whole or in part, any administrative  
23 adjudication provision of the Administrative Procedure  
24 Act.

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

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

31 (c) If an administrative adjudication provision is  
32 suspended or rule of procedure is adopted pursuant to  
33 this section, the Governor shall promptly report the  
34 suspension or adoption to the Legislature. The report  
35 shall include recommendations concerning any  
36 legislation that may be necessary to conform the  
37 provision to federal law.

38 11415.40. Except to the extent prohibited by another  
39 statute or regulation, a person may waive a right  
40 conferred on the person by the administrative

1 adjudication provisions of the Administrative Procedure  
2 Act.

3 11415.50. (a) An agency may provide any  
4 appropriate procedure for a decision for which an  
5 adjudicative proceeding is not required.

6 (b) An adjudicative proceeding is not required for  
7 informal factfinding or an informal investigatory hearing,  
8 or a decision to initiate or not to initiate an investigation,  
9 prosecution, or other proceeding before the agency,  
10 another agency, or a court, whether in response to an  
11 application for an agency decision or otherwise.

12 11415.60. (a) An agency may formulate and issue a  
13 decision by settlement, pursuant to an agreement of the  
14 parties, without conducting an adjudicative proceeding.  
15 Subject to subdivision (c), the settlement may be on any  
16 terms the parties determine are appropriate.  
17 Notwithstanding any other provision of law, no evidence  
18 of an offer of compromise or settlement made in  
19 settlement negotiations is admissible in an adjudicative  
20 proceeding or civil action, whether as affirmative  
21 evidence, by way of impeachment, or for any other  
22 purpose.

23 (b) A settlement may be made before or after issuance  
24 of an agency pleading, except that in an adjudicative  
25 proceeding to determine whether an occupational  
26 license should be revoked, suspended, limited, or  
27 conditioned, a settlement may not be made before  
28 issuance of the agency pleading. *A settlement may be*  
29 *made before, during, or after the hearing.*

30 (c) A settlement is subject to any necessary agency  
31 approval. An agency head may delegate the power to  
32 approve a settlement. The terms of a settlement may not  
33 be contrary to statute or regulation, except that the  
34 settlement may include sanctions the agency would  
35 otherwise lack power to impose.

36

### 37 Article 5. Alternative Dispute Resolution

38

39 11420.10. (a) An agency, with the consent of all the  
40 parties, may refer a dispute that is the subject of an



1 adjudicative proceeding for resolution by any of the  
2 following means:

3 (1) Mediation by a neutral mediator.

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

9 (3) Nonbinding arbitration by a neutral arbitrator.  
10 The arbitrator's decision in a nonbinding arbitration is  
11 final unless within 30 days after the arbitrator delivers the  
12 award to the agency head a party requests that the agency  
13 conduct a de novo adjudicative proceeding. If the  
14 decision in the de novo proceeding is not more favorable  
15 to the party electing the de novo proceeding, the party  
16 shall pay the costs and fees specified in Section 1141.21 of  
17 the Code of Civil Procedure insofar as applicable in the  
18 adjudicative proceeding.

19 (b) If another statute requires mediation or  
20 arbitration in an adjudicative proceeding, that statute  
21 prevails over this section.

22 (c) This section does not apply in an adjudicative  
23 proceeding to the extent an agency by regulation  
24 provides that this section is not applicable in a proceeding  
25 of the agency.

26 11420.20. (a) The Office of Administrative Hearings  
27 shall adopt and promulgate model regulations for  
28 alternative dispute resolution under this article. The  
29 model regulations govern alternative dispute resolution  
30 by an agency under this article, except to the extent the  
31 agency by regulation provides inconsistent rules or  
32 provides that the model regulations are not applicable in  
33 a proceeding of the agency.

34 (b) The model regulations shall include provisions for  
35 selection and compensation of a mediator or arbitrator,  
36 qualifications of a mediator or arbitrator, and  
37 confidentiality of the mediation or arbitration  
38 proceeding.



1 11420.30. Notwithstanding any other provision of law,  
2 a communication made in alternative dispute resolution  
3 under this article is protected to the following extent:

4 (a) Anything said, any admission made, and any  
5 document prepared in the course of, or pursuant to,  
6 mediation under this article is a confidential  
7 communication, and a party to the mediation has a  
8 privilege to refuse to disclose and to prevent another  
9 from disclosing the communication, whether in an  
10 adjudicative proceeding, civil action, or other  
11 proceeding. This subdivision does not limit the  
12 admissibility of evidence if all parties to the proceedings  
13 consent.

14 (b) No reference to nonbinding arbitration  
15 proceedings, ~~an award under this article~~ *a decision of the*  
16 *arbitrator that is rejected by a party's request for a de*  
17 *novo adjudicative proceeding*, the evidence produced, or  
18 any other aspect of the arbitration may be made in an  
19 adjudicative proceeding or civil action, whether as  
20 affirmative evidence, by way of impeachment, or for any  
21 other purpose.

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

26

## 27 Article 6. Administrative Adjudication Bill of Rights

28

29 11425.10. (a) The governing procedure by which an  
30 agency conducts an adjudicative proceeding is subject to  
31 all of the following requirements:

32 (1) The agency shall give the person to which the  
33 agency action is directed notice and an opportunity to be  
34 heard, including the opportunity to present and rebut  
35 evidence.

36 (2) The agency shall make available to the person to  
37 which the agency action is directed a copy of the  
38 governing procedure, including a statement whether  
39 Chapter 5 (commencing with Section 11500) is  
40 applicable to the proceeding.



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

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

6 (5) The presiding officer is subject to disqualification  
7 for bias, prejudice, or interest as provided in Section  
8 11425.40.

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

12 (7) A decision may not be relied on as precedent  
13 unless the agency designates and indexes the decision as  
14 precedent as provided in Section 11425.60.

15 (8) Ex parte communications shall be restricted as  
16 provided in Article 7 (commencing with Section  
17 11430.10).

18 (9) Language assistance shall be made available as  
19 provided in Article 8 (commencing with Section  
20 11435.05) by an agency described in Section 11018 or  
21 ~~Section~~ 11435.15.

22 (b) *The requirements of this section apply to the*  
23 *governing procedure by which an agency conducts an*  
24 *adjudicative proceeding without further action by the*  
25 *agency, and prevail over a conflicting or inconsistent*  
26 *provision of the governing procedure, subject to Section*  
27 *11415.20.*

28 (c) The governing procedure by which an agency  
29 conducts an adjudicative proceeding may include  
30 ~~procedures~~ *provisions* equivalent to, or more protective  
31 of the rights of the person to which the agency action is  
32 directed than, the requirements of this section.

33 11425.20. (a) A hearing shall be open to public  
34 ~~observation except to the extent that any of the following~~  
35 ~~applies:~~

36 ~~(1) A closed hearing is required in whole or in part by~~  
37 ~~statute or by the federal or state Constitution.~~

38 ~~(2) The presiding officer determines it is necessary to~~  
39 ~~close the hearing in whole or in part to ensure a fair~~  
40 ~~hearing in the circumstances of the particular case. The~~



1 ~~presiding officer may conduct the hearing, including the~~  
2 ~~manner of examining witnesses and closing the hearing,~~  
3 ~~observation. Nothing in this subdivision limits the~~  
4 ~~authority of the presiding officer to order closure of a~~  
5 ~~hearing or make other protective orders to the extent~~  
6 ~~necessary or proper for any of the following purposes:~~

7 (1) *To satisfy the United States Constitution, the*  
8 *California Constitution, statute, or other law, including*  
9 *but not limited to, laws protecting privileged,*  
10 *confidential, or other protected information.*

11 (2) *To ensure a fair hearing in the circumstances of the*  
12 *particular case.*

13 (3) *To conduct the hearing, including the manner of*  
14 *examining witnesses, in a way that is appropriate to*  
15 *protect a minor witness or a witness with a*  
16 *developmental disability, as defined in Section 4512 of the*  
17 *Welfare and Institutions Code, from intimidation or other*  
18 *harm, taking into account the rights of all persons.*

19 (b) *To the extent a hearing is conducted by telephone,*  
20 *television, or other electronic means, subdivision (a) is*  
21 *satisfied if members of the public have an opportunity to*  
22 *do both of the following:*

23 (1) *At reasonable times, hear or inspect the agency's*  
24 *record, and inspect any transcript obtained by the*  
25 *agency.*

26 (2) *Be physically present at the place where the*  
27 *presiding officer is conducting the hearing.*

28 (c) *This section does not apply to a prehearing*  
29 *conference, settlement conference, or proceedings for*  
30 *alternative dispute resolution other than binding*  
31 *arbitration.*

32 11425.30. (a) *A person may not serve as presiding*  
33 *officer in an adjudicative proceeding in any of the*  
34 *following circumstances:*

35 (1) *The person has served as investigator, prosecutor,*  
36 *or advocate in the proceeding or its pre-adjudicative*  
37 *stage.*

38 (2) *The person is subject to the authority, direction, or*  
39 *discretion of a person who has served as investigator,*



1 prosecutor, or advocate in the proceeding or its  
2 pre-adjudicative stage.

3 (b) Notwithstanding subdivision (a):

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

6 (2) A person who has participated—*as only as a*  
7 *decisionmaker or as an advisor to* a decisionmaker in a  
8 determination of probable cause or other equivalent  
9 preliminary determination in an adjudicative proceeding  
10 or its pre-adjudicative stage may serve as presiding officer  
11 in the proceeding.

12 (c) The provisions of this section governing separation  
13 of functions as to the presiding officer also govern  
14 separation of functions as to the agency head or other  
15 person or body to which the power to hear or decide in  
16 the proceeding is delegated.

17 11425.40. (a) The presiding officer is subject to  
18 disqualification for bias, prejudice, or interest in the  
19 proceeding.

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

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

26 (2) Has experience, technical competence, or  
27 specialized knowledge of, or has in any capacity  
28 expressed a view on, a legal, factual, or policy issue  
29 presented in the proceeding.

30 (3) Has as a lawyer or public official participated in the  
31 drafting of laws or regulations or in the effort to pass or  
32 defeat laws or regulations, the meaning, effect, or  
33 application of which is in issue in the proceeding.

34 (c) The provisions of this section governing  
35 disqualification of the presiding officer also govern  
36 disqualification of the agency head or other person or  
37 body to which the power to hear or decide in the  
38 proceeding is delegated.

39 11425.50. (a) The decision shall be in writing and  
40 shall include a statement of the factual and legal basis for



1 the decision as to each of the principal controverted  
2 issues.

3 (b) The statement of the factual basis for the decision  
4 may be in the language of, or by reference to, the  
5 pleadings. If the statement is no more than mere  
6 repetition or paraphrase of the relevant statute or  
7 regulation, the statement shall be accompanied by a  
8 concise and explicit statement of the underlying facts of  
9 record that support the decision. If the factual basis for  
10 the decision includes a determination based substantially  
11 on the credibility of a witness, the statement shall identify  
12 any specific evidence of the observed demeanor, manner,  
13 or attitude of the witness that supports the determination,  
14 and on judicial review the court shall give great weight  
15 to the determination to the extent the determination  
16 identifies the observed demeanor, manner, or attitude of  
17 the witness that supports it.

18 (c) The statement of the factual basis for the decision  
19 shall be based exclusively on the evidence of record in the  
20 proceeding and on matters officially noticed in the  
21 proceeding. ~~Evidence of record may include~~  
22 ~~supplements to the record that are made after the~~  
23 ~~hearing, provided that all parties are given an~~  
24 ~~opportunity to comment on it.~~ The presiding officer's  
25 experience, technical competence, and specialized  
26 knowledge may be used in evaluating evidence.

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

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

35 11425.60. (a) A decision may not be expressly relied  
36 on as precedent unless it is designated as a precedent  
37 decision by the agency.

38 (b) An agency may designate as a precedent decision  
39 a decision or part of a decision that contains a significant  
40 legal or policy determination of general application that



1 is likely to recur. Designation of a decision or part of a  
2 decision as a precedent decision is not rulemaking and  
3 need not be done under Chapter 3.5 (commencing with  
4 Section 11340). An agency's designation of a decision or  
5 part of a decision, or failure to designate a decision or part  
6 of a decision, as a precedent decision is not subject to  
7 judicial review.

8 (c) An agency shall maintain an index of significant  
9 legal and policy determinations made in precedent  
10 decisions. The index shall be updated not less frequently  
11 than annually, unless no precedent decision has been  
12 designated since the last preceding update. The index  
13 shall be made available to the public by subscription, and  
14 its availability shall be publicized annually in the  
15 California Regulatory Notice Register.

16 (d) This section applies to decisions issued on or after  
17 July 1, 1997. Nothing in this section precludes an agency  
18 from designating as a precedent decision a decision issued  
19 before July 1, 1997.

20

21

Article 7. Ex Parte Communications

22

23 11430.10. (a) While the proceeding is pending there  
24 shall be no communication, direct or indirect, regarding  
25 any issue in the proceeding, to the presiding officer from  
26 an employee or representative of an agency that is a party  
27 or from an interested person outside the agency, without  
28 notice and opportunity for all parties to participate in the  
29 communication.

30 (b) Nothing in this section precludes a  
31 communication, including a communication from an  
32 employee or representative of an agency that is a party,  
33 made on the record at the hearing.

34 (c) For the purpose of this section, a proceeding is  
35 pending from the issuance of the agency's pleading, or  
36 from an application for an agency decision, whichever is  
37 earlier.

38 11430.20. A communication otherwise prohibited by  
39 Section 11430.10 is permissible in any of the following  
40 circumstances:



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

3 (b) The communication concerns a matter of  
4 procedure or practice, including a request for a  
5 continuance, that is not in controversy.

6 11430.30. A communication otherwise prohibited by  
7 Section 11430.10 from an employee or representative of  
8 an agency that is a party to the presiding officer is  
9 permissible in any of the following circumstances:

10 (a) The communication is for the purpose of assistance  
11 and advice to the presiding officer from a person who has  
12 not served as investigator, prosecutor, or advocate in the  
13 proceeding or its pre-adjudicative stage. An assistant or  
14 advisor *may evaluate the evidence in the record but* shall  
15 not furnish, augment, diminish, or modify the evidence  
16 in the record.

17 (b) The communication is for the purpose of advising  
18 the presiding officer concerning a settlement proposal  
19 advocated by the advisor.

20 (c) The communication is for the purpose of advising  
21 the presiding officer concerning any of the following  
22 matters in an adjudicative proceeding that is  
23 nonprosecutorial in character, provided the content of  
24 the advice is disclosed on the record and all parties are  
25 given an opportunity to ~~comment on~~ *address* it in the  
26 manner provided in Section 11430.50:

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

30 (2) The advice involves an issue in a proceeding of the  
31 ~~California Coastal Commission~~, San Francisco Bay  
32 Conservation and Development Commission, California  
33 Tahoe Regional Planning Agency, Delta Protection  
34 Commission, Water Resources Control Board, or a  
35 regional water quality control board.

36 11430.40. If, while the proceeding is pending but  
37 before serving as presiding officer, a person receives a  
38 communication of a type that would be in violation of this  
39 article if received while serving as presiding officer, the  
40 person, promptly after starting to serve, shall disclose the



1 content of the communication on the record and give all  
2 parties an opportunity to ~~comment on~~ *address* it in the  
3 manner provided in Section 11430.50.

4 11430.50. (a) If a presiding officer receives a  
5 communication in violation of this article, the presiding  
6 officer shall make all of the following a part of the record  
7 in the proceeding:

8 (1) If the communication is written, the writing and  
9 any written response *of the presiding officer* to the  
10 communication.

11 (2) If the communication is oral, a memorandum  
12 stating the substance of the communication, any response  
13 made *by the presiding officer*, and the identity of each  
14 person from whom the presiding officer received the  
15 communication.

16 (b) The presiding officer shall notify all parties that a  
17 communication described in this section has been made  
18 ~~a part of the record. A party that requests an opportunity~~  
19 ~~to comment on the communication within ten days after~~  
20 ~~receipt of notice of the communication shall be allowed~~  
21 ~~to comment.~~ *a part of the record.*

22 (c) *If a party requests an opportunity to address the*  
23 *communication within 10 days after receipt of notice of*  
24 *the communication:*

25 (1) *The party shall be allowed to comment on the*  
26 *communication.*

27 (2) *The presiding officer has discretion to allow the*  
28 *party to present evidence concerning the subject of the*  
29 *communication, including discretion to reopen a hearing*  
30 *that has been concluded.*

31 11430.60. Receipt by the presiding officer of a  
32 communication in violation of this article may be grounds  
33 for disqualification of the presiding officer. If the  
34 presiding officer is disqualified, the portion of the record  
35 pertaining to the ex parte communication may be sealed  
36 by protective order of the disqualified presiding officer.

37 11430.70. The provisions of this article governing ex  
38 parte communications to the presiding officer also  
39 govern ex parte communications to the agency head or



1 other person or body to which the power to hear or decide  
2 in the proceeding is delegated.

3 11430.80. (a) There shall be no communication,  
4 direct or indirect, ~~—regarding~~ *while a proceeding is*  
5 *pending regarding the merits of* any issue in the  
6 proceeding, between the presiding officer and the  
7 agency head or other person or body to which the power  
8 to hear or decide in the proceeding is delegated.

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

13  
14 Article 8. Language Assistance

15  
16 11435.05. As used in this article, “language assistance”  
17 means oral interpretation or written translation into  
18 English of a language other than English or of English into  
19 another language for a party or witness who cannot speak  
20 or understand English or who can do so only with  
21 difficulty.

22 11435.10. Nothing in this article limits the application  
23 or effect of Section 754 of the Evidence Code to  
24 interpretation for a deaf or hard-of-hearing party or  
25 witness in an adjudicative proceeding.

26 11435.15. (a) The following state agencies shall  
27 provide language assistance in adjudicative proceedings  
28 to the extent provided in this article:

- 29 Agricultural Labor Relations Board
- 30 Department of Alcohol and Drug Abuse
- 31 State Athletic Commission California
- 32 Unemployment Insurance Appeals Board
- 33 Board of Prison Terms
- 34 State Board of Barbering and Cosmetology
- 35 State Department of Developmental Services
- 36 Public Employment Relations Board
- 37 Franchise Tax Board
- 38 State Department of Health Services
- 39 Department of Housing and Community
- 40 Development



- 1 Department of Industrial Relations
- 2 State Department of Mental Health
- 3 Department of Motor Vehicles
- 4 Notary Public Section, Office of the Secretary of State
- 5 Public Utilities Commission
- 6 Office of Statewide Health Planning and Development
- 7 State Department of Social Services
- 8 Workers' Compensation Appeals Board
- 9 Department of the Youth Authority
- 10 Youthful Offender Parole Board
- 11 Bureau of Employment Agencies
- 12 Department of Insurance
- 13 State Personnel Board
- 14 California Board of Podiatric Medicine
- 15 Board of Psychology

16 (b) Nothing in this section prevents an agency other  
17 than an agency listed in subdivision (a) from electing to  
18 adopt any of the procedures in this article, provided that  
19 any selection of an interpreter is subject to Section  
20 11435.30.

21 (c) Nothing in this section prohibits an agency from  
22 providing an interpreter during a proceeding to which  
23 this chapter does not apply, including an informal  
24 factfinding or informal investigatory hearing.

25 (d) This article applies to an agency listed in  
26 subdivision (a) notwithstanding a general provision that  
27 this chapter does not apply to some or all of an agency's  
28 adjudicative proceedings.

29 11435.20. (a) The hearing, or any medical  
30 examination conducted for the purpose of determining  
31 compensation or monetary award, shall be conducted in  
32 English.

33 (b) If a party or the party's witness does not  
34 proficiently speak or understand English and before  
35 commencement of the hearing or medical examination  
36 requests language assistance, an agency subject to the  
37 language assistance requirement of this article shall  
38 provide the party or witness an interpreter.

39 11435.25. (a) The cost of providing an interpreter  
40 under this article shall be paid by the agency having



1 jurisdiction over the matter if the presiding officer so  
2 directs, otherwise by the party at whose request the  
3 interpreter is provided.

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

8 (c) Notwithstanding any other provision of this  
9 section, in a hearing before the Workers' Compensation  
10 Appeals Board or the Division of Workers' Compensation  
11 relating to ~~worker's~~ *workers'* compensation claims, the  
12 payment of the costs of providing an interpreter shall be  
13 governed by the rules and regulations promulgated by  
14 the Workers' Compensation Appeals Board or the  
15 Administrative Director of the Division of Workers'  
16 Compensation, as appropriate.

