



C A L I F O R N I A

# Water Boards

STATE WATER RESOURCES CONTROL BOARD

REGIONAL WATER QUALITY CONTROL BOARDS

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## OCC Misc. Meeting Code Sections

**Bagley-Keene, APA Chapter 4.5, and  
Miscellaneous Water Code Provisions  
(As amended, including Statutes 2023)**

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**JANUARY 2024**

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD



STATE OF CALIFORNIA  
Gavin Newsom, Governor

STATE WATER RESOURCES CONTROL BOARD

Joaquin Esquivel, Chair  
Dorene D'Adamo, Member  
Sean Maguire, Member  
Laurel Firestone, Member  
Nichole Morgan, Member

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Eric Oppenheimer, Executive Director  
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Compiled by the Office of Chief Counsel

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# STATE WATER RESOURCES CONTROL BOARD AND CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARDS

The State Water Resources Control Board was established in 1967 by the Legislature. The Board succeeded to the functions of the former State Water Rights Board and the State Water Quality Control Board. The nine California Regional Water Quality Control Boards were originally established in the Dickey Water Pollution Control Act of 1949. Together the ten water boards have primarily responsibility for implementing and enforcing the Porter-Cologne Water Quality Control Act (Porter-Cologne Act).

This pamphlet contains the Bagley-Keene Open Meeting Act and Chapter 4.5 (Administrative Adjudications) of the Administrative Procedures Act. The State Water Resources Control Board publishes this collection as part of its public information program. This booklet is provided as a public service. Bracketed headings in Division 7 are not part of the code, but are editorial insertions for the benefit of the reader. While every effort is made to assure accuracy, persons should consult the official version of the California Code when making legal decisions. The California Legislative Counsel maintains the official code, which is accessible on the Internet at:

<http://leginfo.legislature.ca.gov/faces/codes.xhtml>.



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## **EVIDENCE CODE**

### **DIVISION 7. OPINION TESTIMONY AND SCIENTIFIC EVIDENCE [800 - 870]**

*(Division 7 enacted by Stats. 1965, Ch. 299.)*

#### **CHAPTER 1. EXPERT AND OTHER OPINION TESTIMONY [800 - 870]**

*(Chapter 1 enacted by Stats. 1965, Ch. 299.)*

##### **ARTICLE 1. EXPERT AND OTHER OPINION TESTIMONY GENERALLY [800 - 805]**

*(Article 1 enacted by Stats. 1965, Ch. 299.)*

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**§ 801.** If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is:

- (a) Related to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact; and
- (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates, unless an expert is precluded by law from using such matter as a basis for his opinion.

*(Enacted by Stats. 1965, Ch. 299.)*

**§ 802.** A witness testifying in the form of an opinion may state on direct examination the reasons for his opinion and the matter (including, in the case of an expert, his special knowledge, skill, experience, training, and education) upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based.

*(Enacted by Stats. 1965, Ch. 299.)*

**§ 803.** The court may, and upon objection shall, exclude testimony in the form of an opinion that is based in whole or in significant part on matter that is not a proper basis for such an opinion. In such case, the witness may, if there remains a proper basis for his opinion, then state his opinion after excluding from consideration the matter determined to be improper.

*(Enacted by Stats. 1965, Ch. 299.)*

**§ 804.** (a) If a witness testifying as an expert testifies that his opinion is based in whole or in part upon the opinion or statement of another person, such other

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person may be called and examined by any adverse party as if under cross-examination concerning the opinion or statement.

(b) This section is not applicable if the person upon whose opinion or statement the expert witness has relied is (1) a party, (2) a person identified with a party within the meaning of subdivision (d) of Section 776, or (3) a witness who has testified in the action concerning the subject matter of the opinion or statement upon which the expert witness has relied.

(c) Nothing in this section makes admissible an expert opinion that is inadmissible because it is based in whole or in part on the opinion or statement of another person.

(d) An expert opinion otherwise admissible is not made inadmissible by this section because it is based on the opinion or statement of a person who is unavailable for examination pursuant to this section.

*(Enacted by Stats. 1965, Ch. 299.)*

**§ 805.** Testimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.

*(Enacted by Stats. 1965, Ch. 299.)*

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## **GOVERNMENT CODE**

### **TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA**

#### **[8000 - 22980]**

*(Title 2 enacted by Stats. 1943, Ch. 134.)*

### **DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986]**

*(Division 3 added by Stats. 1945, Ch. 111.)*

#### **PART 1. STATE DEPARTMENTS AND AGENCIES [11000 - 11894]**

*(Part 1 added by Stats. 1945, Ch. 111.)*

##### **CHAPTER 1. STATE AGENCIES [11000 - 11148.5]**

*(Chapter 1 added by Stats. 1945, Ch. 111.)*

###### **Article 9. Meetings**

*(Article 9 added by Stats. 1967, Ch. 1656.)*

###### **§ 11120. *[Findings and short title]***

It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.

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In enacting this article the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

This article shall be known and may be cited as the Bagley-Keene Open Meeting Act.

(Amended by Stats. 1981, Ch. 968, Sec. 4.)

### **§ 11121. [State body]**

As used in this article, "state body" means each of the following:

- (a) Every state board, or commission, or similar multimember body of the state that is created by statute or required by law to conduct official meetings and every commission created by executive order.
- (b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.
- (c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons.
- (d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.
- (e) Notwithstanding subdivision (a) of Section 11121.1, the State Bar of California, as described in Section 6001 of the Business and Professions Code. This subdivision shall become operative on April 1, 2016.