17 11435.30. (a) The State Personnel Board shall  
18 establish, maintain, administer, and publish annually an  
19 updated list of certified administrative hearing  
20 interpreters it has determined meet the minimum  
21 standards in interpreting skills and linguistic abilities in  
22 languages designated pursuant to Section 11435.40. Any  
23 interpreter so listed may be examined by each employing  
24 agency to determine the interpreter's knowledge of the  
25 employing agency's technical program terminology and  
26 procedures.

27 (b) Court interpreters certified pursuant to Section  
28 68562, and interpreters listed on the State Personnel  
29 Board's recommended lists of court and administrative  
30 hearing interpreters prior to July 1, 1993, shall be deemed  
31 certified for purposes of this section.

32 11435.35. (a) The State Personnel Board shall  
33 establish, maintain, administer, and publish annually, an  
34 updated list of certified medical examination interpreters  
35 it has determined meet the minimum standards in  
36 interpreting skills and linguistic abilities in languages  
37 designated pursuant to Section 11435.40.

38 (b) Court interpreters certified pursuant to Section  
39 68562 and administrative hearing interpreters certified



1 pursuant to Section 11435.30 shall be deemed certified for  
2 purposes of this section.

3 11435.40. (a) The State Personnel Board shall  
4 designate the languages for which certification shall be  
5 established under Sections 11435.30 and 11435.35. The  
6 languages designated shall include, but not be limited to,  
7 Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean,  
8 Portuguese, and Vietnamese until the State Personnel  
9 Board finds that there is an insufficient need for  
10 interpreting assistance in these languages.

11 (b) The language designations shall be based on the  
12 following:

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

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

17 (3) The availability of experts needed to develop a  
18 language examination.

19 (4) Other information the board deems relevant.

20 11435.45. (a) The State Personnel Board shall  
21 establish and charge fees for applications to take  
22 interpreter examinations and for renewal of  
23 certifications. The purpose of these fees is to cover the  
24 annual projected costs of carrying out this article. The  
25 fees may be adjusted each fiscal year by a percent that is  
26 equal to or less than the percent change in the California  
27 Necessities Index prepared by the Commission on State  
28 Finance.

29 (b) Each certified administrative hearing interpreter  
30 and each certified medical examination interpreter shall  
31 pay a fee, due on July 1 of each year, for the renewal of  
32 the certification. Court interpreters certified under  
33 Section 68562 shall not pay any fees required by this  
34 section.

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



1 11435.50. The State Personnel Board may remove the  
2 name of a person from the list of certified interpreters if  
3 any of the following conditions occurs:

4 (a) The person is deceased.

5 (b) The person notifies the board that the person is  
6 unavailable for work.

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

9 11435.55. (a) An interpreter used in a hearing shall  
10 be certified pursuant to Section 11435.30. However, if an  
11 interpreter certified pursuant to Section 11435.30 cannot  
12 be present at the hearing, the hearing agency shall have  
13 discretionary authority to provisionally qualify and use  
14 another interpreter.

15 (b) An interpreter used in a medical examination shall  
16 be certified pursuant to Section 11435.35. However, if an  
17 interpreter certified pursuant to Section 11435.35 cannot  
18 be present at the medical examination, the physician  
19 provisionally may use another interpreter if that fact is  
20 noted in the record of the medical evaluation.

21 11435.60. Every agency subject to the language  
22 assistance requirement of this article shall advise each  
23 party of the right to an interpreter at the same time that  
24 each party is advised of the hearing date or medical  
25 examination. Each party in need of an interpreter shall  
26 also be encouraged to give timely notice to the agency  
27 conducting the hearing or medical examination so that  
28 appropriate arrangements can be made.

29 11435.65. (a) The rules of confidentiality of the  
30 agency, if any, that apply in an adjudicative proceeding  
31 shall apply to any interpreter in the hearing or medical  
32 examination, whether or not the rules so state.

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

35

### 36 Article 9. General Procedural Provisions

37

38 11440.10. (a) The agency head may do any of the  
39 following with respect to a decision of the presiding  
40 officer or the agency:



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

3 (2) Delegate its review authority to one or more  
4 persons.

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

7 (b) By regulation an agency may mandate review, or  
8 may preclude or limit review, of a decision of the  
9 presiding officer or the agency.

10 11440.20. Service of a writing on, or giving of a notice  
11 to, a person in a procedure provided in this chapter is  
12 subject to the following provisions:

13 (a) The writing or notice shall be delivered personally  
14 or sent by mail or other means to the person at the  
15 person's last known address or, if the person is a party with  
16 an attorney or other authorized representative of record  
17 in the proceeding, to the party's attorney or other  
18 authorized representative. If a party is required by  
19 statute or regulation to maintain an address with an  
20 agency, the party's last known address is the address  
21 maintained with the agency.

22 (b) Unless a provision specifies the form of mail,  
23 service or notice by mail may be by first class mail,  
24 registered mail, or certified mail, by mail delivery service,  
25 by facsimile transmission if complete and without error,  
26 or by other electronic means as provided by regulation,  
27 in the discretion of the sender.

28 11440.30. (a) The presiding officer may conduct all  
29 or part of a hearing by telephone, television, or other  
30 electronic means if each participant in the hearing has an  
31 opportunity to participate in and to hear the entire  
32 proceeding while it is taking place and to observe  
33 exhibits.

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

37 11440.40. (a) In any proceeding under subdivision  
38 (h) or (i) of Section 12940, or Section 19572 or 19702,  
39 alleging conduct that constitutes sexual harassment,  
40 sexual assault, or sexual battery, evidence of specific



1 instances of a complainant's sexual conduct with  
2 individuals other than the alleged perpetrator is subject  
3 to all of the following limitations:

4 (1) The evidence is not discoverable unless it is to be  
5 offered at a hearing to attack the credibility of the  
6 complainant as provided for under subdivision (b). This  
7 paragraph is intended only to limit the scope of discovery;  
8 it is not intended to affect the methods of discovery  
9 allowed by statute.

10 (2) The evidence is not admissible at the hearing  
11 unless offered to attack the credibility of the complainant  
12 as provided for under subdivision (b). Reputation or  
13 opinion evidence regarding the sexual behavior of the  
14 complainant is not admissible for any purpose.

15 (b) Evidence of specific instances of a complainant's  
16 sexual conduct with individuals other than the alleged  
17 perpetrator is presumed inadmissible absent an offer of  
18 proof establishing its relevance and reliability and that its  
19 probative value is not substantially outweighed by the  
20 probability that its admission will create substantial  
21 danger of undue prejudice or confuse the issue.

22 (c) As used in this section "complainant" means a  
23 person claiming to have been subjected to conduct that  
24 constitutes sexual harassment, sexual assault, or sexual  
25 battery.

26 *11440.50. (a) This section applies in adjudicative*  
27 *proceedings of an agency if the agency by regulation*  
28 *provides that this section is applicable in the proceedings.*

29 *(b) The presiding officer shall grant a motion for*  
30 *intervention if all of the following conditions are satisfied:*

31 *(1) The motion is submitted in writing, with copies*  
32 *served on all parties named in the agency's pleading.*

33 *(2) The motion is made as early as practicable in*  
34 *advance of the hearing. If there is a prehearing*  
35 *conference, the motion shall be made in advance of the*  
36 *prehearing conference and shall be resolved at the*  
37 *prehearing conference.*

38 *(3) The motion states facts demonstrating that the*  
39 *applicant's legal rights, duties, privileges, or immunities*  
40 *will be substantially affected by the proceeding or that*



1 *the applicant qualifies as an intervenor under a statute or*  
2 *regulation.*

3 *(4) The presiding officer determines that the interest*  
4 *of justice and the orderly and prompt conduct of the*  
5 *proceeding will not be impaired by allowing the*  
6 *intervention.*

7 *(c) If an applicant qualifies for intervention, the*  
8 *presiding officer may impose conditions on the*  
9 *intervenor's participation in the proceeding, either at the*  
10 *time that intervention is granted or at a subsequent time.*  
11 *Conditions may include the following:*

12 *(1) Limiting the intervenor's participation to*  
13 *designated issues in which the intervenor has a particular*  
14 *interest demonstrated by the motion.*

15 *(2) Limiting or excluding the use of discovery,*  
16 *cross-examination, and other procedures involving the*  
17 *intervenor so as to promote the orderly and prompt*  
18 *conduct of the proceeding.*

19 *(3) Requiring two or more intervenors to combine*  
20 *their presentations of evidence and argument,*  
21 *cross-examination, discovery, and other participation in*  
22 *the proceeding.*

23 *(4) Limiting or excluding the intervenor's*  
24 *participation in settlement negotiations.*

25 *(d) As early as practicable in advance of the hearing*  
26 *the presiding officer shall issue an order granting or*  
27 *denying the motion for intervention, specifying any*  
28 *conditions, and briefly stating the reasons for the order.*  
29 *The presiding officer may modify the order at any time,*  
30 *stating the reasons for the modification. The presiding*  
31 *officer shall promptly give notice of an order granting,*  
32 *denying, or modifying intervention to the applicant and*  
33 *to all parties.*

34 *(e) Whether the interests of justice and the orderly*  
35 *and prompt conduct of the proceedings will be impaired*  
36 *by allowing intervention is a determination to be made*  
37 *in the sole discretion, and based on the knowledge and*  
38 *judgment at that time, of the presiding officer. The*  
39 *determination is not subject to administrative or judicial*  
40 *review.*



1 (f) *Nothing in this section precludes an agency from*  
2 *adopting a regulation that permits participation by a*  
3 *person short of intervention as a party, subject to Article*  
4 *7 (commencing with Section 11430.10) of Chapter 4.5.*

5

6 Article 10. Informal Hearing

7

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

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

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

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

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

25 ~~11445.20.—An informal hearing procedure may be used~~

26 11445.20. *Subject to Section 1145.30, an agency may*  
27 *use an informal hearing procedure* in any of the following  
28 proceedings, if in the circumstances its use does not  
29 violate another statute or the federal or state  
30 Constitution:

31 (a) A proceeding where there is no disputed issue of  
32 material fact.

33 (b) A proceeding where there is a disputed issue of  
34 material fact, if the matter is limited to any of the  
35 following:

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

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



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

4 (4) A disciplinary sanction against a licensee that does  
5 ~~not involve revocation, suspension, annulment,~~  
6 ~~withdrawal, or amendment of a license.~~ *not involve an*  
7 *actual revocation of a license or an actual suspension of a*  
8 *license for more than five days. Nothing in this section*  
9 *precludes an agency from imposing a stayed revocation*  
10 *or a stayed suspension of a license in an informal hearing.*

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

13 (d) A proceeding where an evidentiary hearing for  
14 determination of facts is not required by statute but  
15 where the agency determines the federal or state  
16 Constitution may require a hearing.

17 11445.30. (a) ~~The agency's pleading~~ *notice of*  
18 *hearing* shall state the agency's selection of the informal  
19 hearing procedure.

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

22 (c) An objection to use of the informal hearing  
23 procedure shall be resolved by the presiding officer  
24 before the hearing on the basis of the pleadings and any  
25 written submissions in support of the pleadings.

26 11445.40. (a) Except as provided in this article, the  
27 hearing procedures otherwise required by statute for an  
28 adjudicative proceeding apply to an informal hearing.

29 (b) In an informal hearing the presiding officer shall  
30 regulate the course of the proceeding. The presiding  
31 officer shall permit the parties and may permit others to  
32 offer written or oral comments on the issues. The  
33 presiding officer may limit the use of witnesses,  
34 testimony, evidence, and argument, and may limit or  
35 eliminate the use of pleadings, intervention, discovery,  
36 prehearing conferences, and rebuttal.

37 11445.50. (a) The presiding officer may deny use of  
38 the informal hearing procedure, or may convert an  
39 informal hearing to a formal hearing after an informal  
40 hearing is commenced, if it appears to the presiding



1 officer that cross-examination is necessary for proper  
2 determination of the matter and that the delay, burden,  
3 or complication due to allowing cross-examination in the  
4 informal hearing will be more than minimal.

5 (b) An agency, by regulation, may specify categories  
6 of cases in which cross-examination is deemed not  
7 necessary for proper determination of the matter under  
8 the informal hearing procedure. The presiding officer  
9 may allow cross-examination of witnesses in an informal  
10 hearing notwithstanding an agency regulation if it  
11 appears to the presiding officer that in the circumstances  
12 cross-examination is necessary for proper determination  
13 of the matter.

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

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

28 (b) If a party has reason to believe that essential facts  
29 must be obtained in order to permit an adequate  
30 presentation of the case, the party may inform the  
31 presiding officer regarding the general nature of the facts  
32 and the sources from which the party would propose to  
33 obtain the facts if the proceeding were converted to a  
34 formal or other applicable hearing procedure.

35

#### 36 Article 11. Subpoenas

37

38 11450.10. (a) Subpoenas and subpoenas duces tecum  
39 may be issued for attendance at a hearing and for



1 production of documents at any reasonable time and  
2 place or at a hearing.

3 (b) The custodian of documents that are the subject of  
4 a subpoena duces tecum may satisfy the subpoena by  
5 delivery of the documents or a copy of the documents, or  
6 by making the documents available for inspection or  
7 copying, together with an affidavit in compliance with  
8 Section 1561 of the Evidence Code.

9 11450.20. (a) Subpoenas and subpoenas duces tecum  
10 shall be issued by the agency or presiding officer at the  
11 request of a party, or by the attorney of record for a party,  
12 in accordance with Sections 1985 to 1985.4, inclusive, of  
13 the Code of Civil Procedure.

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



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

3 11450.30. (a) A person served with a subpoena or a  
4 subpoena duces tecum may object to its terms by a  
5 motion for a protective order, including a motion to  
6 quash.

7 (b) The objection shall be resolved by the presiding  
8 officer on terms and conditions that the presiding officer  
9 declares. The presiding officer may make another order  
10 that is appropriate to protect the parties or the witness  
11 from unreasonable or oppressive demands, including  
12 violations of the right to privacy.

13 (c) A subpoena or a subpoena duces tecum issued by  
14 the agency on its own motion may be quashed by the  
15 agency.

16 11450.40. A witness appearing pursuant to a subpoena  
17 or a subpoena duces tecum, other than a party, shall  
18 receive for the appearance the following mileage and  
19 fees, to be paid by the party at whose request the witness  
20 is subpoenaed:

21 (a) The same mileage allowed by law to a witness in a  
22 civil case.

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

26

## 27 Article 12. Enforcement of Orders and Sanctions

28

29 11455.10. A person is subject to the contempt sanction  
30 for any of the following in an adjudicative proceeding  
31 before an agency:

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

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

35 (c) Obstruction or interruption of the due course of  
36 the proceeding during a hearing or near the place of the  
37 hearing by any of the following:

38 (1) Disorderly, contemptuous, or insolent behavior  
39 toward the presiding officer while conducting the  
40 proceeding.



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

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

5 (d) Violation of the prohibition of ex parte  
6 communications under Article 7 (commencing with  
7 Section 11430.10).

8 (e) Failure or refusal, without substantial justification,  
9 to comply with a deposition order, discovery request,  
10 subpoena, or other order of the presiding officer, or  
11 moving, without substantial justification, to compel  
12 discovery.

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

24 (b) The same proceedings shall be had, the same  
25 penalties may be imposed, and the person charged may  
26 purge the contempt in the same way, as in the case of a  
27 person who has committed a contempt in the trial of a  
28 civil action before a superior court.

29 11455.30. (a) The presiding officer may order a  
30 party, the party's attorney or other authorized  
31 representative, or both, to pay reasonable expenses,  
32 including attorney's fees, incurred by another party as a  
33 result of bad faith actions or tactics that are frivolous or  
34 solely intended to cause unnecessary delay as defined in  
35 Section 128.5 of the Code of Civil Procedure.

36 (b) The order, or denial of an order, is subject to  
37 judicial review in the same manner as a decision in the  
38 proceeding. The order is enforceable in the same manner  
39 as a money judgment or by the contempt sanction.

40



## 1 Article 13. Emergency Decision

2

3 11460.10. Subject to the limitations in this article, an  
4 agency may conduct an adjudicative proceeding under  
5 the emergency decision procedure provided in this  
6 article.

7 11460.20. (a) An agency may issue an emergency  
8 decision for temporary, interim relief under this article if  
9 the agency has adopted a regulation that provides that  
10 the agency may use the procedure provided in this  
11 article.

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

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

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

19 (3) Prescribe the procedures that will be available  
20 before and after issuance of an emergency decision under  
21 this article. The procedures may be more protective of  
22 the person to which the agency action is directed than  
23 those provided in this article.

24 (c) This article does not apply to an emergency  
25 decision, including a cease and desist order or temporary  
26 suspension order, issued pursuant to other express  
27 statutory authority.

28 11460.30. (a) An agency may *only* issue an  
29 emergency decision under this article in a situation  
30 involving an immediate danger to the public health,  
31 safety, or welfare that requires immediate agency action.

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

36 (c) An emergency decision issued under this article is  
37 limited to temporary, interim relief. The temporary,  
38 interim relief is subject to judicial review under Section  
39 11460.80, and the underlying issue giving rise to the



1 temporary, interim relief is subject to an adjudicative  
2 proceeding pursuant to Section 11460.60.

3 11460.40. (a) Before issuing an emergency decision  
4 under this article, the agency shall, if practicable, give the  
5 person to which the agency action is directed notice and  
6 an opportunity to be heard.

7 (b) Notice and hearing under this section may be oral  
8 or written, including notice and hearing by telephone,  
9 facsimile transmission, or other electronic means, as the  
10 circumstances permit. The hearing may be conducted in  
11 the same manner as an informal hearing.

12 11460.50. (a) The agency shall issue an emergency  
13 decision, including a brief explanation of the factual and  
14 legal basis and reasons for the emergency decision, to  
15 justify the determination of an immediate danger and the  
16 agency's emergency decision to take the specific action.

17 (b) The agency shall give notice to the extent  
18 practicable to the person to which the agency action is  
19 directed. The emergency decision is effective when  
20 issued or as provided in the decision.

21 11460.60. (a) After issuing an emergency decision  
22 under this article for temporary, interim relief, the  
23 agency shall conduct an adjudicative proceeding under  
24 a formal, informal, or other applicable hearing procedure  
25 to resolve the underlying issues giving rise to the  
26 temporary, interim relief.

27 (b) The agency shall commence an adjudicative  
28 proceeding under another procedure within 10 days after  
29 issuing an emergency decision under this article,  
30 notwithstanding the pendency of proceedings for judicial  
31 review of the emergency decision.

32 11460.70. The agency record consists of any  
33 documents concerning the matter that were considered  
34 or prepared by the agency. The agency shall maintain  
35 these documents as its official record.

36 11460.80. (a) On issuance of an emergency decision  
37 under this article, the person to which the agency action  
38 is directed may obtain judicial review of the decision in  
39 the manner provided in this section without exhaustion  
40 of administrative remedies.



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

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

7 (2) Where it is claimed that the findings are not  
 8 supported by the evidence, abuse of discretion is  
 9 established if the court determines that the findings are  
 10 not supported by substantial evidence in the light of the  
 11 whole record.

12 (3) A party, on written request to another party,  
 13 before the proceedings for review and within 10 days  
 14 after issuance of the emergency decision, is entitled to  
 15 appropriate discovery.

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

18

19 Article 14. Declaratory Decision

20

21 11465.10. Subject to the limitations in this article, an  
 22 agency may conduct an adjudicative proceeding under  
 23 the declaratory decision procedure provided in this  
 24 article.

25 11465.20. (a) ~~In case of an actual controversy, a~~ A  
 26 person may apply to an agency for a declaratory decision  
 27 as to the applicability to specified circumstances of a  
 28 statute, regulation, or decision within the primary  
 29 jurisdiction of the agency.

30 (b) The agency in its discretion may issue a  
 31 declaratory decision in response to the application. The  
 32 agency shall not issue a declaratory decision if ~~the agency~~  
 33 ~~determines that~~ any of the following applies:

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

36 (2) The decision would substantially prejudice the  
 37 rights of a person who would be a necessary party and  
 38 who does not consent in writing to the determination of  
 39 the matter by a declaratory decision proceeding.



1 (3) *The decision involves a matter that is the subject*  
2 *of pending administrative or judicial proceeding.*

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

6 11465.30. Within 30 days after receipt of an  
7 application for a declaratory decision, an agency shall  
8 give notice of the application to all persons to which  
9 notice of an adjudicative proceeding is otherwise  
10 required, and may give notice to any other person.

11 11465.40. The provisions of a formal, informal, or  
12 other applicable hearing procedure do not apply to an  
13 agency proceeding for a declaratory decision except to  
14 the extent provided in this article or to the extent the  
15 agency so provides by regulation or order.

16 11465.50. (a) Within 60 days after receipt of an  
17 application for a declaratory decision, an agency shall do  
18 one of the following, in writing:

19 (1) Issue a decision declaring the applicability of the  
20 statute, regulation, or decision in question to the specified  
21 circumstances.

22 (2) Set the matter for specified proceedings.

23 (3) Agree to issue a declaratory decision by a specified  
24 time.

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

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

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

35 11465.60. (a) A declaratory decision shall contain the  
36 names of all parties to the proceeding, the particular facts  
37 on which it is based, and the reasons for its conclusion.

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



1 11465.70. (a) The Office of Administrative Hearings  
2 shall adopt and promulgate model regulations under this  
3 article that are consistent with the public interest and  
4 with the general policy of this article to facilitate and  
5 encourage agency issuance of reliable advice. The model  
6 regulations shall provide for all of the following:

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

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

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

13 (4) The disposition of an application.

14 (b) The regulations adopted by the Office of  
15 Administrative Hearings under this article apply in an  
16 adjudicative proceeding unless an agency adopts its own  
17 regulations to govern declaratory decisions of the agency.

18 (c) This article does not apply in an adjudicative  
19 proceeding to the extent an agency by regulation  
20 provides inconsistent rules or provides that this article is  
21 not applicable in a proceeding of the agency.

22

23

#### Article 15. Conversion of Proceeding

24

25 11470.10. (a) Subject to any applicable regulation  
26 adopted under Section 11470.50, at any point in an agency  
27 proceeding the presiding officer or other agency official  
28 responsible for the proceeding:

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

33 (2) Shall convert the proceeding to another type of  
34 agency proceeding provided for by statute, if required by  
35 regulation or statute.

36 (b) A proceeding of one type may be converted to a  
37 proceeding of another type only on notice to all parties to  
38 the original proceeding.

39 11470.20. If the presiding officer or other agency  
40 official responsible for the original proceeding would not



1 have authority over the new proceeding to which it is to  
2 be converted, the agency head shall appoint a successor  
3 to preside over or be responsible for the new proceeding.

4 11470.30. To the extent practicable and consistent  
5 with the rights of parties and the requirements of this  
6 article relating to the new proceeding, the record of the  
7 original agency proceeding shall be used in the new  
8 agency proceeding.

9 11470.40. After a proceeding is converted from one  
10 type to another, the presiding officer or other agency  
11 official responsible for the new proceeding shall do all of  
12 the following:

13 (a) Give additional notice to parties or other persons  
14 necessary to satisfy the statutory requirements relating to  
15 the new proceeding.

16 (b) Dispose of the matters involved without further  
17 proceedings if sufficient proceedings have already been  
18 held to satisfy the statutory requirements relating to the  
19 new proceeding.

20 (c) Conduct or cause to be conducted any additional  
21 proceedings necessary to satisfy the statutory  
22 requirements relating to the new proceeding, and allow  
23 the parties a reasonable time to prepare for the new  
24 proceeding.

25 11470.50. An agency may adopt regulations to govern  
26 the conversion of one type of proceeding to another. The  
27 regulations may include an enumeration of the factors to  
28 be considered in determining whether and under what  
29 circumstances one type of proceeding will be converted  
30 to another.

31 ~~SEC. 17.~~

32 *SEC. 22.* The heading of Chapter 5 (commencing  
33 with Section 11500) of Part 1 of Division 3 of Title 2 of the  
34 Government Code is amended to read:

35  
36 CHAPTER 5. ADMINISTRATIVE ADJUDICATION: FORMAL  
37 HEARING

38 ~~SEC. 18.~~

39 *SEC. 23.* Section 11500 of the Government Code is  
40 amended to read:



1 11500. In this chapter unless the context or subject  
2 matter otherwise requires:

3 (a) “Agency” includes the state boards, commissions,  
4 and officers to which this chapter is made applicable by  
5 law, except that wherever the word “agency” alone is  
6 used the power to act may be delegated by the agency,  
7 and wherever the words “agency itself” are used the  
8 power to act shall not be delegated unless the statutes  
9 relating to the particular agency authorize the delegation  
10 of the agency’s power to hear and decide.

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

15 (c) “Respondent” means any person against whom an  
16 accusation is filed pursuant to Section 11503 or against  
17 whom a statement of issues is filed pursuant to Section  
18 11504.

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

21 (e) “Agency member” means any person who is a  
22 member of any agency to which this chapter is applicable  
23 and includes any person who himself or herself  
24 constitutes an agency.

25 ~~SEC. 19.—~~

26 *SEC. 24.* Section 11501 of the Government Code is  
27 amended to read:

28 11501. (a) This chapter applies to any agency as  
29 determined by the statutes relating to that agency.

30 (b) This chapter applies to an adjudicative  
31 proceeding of an agency created on or after July 1, 1997,  
32 unless the statutes relating to the proceeding provide  
33 otherwise.

34 (c) Chapter 4.5 (commencing with Section 11400)  
35 applies to an adjudicative proceeding required to be  
36 conducted under this chapter, unless the statutes relating  
37 to the proceeding provide otherwise.

38 ~~SEC. 20.—~~

39 *SEC. 25.* Section 11501.5 of the Government Code is  
40 repealed.



1 ~~SEC. 21.—~~

2 *SEC. 26.* Section 11502 of the Government Code is  
3 amended to read:

4 11502. (a) All hearings of state agencies required to  
5 be conducted under this chapter shall be conducted by  
6 administrative law judges on the staff of the Office of  
7 Administrative Hearings. This subdivision applies to a  
8 hearing required to be conducted under this chapter that  
9 is conducted under the informal hearing or emergency  
10 decision procedure provided in Chapter 4.5  
11 (commencing with Section 11400).

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

21 ~~SEC. 22.—~~

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

24 ~~SEC. 23.—~~

25 *SEC. 28.* Section 11505 of the Government Code is  
26 amended to read:

27 11505. (a) Upon the filing of the accusation the  
28 agency shall serve a copy thereof on the respondent as  
29 provided in subdivision (c). The agency may include with  
30 the accusation any information which it deems  
31 appropriate, but it shall include a post card or other form  
32 entitled Notice of Defense which, when signed by or on  
33 behalf of the respondent and returned to the agency, will  
34 acknowledge service of the accusation and constitute a  
35 notice of defense under Section 11506. The copy of the  
36 accusation shall include or be accompanied by (1) a  
37 statement that respondent may request a hearing by  
38 filing a notice of defense as provided in Section 11506  
39 within 15 days after service upon the respondent of the  
40 accusation, and that failure to do so will constitute a



1 waiver of the respondent's right to a hearing, and (2)  
2 copies of Sections 11507.5, 11507.6, and 11507.7.

3 (b) The statement to respondent shall be substantially  
4 in the following form:

5 Unless a written request for a hearing signed by or on  
6 behalf of the person named as respondent in the  
7 accompanying accusation is delivered or mailed to the  
8 agency within 15 days after the accusation was personally  
9 served on you or mailed to you, (here insert name of  
10 agency) may proceed upon the accusation without a  
11 hearing. The request for a hearing may be made by  
12 delivering or mailing the enclosed form entitled Notice  
13 of Defense, or by delivering or mailing a notice of defense  
14 as provided by Section 11506 to: (here insert name and  
15 address of agency). You may, but need not, be  
16 represented by counsel at any or all stages of these  
17 proceedings.

18 If you desire the names and addresses of witnesses or an  
19 opportunity to inspect and copy the items mentioned in  
20 Section 11507.6 in the possession, custody or control of the  
21 agency, you may contact: (here insert name and address  
22 of appropriate person).

23 The hearing may be postponed for good cause. If you  
24 have good cause, you are obliged to notify the agency or,  
25 if an administrative law judge has been assigned to the  
26 hearing, the Office of Administrative Hearings, within 10  
27 working days after you discover the good cause. Failure  
28 to give notice within 10 days will deprive you of a  
29 postponement.

30 (c) The accusation and all accompanying information  
31 may be sent to the respondent by any means selected by  
32 the agency. But no order adversely affecting the rights of  
33 the respondent shall be made by the agency in any case  
34 unless the respondent shall have been served personally  
35 or by registered mail as provided herein, or shall have  
36 filed a notice of defense or otherwise appeared. Service  
37 may be proved in the manner authorized in civil actions.  
38 Service by registered mail shall be effective if a statute or  
39 agency rule requires the respondent to file the  
40 respondent's address with the agency and to notify the



1 agency of any change, and if a registered letter containing  
2 the accusation and accompanying material is mailed,  
3 addressed to the respondent at the latest address on file  
4 with the agency.

5 ~~SEC. 24.~~

6 *SEC. 29.* Section 11506 of the Government Code is  
7 amended to read:

8 11506. (a) Within 15 days after service of the  
9 accusation the respondent may file with the agency a  
10 notice of defense in which the respondent may:

- 11 (1) Request a hearing.
  - 12 (2) Object to the accusation upon the ground that it  
13 does not state acts or omissions upon which the agency  
14 may proceed.
  - 15 (3) Object to the form of the accusation on the ground  
16 that it is so indefinite or uncertain that the respondent  
17 cannot identify the transaction or prepare a defense.
  - 18 (4) Admit the accusation in whole or in part.
  - 19 (5) Present new matter by way of defense.
  - 20 (6) Object to the accusation upon the ground that,  
21 under the circumstances, compliance with the  
22 requirements of a regulation would result in a material  
23 violation of another regulation enacted by another  
24 department affecting substantive rights.
- 25 (b) Within the time specified respondent may file one  
26 or more notices of defense upon any or all of these  
27 grounds but all ~~such~~ *of these* notices shall be filed within  
28 that period unless the agency in its discretion authorizes  
29 the filing of a later notice.
- 30 (c) The respondent shall be entitled to a hearing on  
31 the merits if the respondent files a notice of defense, and  
32 the notice shall be deemed a specific denial of all parts of  
33 the accusation not expressly admitted. Failure to file a  
34 notice of defense shall constitute a waiver of respondent's  
35 right to a hearing, but the agency in its discretion may  
36 nevertheless grant a hearing. Unless objection is taken as  
37 provided in paragraph (3) of subdivision (a), all  
38 objections to the form of the accusation shall be deemed  
39 waived.

1 (d) The notice of defense shall be in writing signed by  
2 or on behalf of the respondent and shall state the  
3 respondent's mailing address. It need not be verified or  
4 follow any particular form.

5 (e) As used in this section, "file," "files," "filed," or  
6 "filing" means "delivered or mailed" to the agency as  
7 provided in Section 11505.

8 ~~SEC. 25.—~~

9 *SEC. 30.* Section 11507.2 is added to the Government  
10 Code, to read:

11 11507.2. (a) This section does not apply in an  
12 adjudicative proceeding to the extent an agency by  
13 regulation provides inconsistent rules or provides that  
14 this section is not applicable in a proceeding of the  
15 agency.

16 (b) The administrative law judge shall grant a motion  
17 for intervention if all of the following conditions are  
18 satisfied:

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

21 (2) The motion is made as early as practicable in  
22 advance of the hearing. If there is a prehearing  
23 conference, the motion shall be made in advance of the  
24 prehearing conference and shall be resolved at the  
25 prehearing conference.

26 (3) The motion states facts demonstrating that the  
27 applicant's legal rights, duties, privileges, or immunities  
28 will be substantially affected by the proceeding or that  
29 the applicant qualifies as an intervenor under a statute or  
30 regulation.

31 (4) The administrative law judge determines that the  
32 interests of justice and the orderly and prompt conduct  
33 of the proceeding will not be impaired by allowing the  
34 intervention.

35 (c) If an applicant qualifies for intervention, the  
36 administrative law judge may impose conditions on the  
37 intervenor's participation in the proceeding, either at the  
38 time that intervention is granted or at a subsequent time.  
39 Conditions may include the following:



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

4 (2) Limiting or excluding the use of discovery,  
5 cross-examination, and other procedures involving the  
6 intervenor so as to promote the orderly and prompt  
7 conduct of the proceeding.

8 (3) Requiring two or more intervenors to combine  
9 their presentations of evidence and argument,  
10 cross-examination, discovery, and other participation in  
11 the proceeding.

12 (4) Limiting or excluding the intervenor's  
13 participation in settlement negotiations.

14 (d) As early as practicable in advance of the hearing  
15 the administrative law judge shall issue an order granting  
16 or denying the motion for intervention, specifying any  
17 conditions, and briefly stating the reasons for the order.  
18 The administrative law judge may modify the order at  
19 any time, stating the reasons for the modification. The  
20 administrative law judge shall promptly give notice of an  
21 order granting, denying, or modifying intervention to the  
22 applicant and to all parties.

23 (e) Whether the interests of justice and the orderly  
24 and prompt conduct of the proceedings will be impaired  
25 by allowing intervention is a determination to be made  
26 in the sole discretion, and based on the knowledge and  
27 judgment at that time, of the administrative law judge.  
28 The determination is not subject to administrative or  
29 judicial review.

30 (f) Nothing in this section precludes an agency from  
31 adopting a regulation that permits participation by a  
32 person short of intervention as a party, subject to Article  
33 7 (commencing with Section 11430.10) of Chapter 4.5.

34 ~~SEC. 26.—~~

35 *SEC. 31.* Section 11507.3 is added to the Government  
36 Code, to read:

37 11507.3. (a) When proceedings that involve a  
38 common question of law or fact are pending, the  
39 administrative law judge on the judge's own motion or on  
40 motion of a party may order a joint hearing of any or all



1 the matters at issue in the proceedings. The  
2 administrative law judge may order all the proceedings  
3 consolidated and may make orders concerning the  
4 procedure that may tend to avoid unnecessary costs or  
5 delay.

6 (b) The administrative law judge on the judge's own  
7 motion or on motion of a party, in furtherance of  
8 convenience or to avoid prejudice or when separate  
9 hearings will be conducive to expedition and economy,  
10 may order a separate hearing of any issue, including an  
11 issue raised in the notice of defense, or of any number of  
12 issues.

13 ~~SEC. 27.—~~

14 *SEC. 32.* Section 11507.6 of the Government Code is  
15 amended to read:

16 11507.6. After initiation of a proceeding in which a  
17 respondent or other party is entitled to a hearing on the  
18 merits, a party, upon written request made to another  
19 party, prior to the hearing and within 30 days after service  
20 by the agency of the initial pleading or within 15 days  
21 after ~~such~~ *the* service of an additional pleading, is entitled  
22 to (1) obtain the names and addresses of witnesses to the  
23 extent known to the other party, including, but not  
24 limited to, those intended to be called to testify at the  
25 hearing, and (2) inspect and make a copy of any of the  
26 following in the possession or custody or under the control  
27 of the other party:

28 (a) A statement of a person, other than the  
29 respondent, named in the initial administrative pleading,  
30 or in any additional pleading, when it is claimed that the  
31 act or omission of the respondent as to ~~such~~ *this* person is  
32 the basis for the administrative proceeding;

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

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



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

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

6 (f) Investigative reports made by or on behalf of the  
7 agency or other party pertaining to the subject matter of  
8 the proceeding, to the extent that ~~such~~ *these* reports (1)  
9 contain the names and addresses of witnesses or of  
10 persons having personal knowledge of the acts, omissions  
11 or events which are the basis for the proceeding, or (2)  
12 reflect matters perceived by the investigator in the  
13 course of his or her investigation, or (3) contain or include  
14 by attachment any statement or writing described in (a)  
15 to (e), inclusive, or summary thereof.

16 For the purpose of this section, “statements” include  
17 written statements by the person signed or otherwise  
18 authenticated by him or her, stenographic, mechanical,  
19 electrical or other recordings, or transcripts thereof, of  
20 oral statements by the person, and written reports or  
21 summaries of ~~such~~ *these* oral statements.

22 Nothing in this section shall authorize the inspection or  
23 copying of any writing or thing which is privileged from  
24 disclosure by law or otherwise made confidential or  
25 protected as the attorney’s work product.

26 ~~SEC. 28.—~~

27 *SEC. 33.* Section 11507.7 of the Government Code is  
28 amended to read:

29 11507.7. (a) Any party claiming the party’s request  
30 for discovery pursuant to Section 11507.6 has not been  
31 complied with may serve and file with the administrative  
32 law judge a motion to compel discovery , naming as  
33 respondent the party refusing or failing to comply with  
34 Section 11507.6. The motion shall state facts showing the  
35 respondent party failed or refused to comply with Section  
36 11507.6, a description of the matters sought to be  
37 discovered, the reason or reasons why the matter is  
38 discoverable under that section, that a reasonable and  
39 good faith attempt to contact the respondent for an  
40 informal resolution of the issue has been made, and the



1 ground or grounds of respondent's refusal so far as known  
2 to the moving party.

3 (b) The motion shall be served upon respondent party  
4 and filed within 15 days after the respondent party first  
5 evidenced failure or refusal to comply with Section  
6 11507.6 or within 30 days after request was made and the  
7 party has failed to reply to the request, or within another  
8 time provided by stipulation, whichever period is longer.

9 (c) The hearing on the motion to compel discovery  
10 shall be held within 15 days after the motion is made, or  
11 a later time that the administrative law judge may on the  
12 judge's own motion for good cause determine. The  
13 respondent party shall have the right to serve and file a  
14 written answer or other response to the motion before or  
15 at the time of the hearing.

16 (d) Where the matter sought to be discovered is under  
17 the custody or control of the respondent party and the  
18 respondent party asserts that the matter is not a  
19 discoverable matter under the provisions of Section  
20 11507.6, or is privileged against disclosure under those  
21 provisions, the administrative law judge may order  
22 lodged with it matters provided in subdivision (b) of  
23 Section 915 of the Evidence Code and examine the  
24 matters in accordance with its provisions .

25 (e) The administrative law judge shall decide the case  
26 on the matters examined in camera, the papers filed by  
27 the parties, and such oral argument and additional  
28 evidence as the administrative law judge may allow.

29 (f) Unless otherwise stipulated by the parties, the  
30 administrative law judge shall no later than 15 days after  
31 the hearing make its order denying or granting the  
32 motion. The order shall be in writing setting forth the  
33 matters the moving party is entitled to discover under  
34 Section 11507.6. A copy of the order shall forthwith be  
35 served by mail by the administrative law judge upon the  
36 parties. Where the order grants the motion in whole or in  
37 part, the order shall not become effective until 10 days  
38 after the date the order is served . Where the order denies  
39 relief to the moving party, the order shall be effective on  
40 the date it is served .



1 ~~SEC. 29.—~~

2 *SEC. 34.* Section 11508 of the Government Code is  
3 amended to read:

4 11508. (a) The agency shall consult the office, and  
5 subject to the availability of its staff, shall determine the  
6 time and place of hearing. The hearing shall be held in  
7 San Francisco if the transaction occurred or the  
8 respondent resides within the First or Sixth Appellate  
9 District, in the County of Los Angeles if the transaction  
10 occurred or the respondent resides within the Second or  
11 Fourth Appellate District other than the County of  
12 Imperial or San Diego, in the County of Sacramento if the  
13 transaction occurred or the respondent resides within the  
14 Third or Fifth Appellate District, and in the County of San  
15 Diego if the transaction occurred or the respondent  
16 resides within the Fourth Appellate District in the  
17 County of Imperial or San Diego.

18 (b) Notwithstanding subdivision (a):

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

22 (2) The agency may select a different place nearer the  
23 place where the transaction occurred or the respondent  
24 resides.

25 (3) The parties by agreement may select any place  
26 within the state.

27 (c) The respondent may move for, and the  
28 administrative law judge has discretion to grant or deny,  
29 a change in the place of the hearing. A motion for a  
30 change in the place of the hearing shall be made within  
31 10 days after service of the notice of hearing on the  
32 respondent.

33 ~~SEC. 30.—~~

34 *SEC. 35.* Section 11509 of the Government Code is  
35 amended to read:

36 11509. The agency shall deliver or mail a notice of  
37 hearing to all parties at least 10 days prior to the hearing.  
38 The hearing shall not be prior to the expiration of the time  
39 within which the respondent is entitled to file a notice of  
40 defense.



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

3  
4 You are hereby notified that a hearing will be held  
5 before [here insert name of agency] at [here insert place  
6 of hearing] on the \_\_\_\_ day of \_\_\_\_, 19\_\_, at the  
7 hour of \_\_\_\_, upon the charges made in the  
8 accusation served upon you. If you object to the place of  
9 hearing, you must notify the presiding officer within 10  
10 days after this notice is served on you. Failure to notify the  
11 presiding officer within 10 days will deprive you of a  
12 change in the place of the hearing. You may be present  
13 at the hearing. You have the right to be represented by  
14 an attorney at your own expense. You are not entitled to  
15 the appointment of an attorney to represent you at public  
16 expense. You are entitled to represent yourself without  
17 legal counsel. You may present any relevant evidence,  
18 and will be given full opportunity to cross-examine all  
19 witnesses testifying against you. You are entitled to the  
20 issuance of subpoenas to compel the attendance of  
21 witnesses and the production of books, documents or  
22 other things by applying to [here insert appropriate office  
23 of agency].

24  
25 ~~SEC. 31.—~~

26 *SEC. 36.* Section 11510 of the Government Code is  
27 repealed.

28 ~~SEC. 32.—~~

29 *SEC. 37.* Section 11511 of the Government Code is  
30 amended to read:

31 11511. On verified petition of any party, an  
32 administrative law judge or, if an administrative law  
33 judge has not been appointed, an agency may order that  
34 the testimony of any material witness residing within or  
35 without the state be taken by deposition in the manner  
36 prescribed by law for depositions in civil actions. The  
37 petition shall set forth the nature of the pending  
38 proceeding; the name and address of the witness whose  
39 testimony is desired; a showing of the materiality of the  
40 testimony; a showing that the witness will be unable or



1 can not be compelled to attend; and shall request an order  
2 requiring the witness to appear and testify before an  
3 officer named in the petition for that purpose. The  
4 petitioner shall serve notice of hearing and a copy of the  
5 petition on the other parties at least 10 days before the  
6 hearing. Where the witness resides outside the state and  
7 where the administrative law judge or agency has  
8 ordered the taking of the testimony by deposition, the  
9 agency shall obtain an order of court to that effect by  
10 filing a petition therefor in the superior court in  
11 Sacramento County. The proceedings thereon shall be in  
12 accordance with the provisions of Section 11189 .

13 ~~SEC. 33.—~~

14 *SEC. 38.* Section 11511.5 of the Government Code is  
15 amended to read:

16 11511.5. (a) On motion of a party or by order of an  
17 administrative law judge, the administrative law judge  
18 may conduct a prehearing conference. The  
19 administrative law judge shall set the time and place for  
20 the prehearing conference, and shall give reasonable  
21 written notice to all parties.

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

24 (1) Exploration of settlement possibilities.

25 (2) Preparation of stipulations.

26 (3) Clarification of issues.

27 (4) Rulings on identity and limitation of the number of  
28 witnesses.

29 (5) Objections to proffers of evidence.

30 (6) Order of presentation of evidence and  
31 cross-examination.

32 (7) Rulings regarding issuance of subpoenas and  
33 protective orders.

34 (8) Schedules for the submission of written briefs and  
35 schedules for the commencement and conduct of the  
36 hearing.

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

39 (10) Motions for intervention.



1 (11) Exploration of the possibility of using alternative  
2 dispute resolution provided in Article 5 (commencing  
3 with Section 11420.10) of, or the informal hearing  
4 procedure provided in Article 10 (commencing with  
5 Section 11445.10) of, Chapter 4.5, *and objections to use of*  
6 *the informal hearing procedure.*

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

9 (c) The presiding officer may conduct all or part of the  
10 prehearing conference by telephone, television, or other  
11 electronic means if each participant in the conference has  
12 an opportunity to participate in and to hear the entire  
13 proceeding while it is taking place.

14 (d) With the consent of the parties, the prehearing  
15 conference may be converted immediately into  
16 alternative dispute resolution or an informal hearing.  
17 With the consent of the parties, the proceeding may be  
18 converted into alternative dispute resolution to be  
19 conducted at another time. With the consent of the  
20 agency, the proceeding may be converted into an  
21 informal hearing to be conducted at another time subject  
22 to the right of a party to object to use of the informal  
23 hearing procedure as provided in Section 11445.30.

24 (e) The administrative law judge shall issue a  
25 prehearing order incorporating the matters determined  
26 at the prehearing conference. The administrative law  
27 judge may direct one or more of the parties to prepare a  
28 prehearing order.

29 ~~SEC. 34.—~~

30 *SEC. 39.* Section 11511.7 is added to the Government  
31 Code, to read:

32 11511.7. (a) The administrative law judge may order  
33 the parties to attend and participate in a settlement  
34 conference. The administrative law judge shall set the  
35 time and place for the settlement conference, and shall  
36 give reasonable written notice to all parties.

37 (b) The administrative law judge at the settlement  
38 conference shall not preside as administrative law judge  
39 at the hearing unless otherwise stipulated by the parties.  
40 The administrative law judge may conduct all or part of



1 the settlement conference by telephone, television, or  
2 other electronic means if each participant in the  
3 conference has an opportunity to participate in and to  
4 hear the entire proceeding while it is taking place.

5 ~~SEC. 35.—~~

6 *SEC. 40.* Section 11512 of the Government Code is  
7 amended to read:

8 11512. (a) Every hearing in a contested case shall be  
9 presided over by an administrative law judge. The agency  
10 itself shall determine whether the administrative law  
11 judge is to hear the case alone or whether the agency itself  
12 is to hear the case with the administrative law judge.

13 (b) When the agency itself hears the case, the  
14 administrative law judge shall preside at the hearing, rule  
15 on the admission and exclusion of evidence, and advise  
16 the agency on matters of law; the agency itself shall  
17 exercise all other powers relating to the conduct of the  
18 hearing but may delegate any or all of them to the  
19 administrative law judge. When the administrative law  
20 judge alone hears a case, he or she shall exercise all powers  
21 relating to the conduct of the hearing. A ruling of the  
22 administrative law judge admitting or excluding  
23 evidence is subject to review in the same manner and to  
24 the same extent as the administrative law judge's  
25 proposed decision in the proceeding.

26 (c) An administrative law judge or agency member  
27 shall voluntarily disqualify himself or herself and  
28 withdraw from any case in which there are grounds for  
29 disqualification, including disqualification under Section  
30 11425.40. The parties may waive the disqualification by a  
31 writing that recites the grounds for disqualification. A  
32 waiver is effective only when signed by all parties,  
33 accepted by the administrative law judge or agency  
34 member, and included in the record. Any party may  
35 request the disqualification of any administrative law  
36 judge or agency member by filing an affidavit, prior to the  
37 taking of evidence at a hearing, stating with particularity  
38 the grounds upon which it is claimed that the  
39 administrative law judge or agency member is  
40 disqualified. Where the request concerns an agency



1 member, the issue shall be determined by the other  
2 members of the agency. Where the request concerns the  
3 administrative law judge, the issue shall be determined  
4 by the agency itself if the agency itself hears the case with  
5 the administrative law judge, otherwise the issue shall be  
6 determined by the administrative law judge. No agency  
7 member shall withdraw voluntarily or be subject to  
8 disqualification if his or her disqualification would  
9 prevent the existence of a quorum qualified to act in the  
10 particular case, except that a substitute qualified to act  
11 may be appointed by the appointing authority.

12 (d) The proceedings at the hearing shall be reported  
13 by a stenographic reporter or electronically, as  
14 determined by the administrative law judge. If the  
15 administrative law judge selects electronic reporting of  
16 proceedings, a party may at the party's own expense  
17 require stenographic reporting.

18 (e) Whenever, after the agency itself has commenced  
19 to hear the case with an administrative law judge  
20 presiding, a quorum no longer exists, the administrative  
21 law judge who is presiding shall complete the hearing as  
22 if sitting alone and shall render a proposed decision in  
23 accordance with subdivision (b) of Section 11517 .

24 ~~SEC. 36.—~~

25 *SEC. 41.* Section 11513 of the Government Code is  
26 amended to read:

27 11513. (a) Oral evidence shall be taken only on oath  
28 or affirmation.

29 (b) Each party shall have these rights: to call and  
30 examine witnesses, to introduce exhibits; to  
31 cross-examine opposing witnesses on any matter relevant  
32 to the issues even though that matter was not covered in  
33 the direct examination; to impeach any witness  
34 regardless of which party first called him or her to testify;  
35 and to rebut the evidence against him or her. If  
36 respondent does not testify in his or her own behalf he or  
37 she may be called and examined as if under  
38 cross-examination.

39 (c) The hearing need not be conducted according to  
40 technical rules relating to evidence and witnesses, except



1 as hereinafter provided. Any relevant evidence shall be  
2 admitted if it is the sort of evidence on which responsible  
3 persons are accustomed to rely in the conduct of serious  
4 affairs, regardless of the existence of any common law or  
5 statutory rule which might make improper the admission  
6 of the evidence over objection in civil actions.

7 (d) Hearsay evidence may be used for the purpose of  
8 supplementing or explaining other evidence but *over*  
9 *timely objection* shall not be sufficient in itself to support  
10 a finding unless it would be admissible over objection in  
11 civil actions. ~~On judicial review of the decision in the~~  
12 ~~proceeding, a party may object to a finding supported~~  
13 ~~only by hearsay evidence in violation of this subdivision,~~  
14 ~~whether or not the objection was previously raised in the~~  
15 ~~adjudicative proceeding. An objection is timely if made~~  
16 ~~before submission of the case or on reconsideration or~~  
17 ~~other administrative review.~~

18 (e) The rules of privilege shall be effective to the  
19 extent that they are otherwise required by statute to be  
20 recognized at the hearing, ~~and the~~

21 (f) *The* presiding officer has discretion to exclude  
22 evidence if its probative value is substantially outweighed  
23 by the probability that its admission will necessitate  
24 undue consumption of time.

25 ~~SEC. 37.—~~

26 *SEC. 42.* Section 11513.5 of the Government Code is  
27 repealed.

28 ~~SEC. 38.—~~

29 *SEC. 43.* Section 11517 of the Government Code is  
30 amended to read:

31 11517. (a) If a contested case is heard before an  
32 agency itself, all of the following provisions apply:

33 (1) The administrative law judge who presided at the  
34 hearing shall be present during the consideration of the  
35 case and, if requested, shall assist and advise the agency.

36 (2) No member thereof who did not hear the evidence  
37 shall vote on the decision.

38 (3) The agency shall issue its decision within 100 days  
39 of submission of the case.



1 (b) If a contested case is heard by an administrative  
2 law judge alone, he or she shall prepare within 30 days  
3 after the case is submitted a proposed decision in a form  
4 that may be adopted as the decision in the case. Failure  
5 of the administrative law judge to deliver a proposed  
6 decision within the time required does not prejudice the  
7 rights of the agency in the case. Thirty days after receipt  
8 of the proposed decision, a copy of the proposed decision  
9 shall be filed by the agency as a public record and a copy  
10 shall be served by the agency on each party and his or her  
11 attorney. The filing and service is not an adoption of a  
12 proposed decision by the agency. The agency itself may  
13 do any of the following:

14 (1) Adopt the proposed decision in its entirety.

15 (2) Reduce or otherwise mitigate the proposed  
16 penalty and adopt the balance of the proposed decision.

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

22 (4) Change the legal basis of the proposed decision and  
23 adopt the proposed decision with that change as the  
24 decision. Before acting under this paragraph the agency  
25 shall provide the parties an opportunity to comment on  
26 the proposed change in legal basis.

27 (c) If the proposed decision is not adopted as provided  
28 in subdivision (b), the agency itself may decide the case  
29 upon the record, including the transcript, or an agreed  
30 statement of the parties, with or without taking additional  
31 evidence, or may refer the case to the same  
32 administrative law judge if reasonably available,  
33 otherwise to another administrative law judge, to take  
34 additional evidence. A copy of the record shall be made  
35 available to the parties. The agency may require payment  
36 of fees covering direct costs of making the copy. By  
37 stipulation of the parties, the agency may decide the case  
38 upon the record without including the transcript. If the  
39 case is assigned to an administrative law judge he or she  
40 shall prepare a proposed decision as provided in



1 subdivision (b) upon the additional evidence and the  
2 transcript and other papers which are part of the record  
3 of the prior hearing. A copy of the proposed decision shall  
4 be furnished to each party and his or her attorney as  
5 prescribed in subdivision (b). The agency itself shall  
6 decide no case provided for in this subdivision without  
7 affording the parties the opportunity to present either  
8 oral or written argument before the agency itself. If  
9 additional oral evidence is introduced before the agency  
10 itself, no agency member may vote unless the member  
11 heard the additional oral evidence. The authority of the  
12 agency itself to decide the case under this subdivision  
13 includes authority to decide some but not all issues in the  
14 case.

15 (d) The proposed decision shall be deemed adopted  
16 by the agency 100 days after delivery to the agency by the  
17 Office of Administrative Hearings, unless within that  
18 time (i) the agency notifies the parties that the proposed  
19 decision is not adopted as provided in subdivision (b) and  
20 commences proceedings to decide the case upon the  
21 record, including the transcript, or without the transcript  
22 where the parties have so stipulated, or (ii) the agency  
23 refers the case to the administrative law judge to take  
24 additional evidence. In a case where the agency  
25 commences proceedings to decide the case upon the  
26 record and has ordered a transcript of the proceedings,  
27 the 100-day period shall begin upon delivery of the  
28 transcript. If the agency finds that a further delay is  
29 required by special circumstances, it shall issue an order  
30 delaying the decision for no more than 30 days and  
31 specifying the reasons therefor. The order shall be subject  
32 to judicial review pursuant to Section 11523.

33 (e) The decision of the agency shall be filed  
34 immediately by the agency as a public record and a copy  
35 shall be served by the agency on each party and his or her  
36 attorney.

37 ~~SEC. 39.—~~

38 *SEC. 44.* Section 11518 of the Government Code is  
39 amended to read:

1 11518. Copies of the decision shall be delivered to the  
2 parties personally or sent to them by registered mail.

3 ~~SEC. 40.—~~

4 *SEC. 45.* Section 11518.5 is added to the Government  
5 Code, to read:

6 11518.5. (a) Within 15 days after service of a copy of  
7 the decision on a party, but not later than the effective  
8 date of the decision, the party may apply to the agency for  
9 correction of a mistake or clerical error in the decision,  
10 stating the specific ground on which the application is  
11 made. Notice of the application shall be given to the other  
12 parties to the proceeding. The application is not a  
13 prerequisite for seeking judicial review.

14 (b) The agency may refer the application to the  
15 administrative law judge who formulated the proposed  
16 decision or may delegate its authority under this section  
17 to one or more persons.

18 (c) The agency may deny the application, grant the  
19 application and modify the decision, or grant the  
20 application and set the matter for further proceedings.  
21 The application is considered denied if the agency does  
22 not dispose of it within 15 days after it is made or a longer  
23 time that the agency provides by regulation.

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

29 (e) The agency shall, within 15 days after correction of  
30 a mistake or clerical error in the decision, serve a copy of  
31 the correction on each party on which a copy of the  
32 decision was previously served.

33 ~~SEC. 41.—~~

34 *SEC. 46.* Section 11519 of the Government Code is  
35 amended to read:

36 11519. (a) The decision shall become effective 30  
37 days after it is delivered or mailed to respondent unless:  
38 a reconsideration is ordered within that time, or the  
39 agency itself orders that the decision shall become  
40 effective sooner, or a stay of execution is granted.



1 (b) A stay of execution may be included in the decision  
2 or if not included therein may be granted by the agency  
3 at any time before the decision becomes effective. The  
4 stay of execution provided herein may be accompanied  
5 by an express condition that respondent comply with  
6 specified terms of probation; provided, however, that the  
7 terms of probation shall be just and reasonable in the light  
8 of the findings and decision.

9 (c) If respondent was required to register with any  
10 public officer, a notification of any suspension or  
11 revocation shall be sent to the officer after the decision  
12 has become effective.

13 (d) As used in subdivision (b), specified terms of  
14 probation may include an order of restitution . Where  
15 restitution is ordered and paid pursuant to the provisions  
16 of this subdivision, the amount paid shall be credited to  
17 any subsequent judgment in a civil action.

18 (e) The person to which the agency action is directed  
19 may not be required to comply with a decision unless the  
20 person has been served with the decision in the manner  
21 provided in Section 11505; or has actual knowledge of the  
22 decision.

23 (f) A nonparty may not be required to comply with a  
24 decision unless the agency has made the decision  
25 available for public inspection and copying or the  
26 nonparty has actual knowledge of the decision.

27 (g) This section does not preclude an agency from  
28 taking immediate action to protect the public interest in  
29 accordance with Article 13 (commencing with Section  
30 11460.10) of Chapter 4.5.

31 ~~SEC. 42.—~~

32 *SEC. 47.* Section 11520 of the Government Code is  
33 amended to read:

34 11520. (a) If the respondent either fails to file a  
35 notice of defense or to appear at the hearing, the agency  
36 may take action based upon the respondent's express  
37 admissions or upon other evidence and affidavits may be  
38 used as evidence without any notice to respondent; and  
39 where the burden of proof is on the respondent to  
40 establish that the respondent is entitled to the agency



1 action sought, the agency may act without taking  
2 evidence.

3 (b) Notwithstanding the default of the respondent,  
4 the agency or the administrative law judge, before a  
5 proposed decision is issued, has discretion to grant a  
6 hearing on reasonable notice to the parties. If the agency  
7 and administrative law judge make conflicting orders  
8 under this subdivision, the agency's order takes  
9 precedence. The administrative law judge may order the  
10 respondent, or the respondent's attorney or other  
11 authorized representative, or both, to pay reasonable  
12 expenses, including attorney's fees, incurred by another  
13 party as a result of the respondent's failure to appear at  
14 the hearing.

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

23 (1) Failure of the person to receive notice served  
24 pursuant to Section 11505.

25 (2) Mistake, inadvertence, surprise, or excusable  
26 neglect.

27 ~~SEC. 43.—~~

28 *SEC. 48.* Section 11523 of the Government Code is  
29 amended to read:

30 11523. Judicial review may be had by filing a petition  
31 for a writ of mandate in accordance with the provisions  
32 of the Code of Civil Procedure, subject, however, to the  
33 statutes relating to the particular agency. Except as  
34 otherwise provided in this section, the petition shall be  
35 filed within 30 days after the last day on which  
36 reconsideration can be ordered. The right to petition shall  
37 not be affected by the failure to seek reconsideration  
38 before the agency. On request of the petitioner for a  
39 record of the proceedings, the complete record of the  
40 proceedings, or the parts thereof as are designated by the



1 petitioner in the request, shall be prepared by the Office  
2 of Administrative Hearings or the agency and shall be  
3 delivered to petitioner, within 30 days after the request,  
4 which time shall be extended for good cause shown, upon  
5 the payment of the fee specified in Section 69950 for the  
6 transcript, the cost of preparation of other portions of the  
7 record and for certification thereof. Thereafter, the  
8 remaining balance of any costs or charges for the  
9 preparation of the record shall be assessed against the  
10 petitioner whenever the agency prevails on judicial  
11 review following trial of the cause. These costs or charges  
12 constitute a debt of the petitioner which is collectible by  
13 the agency in the same manner as in the case of an  
14 obligation under a contract, and no license shall be  
15 renewed or reinstated where the petitioner has failed to  
16 pay all of these costs or charges. The complete record  
17 includes the pleadings, all notices and orders issued by the  
18 agency, any proposed decision by an administrative law  
19 judge, the final decision, a transcript of all proceedings,  
20 the exhibits admitted or rejected, the written evidence  
21 and any other papers in the case. Where petitioner,  
22 within 10 days after the last day on which reconsideration  
23 can be ordered, requests the agency to prepare all or any  
24 part of the record the time within which a petition may  
25 be filed shall be extended until 30 days after its delivery  
26 to him or her. The agency may file with the court the  
27 original of any document in the record in lieu of a copy  
28 thereof. In the event that the petitioner prevails in  
29 overturning the administrative decision following  
30 judicial review, the agency shall reimburse the petitioner  
31 for all costs of transcript preparation, compilation of the  
32 record, and certification.

33 ~~SEC. 44.—~~

34 *SEC. 49.* Section 11524 of the Government Code is  
35 amended to read:

36 11524. (a) The agency may grant continuances.  
37 When an administrative law judge of the Office of  
38 Administrative Hearings has been assigned to the  
39 hearing, no continuance may be granted except by him  
40 or her or by the presiding judge of the appropriate



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

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

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

28 ~~SEC. 45.—~~

29 *SEC. 50.* Section 11525 of the Government Code is  
30 repealed.

31 ~~SEC. 46.—~~

32 *SEC. 51.* Section 11526 of the Government Code is  
33 amended to read:

34 11526. The members of an agency qualified to vote on  
35 any question may vote by mail or another appropriate  
36 method.

37 ~~SEC. 47.—~~

38 *SEC. 52.* Section 11529 of the Government Code is  
39 amended to read:



1 11529. (a) The administrative law judge of the  
2 Medical Quality Hearing Panel established pursuant to  
3 Section 11371 may issue an interim order suspending a  
4 license, or imposing drug testing, continuing education,  
5 supervision of procedures, or other license restrictions.  
6 Interim orders may be issued only if the affidavits in  
7 support of the petition show that the licensee has engaged  
8 in, or is about to engage in, acts or omissions constituting  
9 a violation of the Medical Practice Act or the appropriate  
10 practice act governing each allied health profession, and  
11 that permitting the licensee to continue to engage in the  
12 profession for which the license was issued will endanger  
13 the public health, safety, or welfare.

14 (b) All orders authorized by this section shall be issued  
15 only after a hearing conducted pursuant to subdivision  
16 (d), unless it appears from the facts shown by affidavit  
17 that serious injury would result to the public before the  
18 matter can be heard on notice. Except as provided in  
19 subdivision (c), the licensee shall receive at least 15 days'  
20 prior notice of the hearing, which notice shall include  
21 affidavits and all other information in support of the  
22 order.

23 (c) If an interim order is issued without notice, the  
24 administrative law judge who issued the order without  
25 notice shall cause the licensee to be notified of the order,  
26 including affidavits and all other information in support  
27 of the order by a 24-hour delivery service. That notice  
28 shall also include the date of the hearing on the order,  
29 which shall be conducted in accordance with the  
30 requirement of subdivision (d), not later than 20 days  
31 from the date of issuance. The order shall be dissolved  
32 unless the requirements of subdivision (a) are satisfied.

33 (d) For the purposes of the hearing conducted  
34 pursuant to this section, the licentiate shall, at a  
35 minimum, have the following rights:

- 36 (1) To be represented by counsel.  
37 (2) To have a record made of the proceedings, copies  
38 of which may be obtained by the licentiate upon payment  
39 of any reasonable charges associated with the record.



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

3 The discretion of the administrative law judge to  
4 permit testimony at the hearing conducted pursuant to  
5 this section shall be identical to the discretion of a  
6 superior court judge to permit testimony at a hearing  
7 conducted pursuant to Section 527 of the Code of Civil  
8 Procedure.

9 (4) To present oral argument.

10 (e) Consistent with the burden and standards of proof  
11 applicable to a preliminary injunction entered under  
12 Section 527 of the Code of Civil Procedure, the  
13 administrative law judge shall grant the interim order  
14 where, in the exercise of discretion, the administrative  
15 law judge concludes that:

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

18 (2) The likelihood of injury to the public in not issuing  
19 the order outweighs the likelihood of injury to the  
20 licensee in issuing the order.

21 (f) In all cases where an interim order is issued, and an  
22 accusation is not filed and served pursuant to Sections  
23 11503 and 11505 within 15 days of the date in which the  
24 parties to the hearing on the interim order have  
25 submitted the matter, the order shall be dissolved.

26 Upon service of the accusation the licensee shall have,  
27 in addition to the rights granted by this section, all of the  
28 rights and privileges available as specified in this chapter.  
29 If the licensee requests a hearing on the accusation, the  
30 board shall provide the licensee with a hearing within 30  
31 days of the request, unless the licensee stipulates to a later  
32 hearing, and a decision within 15 days of the date that  
33 matter is submitted, or the board shall nullify the interim  
34 order previously issued, unless good cause can be shown  
35 by the Division of Medical Quality for a delay.

36 (g) Where an interim order is issued, a written  
37 decision shall be prepared within 15 days of the hearing,  
38 by the administrative law judge, including findings of fact  
39 and a conclusion articulating the connection between the



1 evidence produced at the hearing and the decision  
2 reached.

3 (h) Notwithstanding the fact that interim orders  
4 issued pursuant to this section are not issued after a  
5 hearing as otherwise required by this chapter, interim  
6 orders so issued shall be subject to judicial review  
7 pursuant to Section 1094.5 of the Code of Civil Procedure.  
8 The relief which may be ordered shall be limited to a stay  
9 of the interim order. Interim orders issued pursuant to  
10 this section are final interim orders and, if not dissolved  
11 pursuant to subdivision (c) or (f), may only be challenged  
12 administratively at the hearing on the accusation.

13 (i) The interim order provided for by this section shall  
14 be in addition to, and not a limitation on, the authority to  
15 seek injunctive relief provided for in the Business and  
16 Professions Code.

17 ~~SEC. 48.—~~

18 *SEC. 53.* Section 11530 of the Government Code is  
19 repealed.

20 ~~SEC. 49.—~~

21 *SEC. 54. Section 12935 of the Government Code is*  
22 *amended to read:*

23 12935. The commission shall have the following  
24 functions, powers, and duties:

25 (a) To adopt, promulgate, amend, and rescind suitable  
26 rules, regulations, and standards (1) to interpret,  
27 implement, and apply all provisions of this part, (2) to  
28 regulate the conduct of hearings held pursuant to  
29 Sections 12967 and 12980, and (3) to carry out all other  
30 functions and duties of the commission pursuant to this  
31 part.

32 (b) To conduct hearings pursuant to Sections 12967  
33 and 12981.

34 (c) To establish and maintain a principal office within  
35 the state.

36 (d) To meet and function at any place within the state.

37 (e) To appoint an executive secretary, and any  
38 attorneys and other employees as it may deem necessary,  
39 fix their compensation within the limitations provided by  
40 law, and prescribe their duties.



1 (f) To hold hearings, subpoena witnesses, compel their  
2 attendance, administer oaths, examine any person under  
3 oath and, in connection therewith, to require the  
4 production of any books or papers relating to any matter  
5 under investigation or in question before the commission.

6 (g) To create or provide financial or technical  
7 assistance to any advisory agencies and conciliation  
8 councils, local or otherwise, as in its judgment will aid in  
9 effectuating the purposes of this part, and to empower  
10 them to study the problems of discrimination in all or  
11 specific fields of human relationships or in particular  
12 instances of employment discrimination on the bases  
13 enumerated in this part or in specific instances of housing  
14 discrimination because of race, religious creed, color,  
15 national origin, ancestry, familial status, disability, marital  
16 status, or sex, and to foster, through community effort or  
17 otherwise, good will, cooperation, and conciliation among  
18 the groups and elements of the population of the state and  
19 to make recommendations to the commission for the  
20 development of policies and procedures in general. These  
21 advisory agencies and conciliation councils shall be  
22 composed of representative citizens, serving without pay.

23 (h) With respect to findings and orders made pursuant  
24 to this part, to establish a system of published opinions  
25 which shall serve as precedent in interpreting and  
26 applying the provisions of this part. *Commission findings,*  
27 *orders, and opinions in an adjudicative proceeding are*  
28 *subject to Section 11425.60.*

29 (i) To issue publications and results of inquiries and  
30 research which in its judgment will tend to promote good  
31 will and minimize or eliminate unlawful discrimination.  
32 These publications shall include an annual report to the  
33 Governor and the Legislature of its activities and  
34 recommendations.

35 (j) Notwithstanding Sections 11370.3 and 11502, to  
36 appoint hearing officers, as it may deem necessary, to  
37 conduct hearings. Each hearing officer shall possess the  
38 qualifications established by the State Personnel Board  
39 for the particular class of position involved.



1 SEC. 55. Section 17533 is added to the Government  
2 Code, to read:

3 ~~17533. The administrative adjudication provisions of~~  
4 ~~the Administrative Procedure Act (Chapter 4.5~~  
5 ~~(commencing with Section 11400) and Chapter 5~~  
6 ~~(commencing with Section 11500) of Part 1 of Division 3)~~  
7 ~~do not apply to a hearing by the commission under this~~

8 *17533. Notwithstanding Section 11425.10, Chapter 4.5*  
9 *(commencing with Section 11400) of Part 1 of Division 3*  
10 *does not apply to a hearing by the commission under this*  
11 *part.*

12 ~~SEC. 50.—~~

13 SEC. 56. Section 19582.5 of the Government Code is  
14 amended to read:

15 19582.5. The board may designate certain of its  
16 decisions as precedents. ~~Precedential decisions shall not~~  
17 ~~be subject to Chapter 3.5 (commencing with Section~~  
18 ~~11340) of Part 1 of Division 3. Decisions of the board are~~  
19 *subject to Section 11425.60.* The board may provide by  
20 rule for the reconsideration of a previously issued decision  
21 to determine whether or not it shall be designated as a  
22 precedent decision. All decisions designated as  
23 precedents shall be published in a manner determined by  
24 the board.

25 SEC. 57. Section 37624.2 of the Government Code is  
26 amended to read:

27 37624.2. The governing body or the hearing officer, if  
28 one is appointed, shall have the same power with respect  
29 to the issuance of subpoenas and subpoenas duces tecum  
30 as that granted to any agency or hearing officer pursuant  
31 to ~~Section 11510 Article 11 (commencing with Section~~  
32 ~~11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2.~~  
33 Any subpoena or subpoena duces tecum issued pursuant  
34 to this section shall have the same force and effect and  
35 impose the same obligations upon witnesses as that  
36 provided in ~~Section 11510 Article 11 (commencing with~~  
37 ~~Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of~~  
38 *Title 2.*

39 SEC. 58. Section 68560.5 of the Government Code is  
40 amended to read:



1 68560.5. As used in this article:

2 (a) “Court proceeding” means a civil, criminal, or  
3 juvenile proceeding, excluding a small claims  
4 proceeding, and a deposition.

5 (b) “Interpreter” does not include (1) an interpreter  
6 qualified under Section 754 of the Evidence Code to  
7 interpret for deaf or hard-of-hearing persons, or (2) an  
8 interpreter qualified for administrative hearings or  
9 noncourt settings under ~~Section 11513~~ *Article 8*  
10 *(commencing with Section 11435.05) of Chapter 4.5 of*  
11 *Part 1 of Division 3 of Title 2.*

12 *SEC. 59.* Section 443.37 of the Health and Safety Code  
13 is amended to read:

14 443.37. (a) Any health facility affected by any  
15 determination made under this part by the office may  
16 petition the office for review of the decision. This petition  
17 shall be filed with the office within 15 business days, or  
18 within such greater time as the office, with the advice of  
19 the commission, may allow, and shall specifically describe  
20 the matters which are disputed by the petitioner.

21 ~~A~~

22 (b) *A* hearing shall be commenced within 60 calendar  
23 days of the date on which the petition was filed. The  
24 hearing shall be held before an employee of the office, an  
25 administrative law judge employed by the Office of  
26 Administrative Hearings, or a committee of the  
27 commission chosen by the chairperson for this purpose.  
28 If held before an employee of the office or a committee  
29 of the commission, the hearing shall be held in  
30 accordance with ~~such~~ *any* procedures as the office, with  
31 the advice of the commission, shall prescribe. If held  
32 before an administrative law judge employed by the  
33 Office of Administrative Hearings, the hearing shall be  
34 held in accordance with Chapter 5 (commencing with  
35 Section 11500) of Part 1 of Division 3 of Title 2 of the  
36 Government Code. The employee, administrative law  
37 judge, or committee shall prepare a recommended  
38 decision including findings of fact and conclusions of law  
39 and present it to the office for its adoption. The decision  
40 of the office shall be in writing and shall be final. The



1 decision of the office shall be made within 60 calendar  
2 days after the conclusion of the hearing and shall be  
3 effective upon filing and service upon the petitioner.

4 **Judicial**

5 (c) *Judicial* review of any final action, determination,  
6 or decision may be had by any party to the proceedings  
7 as provided in Section 1094.5 of the Code of Civil  
8 Procedure. The decision of the office shall be upheld  
9 against a claim that its findings are not supported by the  
10 evidence unless the court determines that the findings  
11 are not supported by substantial evidence.

12 **The**

13 (d) *The* employee of the office, the administrative law  
14 judge employed by the Office of Administrative  
15 Hearings, the Office of Administrative Hearings, or the  
16 committee of the commission, may issue subpoenas and  
17 subpoenas duces tecum in a manner and subject to the  
18 conditions established by Article 11 (commencing with  
19 Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of  
20 Title 2 of the Government Code.

21 **SEC. 51.—**

22 *SEC. 60.* Section 1551.5 of the Health and Safety Code  
23 is amended to read:

24 ~~1551.5. Notwithstanding Section 11450.40 of the~~  
25 ~~Government Code, witnesses subpoenaed at the request~~  
26 ~~of the department for a hearing conducted pursuant to~~  
27 ~~this article who attend a hearing may be paid by the~~  
28 ~~department witness fees and mileage as provided by~~  
29 ~~Section 68093 of the Government Code. In addition, the~~

30 *1551.5. In addition to the witness fees and mileage*  
31 *provided by Section 11450.40 of the Government Code,*  
32 *the department may pay actual, necessary, and*  
33 *reasonable expenses in an amount not to exceed the per*  
34 *diem allowance payable to a nonrepresented state*  
35 *employee on travel status. The department may pay*  
36 *witness expenses pursuant to this section in advance of*  
37 *the hearing.*

38 **SEC. 52.—**

39 *SEC. 61.* Section 1568.065 of the Health and Safety  
40 *Code is amended to read:*



1 1568.065. (a) Proceedings for the suspension,  
2 revocation, or denial of a license under this chapter shall  
3 be conducted in accordance with Chapter 5  
4 (commencing with Section 11500) of Part 1 of Division 3  
5 of Title 2 of the Government Code, and the department  
6 shall have all those powers granted by the provisions. In  
7 the event of conflict between this chapter and those  
8 provisions of the Government Code, this chapter shall  
9 prevail.

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

13 (c) If the license is not temporarily suspended  
14 pursuant to Section 1568.082, the hearing shall be held  
15 within 90 calendar days after receipt of the notice of  
16 defense, unless a continuance of the hearing is granted by  
17 the department or the administrative law judge. When  
18 the matter has been set for hearing, only the  
19 administrative law judge may grant a continuance of the  
20 hearing. The administrative law judge may, but need not,  
21 grant a continuance of the hearing, only upon finding the  
22 existence of any of the following:

23 (1) The death or incapacitating illness of a party, a  
24 representative or attorney of a party, a witness to an  
25 essential fact, or of the parent, child, or member of the  
26 household of ~~such~~ *that* person, when it is not feasible to  
27 substitute another representative, attorney, or witness  
28 because of the proximity of the hearing date.

29 (2) Lack of notice of hearing as provided in Section  
30 11509 of the Government Code.

31 (3) A material change in the status of the case where  
32 a change in the parties or pleadings requires  
33 postponement, or an executed settlement or stipulated  
34 findings of fact obviate the need for hearing. A partial  
35 amendment of the pleadings shall not be good cause for  
36 continuance to the extent that the unamended portion of  
37 the pleadings is ready to be heard.

38 (4) A stipulation for continuance signed by all parties  
39 or their authorized representatives, including, but not  
40 limited to, a representative, which is communicated with



1 the request for continuance to the administrative law  
2 judge no later than 25 business days before the hearing.

3 (5) The substitution of the representative or attorney  
4 of a party upon showing that the substitution is required.

5 (6) The unavailability of a party, representative, or  
6 attorney of a party, or witness to an essential fact due to  
7 a conflicting and required appearance in a judicial matter  
8 if when the hearing date was set, the person did not know  
9 and could neither anticipate nor at any time avoid the  
10 conflict, and the conflict with request for continuance is  
11 immediately communicated to the administrative law  
12 judge.

13 (7) The unavailability of a party, a representative or  
14 attorney of a party, or a material witness due to an  
15 unavoidable emergency.

16 (8) Failure by a party to comply with a timely  
17 discovery request if the continuance request is made by  
18 the party who requested the discovery.

19 ~~(d) Notwithstanding Section 11510 of the~~  
20 ~~Government Code, witnesses subpoenaed at the request~~  
21 ~~of the department for a hearing conducted pursuant to~~  
22 ~~this article who attend a hearing may be paid by the~~  
23 ~~department witness fees and mileage as provided by~~  
24 ~~Section 68093 of the Government Code. In addition to the~~  
25 ~~witness fees and mileage provided by Section 11450.40 of~~  
26 ~~the Government Code, the department may pay actual,~~  
27 ~~necessary, and reasonable expenses in an amount not to~~  
28 ~~exceed the per diem allowance payable to a~~  
29 ~~nonrepresented state employee on travel status. The~~  
30 ~~department may pay witness expenses pursuant to this~~  
31 ~~section in advance of the hearing.~~

32 (e) (1) The withdrawal of an application for a license  
33 or a special permit after it has been filed with the  
34 department shall not deprive the department of its  
35 authority to institute or continue a proceeding against the  
36 applicant for the denial of the license or a special permit  
37 upon any ground provided by law or to enter an order  
38 denying the license or special permit upon any ~~such~~  
39 ground *provided by law*.



1 (2) The suspension, expiration, or forfeiture by  
2 operation of law of a license issued by the department, or  
3 its suspension, forfeiture, or cancellation by order of the  
4 department or by order of a court of law, or its surrender,  
5 shall not deprive the department of its authority to  
6 institute or continue a disciplinary proceeding against the  
7 licensee upon any ground provided by law or to enter an  
8 order suspending or revoking the license or otherwise  
9 taking disciplinary action against the licensee on any—~~such~~  
10 ground *provided by law*.

11 (f) (1) If an application for a license indicates, or the  
12 department determines during the application review  
13 process, that the applicant previously was issued a license  
14 under this chapter or under Chapter 1 (commencing  
15 with Section 1200), Chapter 2 (commencing with Section  
16 1250), Chapter 3 (commencing with Section 1500),  
17 Chapter 3.3 (commencing with Section 1569), Chapter  
18 3.4 (commencing with Section 1596.70), Chapter 3.5  
19 (commencing with Section 1596.90), or Chapter 3.6  
20 (commencing with Section 1597.30) and the prior license  
21 was revoked within the preceding two years, the  
22 department shall cease any further review of the  
23 application until two years shall have elapsed from the  
24 date of the revocation. The cessation of review shall not  
25 constitute a denial of the application for purposes of  
26 Section 1568.062, this section, or any other provision of  
27 law.

28 (2) If an application for a license indicates, or the  
29 department determines during the application review  
30 process, that the applicant had previously applied for a  
31 license under any of the chapters listed in paragraph (1)  
32 and the application was denied within the last year, the  
33 department shall cease further review of the application  
34 under either of the following circumstances:

35 (A) In cases where the applicant petitioned for a  
36 hearing, the department shall cease further review of the  
37 application until one year has elapsed from the effective  
38 date of the decision and order of the department  
39 upholding a denial.



1 (B) In cases where the department informed the  
2 applicant of his or her right to petition for a hearing as  
3 specified in Section 1568.063 and the applicant did not  
4 petition for a hearing, the department shall cease further  
5 review of the application until one year has elapsed from  
6 the date of the notification of the denial and the right to  
7 petition for a hearing.

8 (3) The department may continue to review the  
9 application if it has determined that the reasons for the  
10 denial of the application were due to circumstances and  
11 conditions which either have been corrected or are no  
12 longer in existence.

13 *SEC. 62. Section 1569.515 of the Health and Safety*  
14 *Code is amended to read:*

15 ~~1569.515. Notwithstanding Section 11510 of the~~  
16 ~~Government Code, witnesses subpoenaed at the request~~  
17 ~~of the department for a hearing conducted pursuant to~~  
18 ~~this article who attend a hearing may be paid by the~~  
19 ~~department witness fees and mileage as provided by~~  
20 ~~Section 68093 of the Government Code.~~ In addition to the  
21 *witness fees and mileage provided by Section 11450.40 of*  
22 *the Government Code*, the department may pay actual,  
23 necessary, and reasonable expenses in an amount not to  
24 exceed the per diem allowance payable to a  
25 nonrepresented state employee on travel status. The  
26 department may pay witness expenses pursuant to this  
27 section in advance of the hearing.

28 *SEC. 63. Section 1596.8875 of the Health and Safety*  
29 *Code is amended to read:*

30 ~~1596.8875. Notwithstanding Section 11510 of the~~  
31 ~~Government Code, witnesses subpoenaed at the request~~  
32 ~~of the department for a hearing conducted pursuant to~~  
33 ~~this article who attend a hearing may be paid by the~~  
34 ~~department witness fees and mileage as provided by~~  
35 ~~Section 68093 of the Government Code.~~ In addition to the  
36 *witness fees and mileage provided by Section 11450.40 of*  
37 *the Government Code*, the department may pay actual,  
38 necessary, and reasonable expenses in an amount not to  
39 exceed the per diem allowance payable to a  
40 nonrepresented state employee on travel status. The



1 department may pay witness expenses pursuant to this  
2 section in advance of the hearing.

3 *SEC. 64.* Section 11834.37 of the Health and Safety  
4 Code is amended to read:

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

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

17 (c) The department shall commence and process  
18 licensure revocations under this chapter in a timely and  
19 expeditious manner. The Office of Administrative  
20 Hearings shall give priority calendar preference to  
21 licensure revocation hearings pursuant to this chapter,  
22 particularly revocations where the health and safety of  
23 the residents are in question.

24 ~~SEC. 53.—~~

25 *SEC. 65.* Section 18949.6 of the Health and Safety  
26 Code is amended to read:

27 18949.6. (a) The commission shall adopt regulations  
28 setting forth the procedure for the adoption of building  
29 standards and administrative regulations that apply  
30 directly to the implementation or enforcement of  
31 building standards.

32 (b) Regulatory adoption shall be accomplished so as to  
33 facilitate the triennial adoption of the specified model  
34 codes pursuant to Section 18928.

35 (c) The regulations shall allow for the distribution of  
36 proposed building standards and regulatory changes to  
37 the public for review in compliance with the  
38 requirements of the rulemaking provisions of the  
39 Administrative Procedure Act (Chapter 3.5  
40 (commencing with Section 11340) of Part 1 of Division 3



1 of Title 2 of the Government Code) and for the  
2 acceptance of responses from the public.

3 ~~SEC. 54.—~~

4 *SEC. 66.* Section 25149 of the Health and Safety Code  
5 is amended to read:

6 25149. (a) Notwithstanding any other provision of  
7 law, except as provided in Section 25149.5 or 25181 of this  
8 code or Section 731 of the Code of Civil Procedure, no city  
9 or county, whether chartered or general law, or district  
10 may enact, issue, enforce, suspend, revoke, or modify any  
11 ordinance, regulation, law, license, or permit relating to  
12 an existing hazardous waste facility so as to prohibit or  
13 unreasonably regulate the disposal, treatment, or  
14 recovery of resources from hazardous waste or a mix of  
15 hazardous and solid wastes at that facility, unless, after  
16 public notice and hearing, the director determines that  
17 the operation of the facility may present an imminent and  
18 substantial endangerment to health and the  
19 environment. However, nothing in this section  
20 authorizes an operator of that facility to violate any term  
21 or condition of a local land use permit or any other  
22 provision of law not in conflict with this section.

23 (b) The director shall, pursuant to subdivision (c),  
24 conduct the hearing specified in subdivision (a) to  
25 determine whether the operation of an existing  
26 hazardous waste facility may present an imminent and  
27 substantial endangerment to health and the environment  
28 whenever any of the following occurs:

29 (1) A state or federal public agency requires any  
30 person to evacuate a residence or requires the evacuation  
31 of a school, place of employment, commercial  
32 establishment, or other facility to which the public has  
33 access, because of the release of a hazardous substance  
34 from the facility.

35 (2) For more than five days in any month, the air  
36 emissions from the facility result in the violation of an  
37 emission standard for a hazardous air pollutant  
38 established pursuant to Section 7412 of Title 42 of the  
39 United States Code or the threshold exposure level for a  
40 toxic air contaminant, as defined in Section 39655.

1 (3) A state or federal public agency requires that the  
2 use of a source of drinking water be discontinued because  
3 of the contamination of the source by a release of  
4 hazardous waste, hazardous substances, or leachate from  
5 the facility.

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

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

22 (A) The correction of a violation or condition that has  
23 resulted, or threatens to result, in an unauthorized release  
24 of hazardous waste or a constituent of hazardous waste  
25 from the facility into either the onsite or offsite  
26 environment.

27 (B) The cleanup of a release of hazardous waste or a  
28 constituent of hazardous waste, the abatement of the  
29 effects of the release, and any other necessary remedial  
30 action.

31 (6) The facility is in violation of an order issued  
32 pursuant to Article 1 (commencing with Section 13300)  
33 of, or Article 2 (commencing with Section 13320) of,  
34 Chapter 5 of Division 7 of the Water Code or in violation  
35 of a temporary restraining order, preliminary injunction,  
36 or permanent injunction issued pursuant to Article 4  
37 (commencing with Section 13340) of Chapter 5 of  
38 Division 7 of the Water Code.

39 (c) Whenever the director determines that a hearing  
40 is required, as specified in subdivision (b), the director



1 shall immediately request the Office of Administrative  
2 Hearings to assign an administrative law judge to conduct  
3 the hearing, pursuant to this subdivision.

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

21 (2) The hearing specified in paragraph (1) shall be  
22 conducted in accordance with *Article 8 (commencing*  
23 *with Section 11435.05) of Chapter 4.5 of Part 1 of Division*  
24 *3 of Title 2 of, and Sections 11511 to 11515, inclusive, of,*  
25 *the Government Code.* The ~~hearing officer's~~  
26 *administrative law judge's* proposed decision shall be  
27 transmitted to the director within 30 days after the case  
28 is submitted.

29 (3) The director may adopt the proposed decision of  
30 the ~~hearing officer~~ *administrative law judge* in its  
31 entirety or may decide the case upon the record, as  
32 provided in Section 11517 of the Government Code. The  
33 director's decision shall be in writing and shall contain  
34 findings of fact and a determination of the issues  
35 presented. The decision is subject to judicial review in  
36 accordance with Section 11523 of the Government Code.

37 ~~SEC. 55.—~~

38 *SEC. 67. Section 25229 of the Health and Safety Code*  
39 *is amended to read:*



1 25229. (a) If, after the hearing, the director makes  
2 the decision that the subject land should not be  
3 designated a hazardous waste property or border zone  
4 property, the director shall issue that decision in writing  
5 and serve it in the manner provided in subdivision (c).

6 (b) If, after the hearing, the director makes the  
7 decision, upon a preponderance of the evidence,  
8 including any evidence developed at any time prior to  
9 the hearing, that the land should be designated a  
10 hazardous waste property or a border zone property, the  
11 director shall issue that decision in writing, which shall  
12 identify the subject land, or portion thereof, by street  
13 address, assessor's parcel number, or legal description and  
14 the name of the owner of record, contain findings of fact  
15 based upon the issues presented, including the reasons for  
16 this designation, the substances on, under, or in the land,  
17 and the significant existing or potential hazards to present  
18 or future public health and safety, and order every owner  
19 of the designated land to take all of the following actions:

20 (1) Execute before a notary a written instrument  
21 which imposes an easement, covenant, restriction, or  
22 servitude, or any combination thereof, as appropriate,  
23 upon the present and future uses of the land pursuant to  
24 Section 25230. The written instrument shall also include  
25 a copy of the director's decision.

26 (2) Return the executed instrument to the director  
27 within 30 days after the decision is delivered or mailed.  
28 Within 10 days after receiving the instrument, the  
29 director shall execute the written instrument and return  
30 the instrument to the owner.

31 (3) Record the written instrument pursuant to Section  
32 25230 within 10 days after receiving the written  
33 instrument executed by the director, as specified in  
34 paragraph (2).

35 (4) Return the recorded written instrument to the  
36 director within 10 days after the owner records the  
37 instrument, as specified in paragraph (3).

38 (c) Copies of the determination shall be delivered or  
39 sent by certified mail to the owner of the property, the  
40 legislative body of the city or county in whose jurisdiction



1 the land is located, and any other persons who were  
2 served pursuant to Section 25222 or who were permitted  
3 to intervene in the proceeding pursuant to Section 25226.

4 (d) Failure or refusal to comply with any order issued  
5 pursuant to this section shall be treated in the manner  
6 provided by ~~Section 11525~~ *Article 12 (commencing with*  
7 *Section 11455.10) of Chapter 4.5 of Part 1 of Division 3 of*  
8 *Title 2 of the Government Code.*

9 *SEC. 68. Section 25299.59 of the Health and Safety*  
10 *Code is amended to read:*

11 25299.59. (a) Except as specified in subdivision (b),  
12 the procedures in *Article 8 (commencing with Section*  
13 *11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2*  
14 *of, and in Section 11513 of, the Government Code apply*  
15 *to the proceedings conducted by the board pursuant to*  
16 *this article.*

17 (b) Notwithstanding subdivision (a), Sections 801, 802,  
18 803, 804, and 805 of the Evidence Code apply to the  
19 proceedings conducted by the board pursuant to this  
20 article.

21 (c) This article does not require any person to pursue  
22 a claim against the board pursuant to this article before  
23 seeking any other remedy.

24 (d) If the board has paid out of the fund for any costs  
25 of corrective action, the board shall not pay any other  
26 claim out of the fund for the same costs.

27 (e) Notwithstanding Sections 25299.57 and 25299.58,  
28 the board shall not reimburse or authorize prepayment  
29 of any claim in an aggregate amount exceeding nine  
30 hundred ninety thousand (\$990,000) for a claim arising  
31 from the same event or occurrence.

32 (f) The board may conduct an audit of any corrective  
33 action claim honored pursuant to this chapter. The  
34 claimant shall reimburse the state for any costs disallowed  
35 in the audit. A claimant shall preserve, and make  
36 available, upon request of the board or the board's  
37 designee, all records pertaining to the corrective action  
38 claim for a period of three years after the final payment  
39 is made to the claimant.



1 *SEC. 69. Section 25375.5 of the Health and Safety*  
2 *Code is amended to read:*

3 25375.5. (a) Except as specified in subdivision (b),  
4 the procedures specified in *Article 8 (commencing with*  
5 *Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of*  
6 *Title 2 of, and in* Section 11513 of, the Government Code  
7 apply to the proceedings conducted by the board  
8 pursuant to this article.

9 (b) Notwithstanding subdivision (a), Sections 801, 802,  
10 803, 804, and 805 of the Evidence Code apply to the  
11 proceedings conducted by the board pursuant to this  
12 article.

13 (c) The board may consider evidence presented by  
14 any person against whom a demand was made pursuant  
15 to subdivision (c) of Section 25372. The evidence  
16 presented by that person shall become a part of the  
17 record upon which the board's decision shall be based.

18 *SEC. 70. Section 32154 of the Health and Safety Code*  
19 *is amended to read:*

20 32154. The board or the hearing officer, if one is  
21 appointed, shall have the same power with respect to the  
22 issuance of subpoenas and subpoenas duces tecum as that  
23 granted to any agency or presiding officer pursuant to  
24 Article 11 (commencing with Section 11450.10) of  
25 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the  
26 Government Code. Any subpoena or subpoena duces  
27 tecum issued pursuant to this section shall have the same  
28 force and effect and impose the same obligations upon  
29 witnesses as that provided in Article 11 (commencing  
30 with Section 11450.10) of Chapter 4.5 of Part 1 of Division  
31 3 of Title 2 of the Government Code.

32 ~~SEC. 56.—~~

33 *SEC. 71. Section 40843 of the Health and Safety Code*  
34 *is amended to read:*

35 40843. Upon receipt of a report submitted pursuant to  
36 Section 40842, the superior court shall proceed as  
37 specified in Section 11455.20 of the Government Code.

38 ~~SEC. 57.—~~

39 *SEC. 72. Section 146 of the Labor Code is amended to*  
40 *read:*



1 146. In the conduct of hearings related to permanent  
2 variances, the board and its representatives are not  
3 bound by common law or statutory rules of evidence or  
4 by technical or formal rules of procedure but shall  
5 conduct the hearings in accordance with ~~the provisions~~  
6 ~~of Article 8 (commencing with Section 11435.05) of~~  
7 ~~Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and Section~~  
8 11513 of, the Government Code. A full and complete  
9 record shall be kept of all proceedings.

10 *SEC. 73.* Section 1144.5 is added to the Labor Code, to  
11 read:

12 ~~1144.5. (a) The administrative adjudication~~  
13 ~~provisions of the Administrative Procedure Act (Chapter~~  
14 ~~4.5 (commencing with Section 11400) and Chapter 5~~  
15 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
16 ~~of Title 2 of the Government Code) do not apply to a~~  
17 ~~hearing by the board under this part, except that Chapter~~  
18 ~~4.5 applies to a hearing to determine an unfair labor~~

19 *1144.5. (a) Notwithstanding Section 11425.10 of the*  
20 *Government Code, Chapter 4.5 (commencing with*  
21 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
22 *Government Code does not apply to a hearing by the*  
23 *board under this part, except a hearing to determine an*  
24 *unfair labor practice charge.*

25 (b) Notwithstanding Sections 11425.30 and 11430.10 of  
26 the Government Code, in a hearing to determine an  
27 unfair labor practice charge, a person who has  
28 participated in a determination of probable cause,  
29 injunctive or other pre-hearing relief, or other equivalent  
30 preliminary determination in an adjudicative proceeding  
31 may serve as presiding officer or as a supervisor of the  
32 presiding officer or may assist or advise the presiding  
33 officer in the same proceeding.

34 ~~SEC. 58.—~~

35 *SEC. 74.* Section 4600 of the Labor Code is amended  
36 to read:

37 4600. Medical, surgical, chiropractic, and hospital  
38 treatment, including nursing, medicines, medical and  
39 surgical supplies, crutches, and apparatus, including  
40 orthotic and prosthetic devices and services, that is



1 reasonably required to cure or relieve from the effects of  
2 the injury shall be provided by the employer. In the case  
3 of his or her neglect or refusal seasonably to do so, the  
4 employer is liable for the reasonable expense incurred by  
5 or on behalf of the employee in providing treatment.  
6 After 30 days from the date the injury is reported, the  
7 employee may be treated by a physician of his or her own  
8 choice or at a facility of his or her own choice within a  
9 reasonable geographic area. However, if an employee has  
10 notified his or her employer in writing prior to the date  
11 of injury that he or she has a personal physician, the  
12 employee shall have the right to be treated by that  
13 physician from the date of injury. If an employee requests  
14 a change of physician pursuant to Section 4601, the  
15 request may be made at any time after the injury, and the  
16 alternative physician or chiropractor shall be provided  
17 within five days of the request as required by Section  
18 4601. For the purpose of this section, “personal physician”  
19 means the employee’s regular physician and surgeon,  
20 licensed pursuant to Chapter 5 (commencing with  
21 Section 2000) of Division 2 of the Business and Professions  
22 Code, who has previously directed the medical treatment  
23 of the employee, and who retains the employee’s medical  
24 records, including his or her medical history.

25 Where at the request of the employer, the employer’s  
26 insurer, the administrative director, the appeals board, or  
27 a workers’ compensation judge, the employee submits to  
28 examination by a physician, he or she shall be entitled to  
29 receive in addition to all other benefits herein provided  
30 all reasonable expenses of transportation, meals, and  
31 lodging incident to reporting for the examination,  
32 together with one day of temporary disability indemnity  
33 for each day of wages lost in submitting to the  
34 examination. Regardless of the date of injury, “reasonable  
35 expenses of transportation” includes mileage fees from  
36 the employee’s home to the place of the examination and  
37 back at the rate of twenty-one cents (\$0.21) a mile or the  
38 mileage rate adopted by the Director of the Department  
39 of Personnel Administration pursuant to Section 19820 of  
40 the Government Code, whichever is higher, plus any



1 bridge tolls. The mileage and tolls shall be paid to the  
2 employee at the time he or she is given notification of the  
3 time and place of the examination.

4 Where at the request of the employer, the employer's  
5 insurer, the administrative director, the appeals board, a  
6 workers' compensation judge, an employee submits to  
7 examination by a physician and the employee does not  
8 proficiently speak or understand the English language, he  
9 or she shall be entitled to the services of a qualified  
10 interpreter in accordance with conditions and a fee  
11 schedule prescribed by the administrative director.  
12 These services shall be provided by the employer. For  
13 purposes of this section, "qualified interpreter" means a  
14 language interpreter certified, or deemed certified,  
15 pursuant to *Article 8 (commencing with Section*  
16 *11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2*  
17 *of, or Section 41513 or 68566 of, the Government Code.*

18 *SEC. 75. Section 5278 of the Labor Code is amended*  
19 *to read:*

20 5278. (a) No disclosure of any offers of settlement  
21 made by any party shall be made to the arbitrator prior  
22 to the filing of the award.

23 (b) ~~There shall be no ex parte communication by~~  
24 ~~counsel or the parties with~~ *Article 7 (commencing with*  
25 *Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of*  
26 *Title 2 of the Government Code applies to a*  
27 *communication to the arbitrator or a potential arbitrator*  
28 ~~except for the purpose of scheduling the arbitration~~  
29 ~~hearing or requesting a continuance.~~

30 *SEC. 76. Section 5710 of the Labor Code is amended*  
31 *to read:*

32 5710. (a) The appeals board, a workers'  
33 compensation judge, or any party to the action or  
34 proceeding, may, in any investigation or hearing before  
35 the appeals board, cause the deposition of witnesses  
36 residing within or without the state to be taken in the  
37 manner prescribed by law for like depositions in civil  
38 actions in the superior courts of this state. To that end the  
39 attendance of witnesses and the production of records  
40 may be required. Depositions may be taken outside the



1 state before any officer authorized to administer oaths.  
2 The appeals board or a workers' compensation judge in  
3 any proceeding before the appeals board may cause  
4 evidence to be taken in other jurisdictions before the  
5 agency authorized to hear workers' compensation  
6 matters in those other jurisdictions.

7 (b) Where the employer or insurance carrier requests  
8 a deposition to be taken of an injured employee, or any  
9 person claiming benefits as a dependent of an injured  
10 employee, the deponent is entitled to receive in addition  
11 to all other benefits:

12 (1) All reasonable expenses of transportation, meals,  
13 and lodging incident to the deposition.

14 (2) Reimbursement for any loss of wages incurred  
15 during attendance at the deposition.

16 (3) A copy of the transcript of the deposition, without  
17 cost.

18 (4) A reasonable allowance for attorney's fees for the  
19 deponent, if represented by an attorney licensed by the  
20 state bar of this state. The fee shall be discretionary with,  
21 and, if allowed, shall be set by, the appeals board, but shall  
22 be paid by the employer or his or her insurer.

23 (5) A reasonable allowance for interpreter's fees for  
24 the deponent, if interpretation services are needed and  
25 provided by a language interpreter certified or deemed  
26 certified pursuant to *Article 8 (commencing with Section*  
27 *11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2*  
28 *of, or Section ~~11513~~ or 68566* of, the Government Code.  
29 The fee shall be in accordance with the fee schedule set  
30 by the administrative director and paid by the employer  
31 or his or her insurer. Payment for interpreter's services  
32 shall be allowed for deposition of a non-English-speaking  
33 injured worker, and for ~~such~~ *any* other deposition-related  
34 events as permitted by the administrative director.

35 *SEC. 77.* Section 5811 of the Labor Code is amended  
36 to read:

37 5811. (a) No fees shall be charged by the clerk of any  
38 court for the performance of any official service required  
39 by this division, except for the docketing of awards as  
40 judgments and for certified copies of transcripts thereof.



1 In all proceedings under this division before the appeals  
2 board, costs as between the parties may be allowed by the  
3 appeals board.

4 (b) It shall be the responsibility of any party producing  
5 a witness requiring an interpreter to arrange for the  
6 presence of a qualified interpreter. A qualified  
7 interpreter is a language interpreter who is certified, or  
8 deemed certified, pursuant to Article 8 (commencing  
9 with Section 11435.05) of Chapter 4.5 of Part 1 of Division  
10 3 of Title 2 of, ~~and~~ or Section 68566 of, the Government  
11 Code.

12 Interpreter fees which are reasonably, actually, and  
13 necessarily incurred shall be allowed as cost under this  
14 section, provided they are in accordance with the fee  
15 schedule set by the administrative director.

16 A qualified interpreter may render services during the  
17 following:

18 (1) A deposition.

19 (2) An appeals board hearing.

20 (3) During those settings which the administrative  
21 director determines are reasonably necessary to ascertain  
22 the validity or extent of injury to an employee who cannot  
23 communicate in English.

24 ~~SEC. 59.—~~

25 *SEC. 78.* Section 6603 of the Labor Code is amended  
26 to read:

27 6603. (a) The rules of practice and procedure  
28 adopted by the appeals board shall be consistent with  
29 *Article 8 (commencing with Section 11435.05) of Chapter*  
30 *4.5 of Part 1 of Division 3 of Title 2 of, and Sections 11507,*  
31 *11507.6, 11507.7, 11513, 11514, 11515, and 11516 of, the*  
32 *Government Code, and shall provide affected employees*  
33 *or representatives of affected employees an opportunity*  
34 *to participate as parties to a hearing under Section 6602.*

35 (b) The superior courts shall have jurisdiction over  
36 contempt proceedings, as provided in Article 12  
37 (commencing with Section 11455.10) of Chapter 4.5 of  
38 Part 1 of Division 3 of Title 2 of the Government Code.

39 ~~SEC. 60.—~~



1 *SEC. 79.* Section 105 is added to the Military and  
2 Veterans Code, to read:

3 ~~105. The administrative adjudication provisions of the~~  
4 ~~Administrative Procedure Act (Chapter 4.5~~  
5 ~~(commencing with Section 11400) and Chapter 5~~  
6 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
7 ~~of Title 2 of the Government Code) do not apply to a~~

8 *105. Notwithstanding Section 11425.10 of the*  
9 *Government Code, Chapter 4.5 (commencing with*  
10 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
11 *Government Code does not apply to a hearing conducted*  
12 *by the Military Department under this code.*

13 ~~SEC. 61.—~~

14 *SEC. 80.* Section 3066 is added to the Penal Code, to  
15 read:

16 ~~3066. The administrative adjudication provisions of~~  
17 ~~the Administrative Procedure Act (Chapter 4.5~~  
18 ~~(commencing with Section 11400) and Chapter 5~~  
19 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
20 ~~of Title 2 of the Government Code) do not apply to a~~

21 *3066. Notwithstanding Section 11425.10 of the*  
22 *Government Code, Chapter 4.5 (commencing with*  
23 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
24 *Government Code does not apply to a parole hearing or*  
25 *other adjudication concerning rights of an inmate or*  
26 *parolee conducted by the Department of Corrections or*  
27 *the Board of Prison Terms.*

28 ~~SEC. 62.—~~

29 *SEC. 81. Section 663.1 of the Public Resources Code*  
30 *is amended to read:*

31 663.1. (a) For the purposes of this section, “ex parte  
32 communication” means any oral or written  
33 communication between a member of the board and an  
34 interested person about a matter within the board’s  
35 jurisdiction that does not occur in a public hearing,  
36 workshop, or other official proceeding, or on the official  
37 record of the proceeding on the matter.

38 (b) For purposes of this section, “a matter within the  
39 board’s jurisdiction” means any action on a reclamation  
40 plan or financial assurance appealed pursuant to



1 subdivision (e) of Section 2770, any review of an order  
2 setting administrative penalties pursuant to Section  
3 2774.2, or any review of an appeal pursuant to Section  
4 2775.

5 (c) (1) A board member or any person, other than a  
6 staff member of the board, department, or any other state  
7 agency, who is acting in his or her official capacity and  
8 who intends to influence the decision of the board on a  
9 matter within the board's jurisdiction, shall not conduct  
10 an ex parte communication, unless the board member or  
11 the person who engages in the communication with the  
12 board member discloses that communication in one of  
13 the following ways:

14 (A) The board member or the person fully discloses  
15 the communication and makes public the ex parte  
16 communication by providing a full report of the  
17 communication to the executive officer or, if the  
18 communication occurs within seven days of the next  
19 board hearing, to the board on the record of the  
20 proceeding of that hearing.

21 (B) When two or more board members receive  
22 substantially the same written communication or receive  
23 the same oral communication from the same party on the  
24 same matter, one of the board members fully discloses the  
25 communication on behalf of the other board member or  
26 members who received the communication and requests  
27 in writing that it be placed in the board's official record  
28 of the proceeding.

29 (d) (1) The board shall adopt standard disclosure  
30 forms for reporting ex parte communications which shall  
31 include, but not be limited to, all of the following  
32 information:

33 (A) The date, time, and location of the  
34 communication.

35 (B) The identity of the person or persons initiating and  
36 the person or persons receiving the communication.

37 (C) A complete description of the content of the  
38 communication, including the complete text of any  
39 written material that was part of the communication.



1 (2) The executive officer shall place in the public  
2 record any report of an ex parte communication.

3 (e) Communications shall cease to be ex parte  
4 communications when fully disclosed and placed in the  
5 board's official record.

6 (f) In addition to any other applicable penalty, a board  
7 member who knowingly violates this section is subject to  
8 a civil fine, not to exceed seven thousand five hundred  
9 dollars (\$7,500). Notwithstanding any law to the contrary,  
10 the court may award attorneys' fees and costs to the  
11 prevailing party.

12 (g) *Notwithstanding Section 11425.10 of the*  
13 *Government Code, the ex parte communications*  
14 *provisions of the Administrative Procedure Act (Article*  
15 *7 (commencing with Section 11430.10) of Chapter 4.5 of*  
16 *Part 1 of Division 3 of Title 2 of the Government Code)*  
17 *do not apply to proceedings of the board under this code.*

18 SEC. 82. Section 25513.3 is added to the Public  
19 Resources Code, to read:

20 25513.3. Notwithstanding Sections 11425.30 and  
21 11430.10 of the Government Code, unless a party  
22 demonstrates other statutory grounds for disqualification,  
23 a person who has served as investigator or advocate in an  
24 adjudicative proceeding of the commission under this  
25 code may serve as a supervisor of the presiding officer or  
26 assist or advise the presiding officer in the same  
27 proceeding if the service, assistance, or advice occurs  
28 more than one year after the time the person served as  
29 investigator or advocate, provided the content of any  
30 advice is disclosed on the record and all parties have an  
31 opportunity to comment on the advice.

32 ~~SEC. 63.—~~

33 SEC. 83. *Section 30329 is added to the Public*  
34 *Resources Code, to read:*

35 *30329. Notwithstanding Section 11425.10 of the*  
36 *Government Code, the ex parte communications*  
37 *provisions of the Administrative Procedure Act (Article*  
38 *7 (commencing with Section 11430.10) of Chapter 4.5 of*  
39 *Part 1 of Division 3 of Title 2 of the Government Code)*



1 *do not apply to proceedings of the California Coastal*  
2 *Commission under this division.*

3 *SEC. 84. Section 40412 of the Public Resources Code*  
4 *is amended to read:*

5 40412. (a) ~~For the purposes of this section, “ex parte~~  
6 ~~communication” means any oral or written~~  
7 ~~communication concerning matters, other than purely~~  
8 ~~procedural matters; Subject to subdivision (c), Article 7~~  
9 ~~(commencing with Section 11430.10) of Chapter 4.5 of~~  
10 ~~Part 1 of Division 3 of Title 2 of the Government Code~~  
11 ~~applies to matters under the board’s jurisdiction which~~  
12 ~~that are subject to a rollcall vote pursuant to Section~~  
13 ~~40510.~~

14 (b) ~~No board member or any person, excepting a staff~~  
15 ~~member of the board acting in his or her official capacity,~~  
16 ~~who intends to influence the decision of a board member~~  
17 ~~on a matter before the board, shall conduct an ex parte~~  
18 ~~communication, except as follows:~~

19 ~~(1) If an ex parte a communication in violation of this~~  
20 ~~section occurs, the board member shall notify the~~  
21 ~~interested party that a full disclosure of the ex parte~~  
22 ~~communication shall be entered in the board’s record.~~

23 ~~(2) Communications cease to be ex parte~~  
24 ~~communications when~~

25 (c) *It is not a violation of this section if either of the*  
26 *following occurs:*

27 (A)

28 (1) The board member or the person who engaged in  
29 the communication with the board member fully  
30 discloses the communication and requests in writing that  
31 it be placed in the board’s official record of the  
32 proceeding.

33 (B)

34 (2) When two or more board members receive  
35 substantially the same written communication, or are  
36 party to the same oral communication, from the same  
37 party on the same matter, and a single board member  
38 fully discloses the communication on behalf of the other  
39 board member or members who received the



1 communication and requests in writing that it be placed  
 2 in the board's official record of the proceeding.

3 *SEC. 85. Section 40413 of the Public Resources Code*  
 4 *is amended to read:*

5 40413. (a) Any person who violates Section 40411 or  
 6 40412 is punishable by a fine of not more than fifty  
 7 thousand dollars (\$50,000) or by imprisonment for not  
 8 more than one year in the county jail or in the state prison,  
 9 or by both that fine and imprisonment.

10 (b) *In addition to the sanctions provided in Article 7*  
 11 *(commencing with Section 11430.10) of Chapter 4.5 of*  
 12 *Part 1 of Division 3 of Title 2 of the Government Code,*  
 13 *any person who violates Section 40412 is punishable by a*  
 14 *fine of not more than fifty thousand dollars (\$50,000) or*  
 15 *by imprisonment for not more than one year in the*  
 16 *county jail or in the state prison, or by both that fine and*  
 17 *imprisonment.*

18 *SEC. 86. Section 1701 of the Public Utilities Code is*  
 19 *amended to read:*

20 1701. (a) All hearings, investigations, and  
 21 proceedings shall be governed by this part and by rules  
 22 of practice and procedure adopted by the commission,  
 23 and in the conduct thereof the technical rules of evidence  
 24 need not be applied. No informality in any hearing,  
 25 investigation, or proceeding or in the manner of taking  
 26 testimony shall invalidate any order, decision or rule  
 27 made, approved, or confirmed by the commission.

28 ~~(b) The administrative adjudication provisions of the~~  
 29 ~~Administrative Procedure Act (Chapter 4.5~~  
 30 ~~(commencing with Section 11400) and Chapter 5~~  
 31 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
 32 ~~of Title 2 of the Government Code) do not apply to a~~

33 (b) *Notwithstanding Section 11425.10 of the*  
 34 *Government Code, Chapter 4.5 (commencing with*  
 35 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
 36 *Government Code does not apply to a hearing by the*  
 37 *commission under this part.*

38 ~~SEC. 64.—~~

39 *SEC. 87. Section 1636 of the Revenue and Taxation*  
 40 *Code is amended to read:*



1 1636. The county board of supervisors may appoint  
2 one or more assessment hearing officers or contract with  
3 the Office of Administrative Hearings for the services of  
4 an administrative law judge pursuant to Chapter 14  
5 (commencing with Section 27720) of Part 3 of Division 2  
6 of Title 3 of the Government Code to conduct hearings on  
7 any assessment protests filed under Article 1  
8 (commencing with Section 1601) of this chapter and to  
9 make recommendations to the county board of  
10 equalization or assessment appeals board concerning the  
11 protests. Only persons meeting the qualifications  
12 prescribed by Section 1624 may be appointed as an  
13 assessment hearing officer.

14 ~~SEC. 65.—~~

15 *SEC. 88. Section 409 of the Unemployment Insurance*  
16 *Code is amended to read:*

17 409. The chairperson shall assign cases before the  
18 board to any two members of the board for consideration  
19 and decision. Assignments by the chairperson of  
20 members to the cases shall be rotated so as to equalize the  
21 workload of the members, but with the composition of  
22 the members so assigned being varied and changed to  
23 assure that there shall never be a fixed and continuous  
24 composition of members. Except as otherwise provided,  
25 the decision of the two members assigned the case shall  
26 be the decision of the appeals board. In the event that the  
27 two members do not concur in the decision, the  
28 chairperson or another member of the board designated  
29 by the chairperson shall be assigned to the panel and shall  
30 resolve the impasse. A case shall be considered and  
31 decided by the appeals board acting as a whole at the  
32 request of any member of the appeals board.

33 The appeals board shall meet as a whole when the  
34 chairperson may direct to consider and pass on any  
35 matters that the chairperson may bring before it, and to  
36 consider and decide cases that present issues of first  
37 impression or that will enable the appeals board to  
38 achieve uniformity of decisions by the respective  
39 members.



1 The appeals board, acting as a whole, may designate  
2 certain of its decisions as precedents. Precedent decisions  
3 ~~shall not be subject to Chapter 3.5 (commencing with~~  
4 ~~Section 11340) of Part 1 of Division 3 of the appeals board~~  
5 ~~are subject to Section 11425.60 of the Government Code.~~  
6 The appeals board, acting as a whole, may, on its own  
7 motion, reconsider a previously issued decision solely to  
8 determine whether or not the decision shall be  
9 designated as a precedent decision. Decisions of the  
10 appeals board acting as a whole shall be by a majority vote  
11 of its members. The director and the appeals board  
12 administrative law judges shall be controlled by those  
13 precedents except as modified by judicial review.

14 ~~The decisions of the appeals board shall contain a~~  
15 ~~statement of the facts upon which the decision is based,~~  
16 ~~and a statement of the decision itself and the reasons for~~  
17 ~~the decision.~~ If the appeals board issues decisions other  
18 than those designated as precedent decisions, anything  
19 incorporated in those decisions shall be physically  
20 attached to and be made a part of the decisions. ~~The~~  
21 ~~appeals board shall maintain an index of significant legal~~  
22 ~~and policy determinations made in precedent decisions.~~  
23 ~~The index shall be updated at least annually, unless no~~  
24 ~~precedent decision has been designated since the most~~  
25 ~~recent update. The index shall be made available to the~~  
26 ~~public by subscription, and its availability shall be~~  
27 ~~publicized annually in the California Regulatory Notice~~  
28 ~~Register.~~ The appeals board may make a reasonable  
29 charge as it deems necessary to defray the costs of  
30 publication and distribution *of its precedent decisions*  
31 *and index of precedent decisions.*

32 *SEC. 89. Section 3066 of the Vehicle Code is amended*  
33 *to read:*

34 3066. (a) Upon receiving a notice of protest pursuant  
35 to Section 3060, 3062, 3064, or 3065, the board shall fix a  
36 time, which shall be within 60 days of the order, and place  
37 of hearing, and shall send by registered mail a copy of the  
38 order to the franchisor, the protesting franchisee, and all  
39 individuals and groups which have requested notification  
40 by the board of protests and decisions of the board.



1 Except in any case involving a franchisee who deals  
2 exclusively in motorcycles, the board or its secretary may,  
3 upon a showing of good cause, accelerate or postpone the  
4 date initially established for a hearing, but in no event  
5 shall the hearing be rescheduled more than 90 days after  
6 the board's initial order. For the purpose of accelerating  
7 or postponing a hearing date, "good cause" includes, but  
8 is not limited to, the effects upon, and any irreparable  
9 harm to, the parties or interested persons or groups if the  
10 request for a change in hearing date is not granted. The  
11 board, or a hearing officer designated by the board, shall  
12 hear and consider the oral and documented evidence  
13 introduced by the parties and other interested  
14 individuals and groups, and the board shall make its  
15 decision solely on the record so made. Sections 11507.6,  
16 11507.7, ~~except subdivision (e), 11510,~~ 11511, 11513, 11514,  
17 11515, and 11517 of the Government Code apply to these  
18 proceedings.

19 (b) In any hearing on a protest filed pursuant to  
20 Section 3060 or 3062, the franchisor shall have the burden  
21 of proof to establish that there is good cause to modify,  
22 replace, terminate, or refuse to continue a franchise. The  
23 franchisee shall have the burden of proof to establish that  
24 there is good cause not to enter into a franchise  
25 establishing or relocating an additional motor vehicle  
26 dealership.

27 (c) In any hearing on a protest filed pursuant to  
28 Section 3064 or 3065, the franchisee shall have the burden  
29 to establish that the schedule of compensation or the  
30 warranty reimbursement schedule is not reasonable.

31 (d) A member of the board who is a new motor vehicle  
32 dealer may not participate in, hear, comment, or advise  
33 other members upon, or decide, any matter involving a  
34 protest filed pursuant to this article.

35 *SEC. 90. Section 11728 of the Vehicle Code is*  
36 *amended to read:*

37 11728. As part of a compromise settlement agreement  
38 entered into pursuant to Section 11707 or 11808.5, the  
39 department may assess a monetary penalty of not more  
40 than two thousand five hundred dollars (\$2,500) per



1 violation and impose a license suspension of not more  
 2 than 30 days for any dealer who violates subdivision (r)  
 3 of Section 11713. The extent of the penalties shall be based  
 4 on the nature of the violation and effect of the violation  
 5 on the purposes of this article. Except for the penalty  
 6 limits provided for in Sections 11707 and 11808.5, all the  
 7 provisions governing compromise settlement  
 8 agreements for dealers, ~~salesmen~~ salespersons, and  
 9 wholesalers apply to this section, and Section 11415.60 of  
 10 the Government Code does not apply.

11 SEC. 91. Section 14112 of the Vehicle Code is  
 12 amended to read:

13 14112. (a) All matters in a hearing not covered by  
 14 this chapter shall be governed, as far as applicable, by  
 15 Chapter 5 (commencing with Section 11500) of Part 1 of  
 16 Division 3 of Title 2 of the Government Code.

17 (b) Subdivision (a) of Section 11425.30 of the  
 18 Government Code does not apply to a proceeding for  
 19 issuance, denial, revocation, or suspension of a driver's  
 20 license pursuant to this division. The Department of  
 21 Motor Vehicles shall study the effect of that subdivision  
 22 on proceedings involving vehicle operation certificates  
 23 and shall report to the Legislature by December 31, 1999,  
 24 with recommendations concerning experience with its  
 25 application in those proceedings.

26 ~~SEC. 66.—~~

27 SEC. 92. Section 1778 is added to the Welfare and  
 28 Institutions Code, to read:

29 ~~1778. The administrative adjudication provisions of~~  
 30 ~~the Administrative Procedure Act (Chapter 4.5~~  
 31 ~~(commencing with Section 11400) and Chapter 5~~  
 32 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
 33 ~~of Title 2 of the Government Code) do not apply to a~~

34 1778. Notwithstanding Section 11425.10 of the  
 35 Government Code, Chapter 4.5 (commencing with  
 36 Section 11400) of Part 1 of Division 3 of Title 2 of the  
 37 Government Code does not apply to a parole hearing or  
 38 other adjudication concerning rights of a person  
 39 committed to the control of the Youth Authority



1 conducted by the Youth Authority or the Youthful  
2 Offender Parole Board.

3 ~~SEC. 67.—~~

4 *SEC. 93.* Section 3158 is added to the Welfare and  
5 Institutions Code, to read:

6 ~~3158. The administrative adjudication provisions of~~  
7 ~~the Administrative Procedure Act (Chapter 4.5~~  
8 ~~(commencing with Section 11400) and Chapter 5~~  
9 ~~(commencing with Section 11500) of Part 1 of Division 3~~  
10 ~~of Title 2 of the Government Code) do not apply to a~~

11 *3158. Notwithstanding Section 11425.10 of the*  
12 *Government Code, Chapter 4.5 (commencing with*  
13 *Section 11400) of Part 1 of Division 3 of Title 2 of the*  
14 *Government Code does not apply to a release hearing or*  
15 *other adjudication concerning rights of a person*  
16 *committed to the custody of the Director of Corrections*  
17 *conducted by the Narcotic Addiction Evaluation*  
18 *Authority.*

19 ~~SEC. 68.—~~

20 *SEC. 94.* Section 4689.5 of the Welfare and Institutions  
21 Code is amended to read:

22 4689.5. (a) Proceeding for the termination, or denial  
23 of vendorization as a family home agency or family home  
24 pursuant to Section 4689.4 shall be conducted in  
25 accordance with Chapter 5 (commencing with Section  
26 11500) of Part 1 of Division 3 of Title 2 of the Government  
27 Code, and the State Department of Developmental  
28 Services shall have all the powers granted by Chapter 5.  
29 In the event of conflict between this section and Chapter  
30 5, Chapter 5 shall prevail.

31 (b) In all proceedings conducted in accordance with  
32 this section, the standard of proof to be applied shall be  
33 a preponderance of the evidence.

34 (c) The hearing shall be held within 90 calendar days  
35 after receipt of the notice of defense, unless a  
36 continuance of the hearing is granted by the department  
37 or the administrative law judge. When the matter has  
38 been set for hearing, only the administrative law judge  
39 may grant a continuance of the hearing. The  
40 administrative law judge may grant a continuance of the



1 hearing, but only upon finding the existence of one or  
2 more of the following:

3 (1) The death or incapacitating illness of a party, a  
4 representative or attorney of a party, a witness to an  
5 essential fact, or of the parent, child, or member of the  
6 household of that person, when it is not feasible to  
7 substitute another representative, attorney, or witness  
8 because of the proximity of the hearing date.

9 (2) Lack of notice of hearing as provided in Section  
10 11509 of the Government Code.

11 (3) A material change in the status of the case where  
12 a change in the parties or pleadings requires  
13 postponement, or an executed settlement or stipulated  
14 findings of fact obviate the need for hearing. A partial  
15 amendment of the pleadings shall not be good cause for  
16 continuance to the extent that the unamended portion of  
17 the pleadings is ready to be heard.

18 (4) A stipulation for continuance signed by all parties  
19 or their authorized representatives that is communicated  
20 with the request for continuance to the administrative  
21 law judge no later than 25 business days before the  
22 hearing.

23 (5) The substitution of the representative or attorney  
24 of a party upon showing that the substitution is required.

25 (6) The unavailability of a party, representative, or  
26 attorney of a party, or witness to an essential fact due to  
27 a conflicting and required appearance in a judicial matter  
28 if when the hearing date was set, the person did not know  
29 and could neither anticipate nor at any time avoid the  
30 conflict, and the conflict with request for continuance is  
31 immediately communicated to the administrative law  
32 judge.

33 (7) The unavailability of a party, a representative or  
34 attorney of a party, or a material witness due to an  
35 unavoidable emergency.

36 (8) Failure by a party to comply with a timely  
37 discovery request if the continuance request is made by  
38 the party who requested the discovery.

39 (d) ~~Notwithstanding Section 11510 of the~~  
40 ~~Government Code, witnesses subpoenaed at the request~~



1 ~~of the department for a hearing conducted pursuant to~~  
2 ~~this section who attend a hearing may be paid by the~~  
3 ~~department witness fees and mileage as provided by~~  
4 ~~Section 68093 of the Government Code.~~ In addition *to the*  
5 *witness fees and mileage provided by Section 11450.40 of*  
6 *the Government Code*, the department may pay actual,  
7 necessary, and reasonable expenses in an amount not to  
8 exceed the per diem allowance payable to a  
9 nonrepresented state employee on travel status. The  
10 department may pay witness expenses ~~pursuant to this~~  
11 ~~section~~ in advance of the hearing.

12 *SEC. 95.* Section 11350.6 of the Welfare and  
13 Institutions Code is amended to read:

14 11350.6. (a) As used in this section:

15 (1) “Applicant” means any person applying for  
16 issuance or renewal of a license.

17 (2) “Board” means any entity specified in Section 101  
18 of the Business and Professions Code, the entities referred  
19 to in Sections 1000 and 3600 of the Business and  
20 Professions Code, the State Bar, the Department of Real  
21 Estate, and any other state commission, department,  
22 committee, examiner, or agency that issues a license,  
23 certificate, credential, or registration authorizing a  
24 person to engage in a business, occupation, or profession.

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

32 (4) “Compliance with a judgment or order for  
33 support” means that, as set forth in a judgment or order  
34 for child or family support, the obligor is no more than 30  
35 calendar days in arrears in making payments in full for  
36 current support, in making periodic payments in full,  
37 whether court-ordered or by agreement with the district  
38 attorney, on a support arrearage, or in making periodic  
39 payments in full, whether court-ordered or by agreement  
40 with the district attorney, on a judgment for

1 reimbursement for public assistance, or has obtained a  
2 judicial finding that equitable estoppel as provided in  
3 statute or case law precludes enforcement of the order.  
4 The district attorney is authorized to use this section to  
5 enforce orders for spousal support only when the district  
6 attorney is also enforcing a related child support  
7 obligation owed to the obligee parent by the same  
8 obligor, pursuant to Sections 11475.1 and 11475.2.

9 (5) "License" includes membership in the State Bar,  
10 and a certificate, permit, registration, or any other  
11 authorization issued by a board that allows a person to  
12 engage in a business, occupation, or profession, or to  
13 operate a commercial motor vehicle.

14 (6) "Licensee" means any person holding a license,  
15 certificate, permit, registration, or other authorization  
16 issued by a board, to engage in a business, occupation, or  
17 profession, or a commercial driver's license as defined in  
18 Section 15210 of the Vehicle Code.

19 (b) The district attorney shall maintain a list of those  
20 persons included in a case being enforced under Title  
21 IV-D of the Social Security Act against whom a support  
22 order or judgment has been rendered by, or registered in,  
23 a court of this state, and who are not in compliance with  
24 that order or judgment. The district attorney shall submit  
25 a certified list with the names, social security numbers,  
26 and last known addresses of these persons and the name,  
27 address, and telephone number of the district attorney  
28 who certified the list to the State Department of Social  
29 Services. The district attorney shall verify, under penalty  
30 of perjury, that the persons listed are subject to an order  
31 or judgment for the payment of support and that these  
32 persons are not in compliance with the order or  
33 judgment. The district attorney shall submit to the State  
34 Department of Social Services an updated certified list on  
35 a monthly basis.

36 (c) The State Department of Social Services shall  
37 consolidate the certified lists received from the district  
38 attorneys and, within 30 calendar days of receipt, shall  
39 provide a copy of the consolidated list to each board



1 which is responsible for the regulation of licenses, as  
2 specified in this section.

3 (d) On or before November 1, 1992, or as soon  
4 thereafter as economically feasible, as determined by the  
5 State Department of Social Services, all boards subject to  
6 this section shall implement procedures to accept and  
7 process the list provided by the State Department of  
8 Social Services, in accordance with this section.

9 (e) (1) Promptly after receiving the certified  
10 consolidated list from the State Department of Social  
11 Services, and prior to the issuance or renewal of a license,  
12 each board shall determine whether the applicant is on  
13 the most recent certified consolidated list provided by the  
14 State Department of Social Services. The board shall have  
15 the authority to withhold issuance or renewal of the  
16 license of any applicant on the list.

17 (2) If an applicant is on the list, the board shall  
18 immediately serve notice as specified in subdivision (f)  
19 on the applicant of the board's intent to withhold issuance  
20 or renewal of the license. The notice shall be made  
21 personally or by mail to the applicant's last known mailing  
22 address on file with the board. Service by mail shall be  
23 complete in accordance with Section 1013 of the Code of  
24 Civil Procedure.

25 (A) The board shall issue a temporary license valid for  
26 a period of 150 days to any applicant whose name is on the  
27 certified list if the applicant is otherwise eligible for a  
28 license.

29 (B) The 150-day time period for a temporary license  
30 shall not be extended. Only one temporary license shall  
31 be issued during a regular license term and it shall  
32 coincide with the first 150 days of that license term. As this  
33 paragraph applies to commercial driver licenses, "license  
34 term" shall be deemed to be 12 months from the date the  
35 application fee is received by the Department of Motor  
36 Vehicles. A license for the full or remainder of the license  
37 term shall be issued or renewed only upon compliance  
38 with this section.

39 (C) In the event that a license or application for a  
40 license or the renewal of a license is denied pursuant to



1 this section, any funds paid by the applicant or licensee  
2 shall not be refunded by the board.

3 (3) (A) The State Department of Social Services may,  
4 when it is economically feasible for the department and  
5 the boards to do so as determined by the department, in  
6 cases where the department is aware that certain child  
7 support obligors listed on the certified lists have been out  
8 of compliance with a judgment or order for support for  
9 more than four months, provide a supplemental list of  
10 these obligors to each board with which the department  
11 has an interagency agreement to implement this  
12 paragraph. Upon request by the department, the licenses  
13 of these obligors shall be subject to suspension, provided  
14 that the licenses would not otherwise be eligible for  
15 renewal within six months from the date of the request by  
16 the department. The board shall have the authority to  
17 suspend the license of any licensee on this supplemental  
18 list.

19 (B) If a licensee is on a supplemental list, the board  
20 shall immediately serve notice as specified in subdivision  
21 (f) on the licensee that his or her license will be  
22 automatically suspended 150 days after notice is served,  
23 unless compliance with this section is achieved. The  
24 notice shall be made personally or by mail to the licensee's  
25 last known mailing address on file with the board. Service  
26 by mail shall be complete in accordance with Section 1013  
27 of the Code of Civil Procedure.

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

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

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

34 (f) Notices shall be developed by each board in  
35 accordance with guidelines provided by the State  
36 Department of Social Services and subject to approval by  
37 the State Department of Social Services. The notice shall  
38 include the address and telephone number of the district  
39 attorney who submitted the name on the certified list,  
40 and shall emphasize the necessity of obtaining a release



1 from that district attorney's office as a condition for the  
2 issuance, renewal, or continued valid status of a license or  
3 licenses.

4 (1) In the case of applicants not subject to paragraph  
5 (3) of subdivision (e), the notice shall inform the  
6 applicant that the board shall issue a temporary license,  
7 as provided in subparagraph (A) of paragraph (2) of  
8 subdivision (e), for 150 calendar days if the applicant is  
9 otherwise eligible and that upon expiration of that time  
10 period the license will be denied unless the board has  
11 received a release from the district attorney who  
12 submitted the name on the certified list.

13 (2) In the case of licensees named on a supplemental  
14 list, the notice shall inform the licensee that his or her  
15 license will continue in its existing status for no more than  
16 150 calendar days from the date of mailing or service of  
17 the notice and thereafter will be suspended indefinitely  
18 unless, during the 150-day notice period, the board has  
19 received a release from the district attorney who  
20 submitted the name on the certified list. Additionally, the  
21 notice shall inform the licensee that any license  
22 suspended under this section will remain so until the  
23 expiration of the remaining license term, unless the board  
24 receives a release along with applications and fees, if  
25 applicable, to reinstate the license during the license  
26 term.

27 (3) The notice shall also inform the applicant that if an  
28 application is denied or a license is suspended pursuant  
29 to this section, any funds paid by the applicant or licensee  
30 shall not be refunded by the board. The State  
31 Department of Social Services shall also develop a form  
32 that the applicant shall use to request a review by the  
33 district attorney. A copy of this form shall be included  
34 with every notice sent pursuant to this subdivision.

35 (g) Each district attorney shall maintain review  
36 procedures consistent with this section to allow an  
37 applicant to have the underlying arrearage and any  
38 relevant defenses investigated, to provide an applicant  
39 information on the process of obtaining a modification of  
40 a support order, or to provide an applicant assistance in



1 the establishment of a payment schedule on arrearages if  
2 the circumstances so warrant.

3 (h) If the applicant wishes to challenge the submission  
4 of his or her name on the certified list, the applicant shall  
5 make a timely written request for review on the form  
6 specified in subdivision (f) to the district attorney who  
7 certified the applicant's name. The district attorney shall,  
8 within 75 days of receipt of the written request, inform  
9 the applicant in writing of his or her findings upon  
10 completion of the review. The district attorney shall  
11 immediately send a release to the appropriate board and  
12 the applicant, if any of the following conditions are met:

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

16 (2) The applicant has submitted a request for review,  
17 but the district attorney will be unable to complete the  
18 review and send notice of his or her findings to the  
19 applicant within 75 days. This paragraph applies only if  
20 the delay in completing the review process is not the  
21 result of the applicant's failure to act in a reasonable,  
22 timely, and diligent manner upon receiving notice from  
23 the board that his or her name is on the list.

24 (3) The applicant has filed and served a request for  
25 judicial review pursuant to this section, but a resolution  
26 of that review will not be made within 150 days of the date  
27 of service of notice pursuant to subdivision (f). This  
28 paragraph applies only if the delay in completing the  
29 judicial review process is not the result of the applicant's  
30 failure to act in a reasonable, timely, and diligent manner  
31 upon receiving the district attorney's notice of his or her  
32 findings.

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

35 (i) An applicant is required to act with diligence in  
36 responding to notices from the board and the district  
37 attorney with the recognition that the temporary license  
38 will lapse or the license suspension will go into effect after  
39 150 days and that the district attorney and, where  
40 appropriate, the court must have time to act within that



1 period. An applicant's delay in acting, without good  
2 cause, which directly results in the inability of the district  
3 attorney to complete a review of the applicant's request  
4 or the court to hear the request for judicial review within  
5 the 150-day period shall not constitute the diligence  
6 required under this section which would justify the  
7 issuance of a release.

8 (j) Except as otherwise provided in this section, the  
9 district attorney shall not issue a release if the applicant  
10 is not in compliance with the judgment or order for  
11 support. The district attorney shall notify the applicant in  
12 writing that the applicant may, by filing an order to show  
13 cause or notice of motion, request any or all of the  
14 following:

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

17 (2) A judicial determination of compliance.

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

19 The notice shall also contain the name and address of  
20 the court in which the applicant shall file the order to  
21 show cause or notice of motion and inform the applicant  
22 that his or her name shall remain on the certified list if the  
23 applicant does not timely request judicial review. The  
24 applicant shall comply with all statutes and rules of court  
25 regarding orders to show cause and notices of motion.

26 Nothing in this section shall be deemed to limit an  
27 applicant from filing an order to show cause or notice of  
28 motion to modify a support judgment or order or to fix a  
29 payment schedule on arrearages accruing under a  
30 support judgment or order or to obtain a court finding of  
31 compliance with a judgment or order for support.

32 (k) The request for judicial review of the district  
33 attorney's decision shall state the grounds for which  
34 review is requested and judicial review shall be limited to  
35 those stated grounds. The court shall hold an evidentiary  
36 hearing within 20 calendar days of the filing of the request  
37 for review. Judicial review of the district attorney's  
38 decision shall be limited to a determination of each of the  
39 following issues:



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

3 (2) Whether the petitioner is the obligor covered by  
4 the support judgment or order.

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

7 (4) The extent to which the needs of the obligor,  
8 taking into account the obligor's payment history and the  
9 current circumstances of both the obligor and the  
10 obligee, warrant a conditional release as described in this  
11 subdivision.

12 The request for judicial review shall be served by the  
13 applicant upon the district attorney who submitted the  
14 applicant's name on the certified list within seven  
15 calendar days of the filing of the petition. The court has  
16 the authority to uphold the action, unconditionally  
17 release the license, or conditionally release the license.

18 If the judicial review results in a finding by the court  
19 that the obligor is in compliance with the judgment or  
20 order for support, the district attorney shall immediately  
21 send a release in accordance with subdivision (h) to the  
22 appropriate board and the applicant. If the judicial  
23 review results in a finding by the court that the needs of  
24 the obligor warrant a conditional release, the court shall  
25 make findings of fact stating the basis for the release and  
26 the payment necessary to satisfy the unrestricted  
27 issuance or renewal of the license without prejudice to a  
28 later judicial determination of the amount of support  
29 arrearages, including interest, and shall specify payment  
30 terms, compliance with which are necessary to allow the  
31 release to remain in effect.

32 (l) The State Department of Social Services shall  
33 prescribe release forms for use by district attorneys.  
34 When the obligor is in compliance, the district attorney  
35 shall mail to the applicant and the appropriate board a  
36 release stating that the applicant is in compliance. The  
37 receipt of a release shall serve to notify the applicant and  
38 the board that, for the purposes of this section, the  
39 applicant is in compliance with the judgment or order for  
40 support.



1 If the district attorney determines subsequent to the  
2 issuance of a release that the applicant is once again not  
3 in compliance with a judgment or order for support, or  
4 with the terms of repayment as described in this  
5 subdivision, the district attorney may notify the board,  
6 the obligor, and the State Department of Social Services  
7 in a format prescribed by the State Department of Social  
8 Services that the obligor is not in compliance.

9 The State Department of Social Services may, when it  
10 is economically feasible for the department and the  
11 boards to develop an automated process for complying  
12 with this subdivision, notify the boards in a manner  
13 prescribed by the department, that the obligor is once  
14 again not in compliance. Upon receipt of this notice, the  
15 board shall immediately notify the obligor on a form  
16 prescribed by the department that the obligor's license  
17 will be suspended on a specific date, and this date shall be  
18 no longer than 30 days from the date the form is mailed.  
19 The obligor shall be further notified that the license will  
20 remain suspended until ~~such time~~ a new release is issued  
21 in accordance with subdivision (h). Nothing in this  
22 section shall be deemed to limit the obligor from seeking  
23 judicial review of suspension pursuant to the procedures  
24 described in this subdivision.

25 (m) The State Department of Social Services may  
26 enter into interagency agreements with the state  
27 agencies that have responsibility for the administration of  
28 boards necessary to implement this section, to the extent  
29 that it is cost-effective to implement this section. These  
30 agreements shall provide for the receipt by the other  
31 state agencies and boards of federal funds to cover that  
32 portion of costs allowable in federal law and regulation  
33 and incurred by the state agencies and boards in  
34 implementing this section. Notwithstanding any other  
35 provision of law, revenue generated by a board or state  
36 agency shall be used to fund the nonfederal share of costs  
37 incurred pursuant to this section. These agreements shall  
38 provide that boards shall reimburse the State  
39 Department of Social Services for the nonfederal share of  
40 costs incurred by the department in implementing this



1 section. The boards shall reimburse the State  
2 Department of Social Services for the nonfederal share of  
3 costs incurred pursuant to this section from moneys  
4 collected from applicants.

5 (n) Notwithstanding any other provision of law, in  
6 order for the boards subject to this section to be  
7 reimbursed for the costs incurred in administering its  
8 provisions, the boards may, with the approval of the  
9 appropriate department director, levy on all licensees  
10 and applicants a surcharge on any fee or fees collected  
11 pursuant to law, or, alternatively, with the approval of the  
12 appropriate department director, levy on the applicants  
13 or licensees named on a certified list or supplemental list,  
14 a special fee.

15 (o) The process described in subdivision (h) shall  
16 constitute the sole administrative remedy for contesting  
17 the issuance of a temporary license or the denial or  
18 suspension of a license under this section. The procedures  
19 specified in 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) shall not apply to the  
24 denial, suspension, or failure to issue or renew a license or  
25 the issuance of a temporary license pursuant to this  
26 section.

27 (p) In furtherance of the public policy of increasing  
28 child support enforcement and collections, on or before  
29 November 1, 1995, the State Department of Social  
30 Services shall make a report to the Legislature and the  
31 Governor based on data collected by the boards and the  
32 district attorneys in a format prescribed by the State  
33 Department of Social Services. The report shall contain  
34 all of the following:

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

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

39 (3) The number of new licenses and renewals that  
40 were delayed, temporary licenses issued, and licenses



1 suspended subject to this section and the number of new  
2 licenses and renewals granted and licenses reinstated  
3 following board receipt of releases as provided by  
4 subdivision (h) by May 1, 1995.

5 (4) The costs incurred in the implementation and  
6 enforcement of this section.

7 (q) Any board receiving an inquiry as to the licensed  
8 status of an applicant who has had a license denied or  
9 suspended under this section or has been granted a  
10 temporary license under this section shall respond only  
11 that the license was denied or suspended or the  
12 temporary license was issued pursuant to this section.  
13 Information collected pursuant to this section shall be  
14 subject to the Information Practices Act (Section 1798.76  
15 of the Civil Code).

16 (r) Any rules and regulations issued pursuant to this  
17 section may be adopted as emergency regulations in  
18 accordance with the rulemaking provisions of the  
19 Administrative Procedure Act (Chapter 3.5  
20 commencing with Section 11340) of Part 1 of Division 3  
21 of Title 2 of the Government Code). The adoption of  
22 these regulations shall be deemed an emergency and  
23 necessary for the immediate preservation of the public  
24 peace, health, and safety, or general welfare. The  
25 regulations shall become effective immediately upon  
26 filing with the Secretary of State.

27 (s) The State Department of Social Services and  
28 boards, as appropriate, shall adopt regulations necessary  
29 to implement this section.

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

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

36 (v) If any provision of this section or the application  
37 thereof to any person or circumstance is held invalid, that  
38 invalidity shall not affect other provisions or applications  
39 of this section which can be given effect without the



1 invalid provision or application, and to this end the  
2 provisions of this section are severable.

3 (w) All rights to administrative and judicial review  
4 afforded by this section to an applicant shall also be  
5 afforded to a licensee.

6 ~~SEC. 69.—~~

7 *SEC. 96.* (a) Except as provided in subdivision (b),  
8 this act shall be operative on July 1, 1997.

9 (b) If Section 443.37 of the Health and Safety Code is  
10 repealed before July 1, 1997, then Section ~~50~~ 59 of this act  
11 shall not become operative.