(Amended by Stats. 2015, Ch. 537, Sec. 22. Effective January 1, 2016.)

#### **§ 11121.1. [State body exclusions]**

As used in this article, "state body" does not include any of the following:

- (a) Except as provided in subdivision (e) of Section 11121, state agencies provided for in Article VI of the California Constitution.
- (b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).
- (c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-

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Burton Open Meeting Act (Article 2.2 (commencing with Section 9027) of Chapter 1.5 of Part 1 of Division 2 of Title 2).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

(Amended by Stats. 2015, Ch. 537, Sec. 23. Effective January 1, 2016.)

#### **§ 11121.9. [Providing copy to new members]**

Each state body shall provide a copy of this article to each member of the state body upon his or her appointment to membership or assumption of office.

(Amended by Stats. 1981, Ch. 968, Sec. 7.1.)

#### **§ 11121.95. [Appointees or elected officials who have not yet assumed duties]**

Any person appointed or elected to serve as a member of a state body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this article and shall be treated for purposes of this article as if he or she has already assumed office.

(Added by Stats. 1997, Ch. 949, Sec. 1. Effective January 1, 1998.)

#### **§ 11122. [Action taken]**

As used in this article “action taken” means a collective decision made by the members of a state body, a collective commitment or promise by the members of the state body to make a positive or negative decision or an actual vote by the members of a state body when sitting as a body or entity upon a motion, proposal, resolution, order or similar action.

(Amended by Stats. 1981, Ch. 968, Sec. 7.3.)

#### **§ 11122.5. [Meeting and exceptions]**

(a) As used in this article, “meeting” includes any congregation of a majority of the members of a state body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains.

(b) (1) A majority of the members of a state body shall not, outside of a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter of the state body.

(2) Paragraph (1) shall not be construed to prevent an employee or official of a state agency from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter

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that is within the subject matter jurisdiction of the state agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

(c) The prohibitions of this article do not apply to any of the following:

(1) Individual contacts or conversations between a member of a state body and any other person that do not violate subdivision (b).

(2) (A) The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.

(B) Subparagraph (A) does not allow members of the public free admission to a conference or similar gathering at which the organizers have required other participants or registrants to pay fees or charges as a condition of attendance.

(3) The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.

(4) The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency as defined by Section 54951, if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.

(5) The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.

(6) The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.

*(Amended by Stats. 2009, Ch. 150, Sec. 1. Effective January 1, 2010.)*

### **§ 11123. [Open meetings]**

(a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

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(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:

(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.

(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.

(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.

(D) All votes taken during a teleconferenced meeting shall be by rollcall.

(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.

(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(c) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

*(Amended by Stats. 2014, Ch. 510, Sec. 1. Effective January 1, 2015.)*

### **§ 11123.1. [Americans with Disabilities Act compliance]**

All meetings of a state body that are open and public shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

*(Added by Stats. 2002, Ch. 300, Sec. 1. Effective January 1, 2003.)*

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**§ 11123.2. [Teleconference option for open or closed meetings where a majority is in same physical location]**

(a) For purposes of this section, the following definitions apply:

(1) "Teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video.

(2) "Teleconference location" means a physical location that is accessible to the public and from which members of the public may participate in the meeting.

(3) "Remote location" means a location from which a member of a state body participates in a meeting other than a teleconference location.

(4) "Participate remotely" means participation by a member of the body in a meeting at a remote location other than a teleconference location designated in the notice of the meeting.

(b)(1) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123 and Section 11123.5, a state body may hold an open or closed meeting by teleconference as described in this section, provided the meeting complies with all of this section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article relating to the specific type of meeting.

(2) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article, including Sections 11123 and 11123.5.

(c) The portion of the teleconferenced meeting that is required to be open to the public shall be visible and audible to the public at each teleconference location.

(d)(1) The state body shall provide a means by which the public may remotely hear audio of the meeting, remotely observe the meeting, remotely address the body, or attend the meeting by providing on the posted agenda a teleconference telephone number, an internet website or other online platform, and a physical address for each teleconference location. The telephonic or online means provided to the public to access the meeting shall be equivalent to the telephonic or online means provided to a member of the state body participating remotely.

(2) The applicable teleconference telephone number, internet website or other online platform, and physical address of each teleconference location, as well as any other information indicating how the public can access the meeting remotely and in person, shall be specified in any notice required by this article.

(3) If the state body allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall do both of the following:

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(A) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(B) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment.

(e) This section does not prohibit a state body from providing members of the public with additional locations from which the public may observe or address the state body by electronic means, through either audio or both audio and video.

(f)(1) The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7.

(2) Members of the public shall be entitled to exercise their right to directly address the state body during the teleconferenced meeting without being required to submit public comments before the meeting or in writing.

(g) The state body shall post the agenda on its internet website and, on the day of the meeting, at each teleconference location.

(h) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting in accordance with the applicable notice requirements of this article, including Section 11125, requiring the state body to post an agenda of a meeting at least 10 days in advance of the meeting, Section 11125.4, applicable to special meetings, and Sections 11125.5 and 11125.6, applicable to emergency meetings.

(i) At least one member of the state body shall be physically present at each teleconference location.

(j)(1) Except as provided in paragraph (2), a majority of the members of the state body shall be physically present at the same teleconference location. Additional members of the state body in excess of a majority of the members may attend and participate in the meeting from a remote location. A remote location is not required to be accessible to the public. The notice and agenda shall not disclose information regarding a remote location.

(2) A member attending and participating from a remote location may count toward the majority required to hold a teleconference if both of the following conditions are met:

(A) The member has a need related to a physical or mental disability, as those terms are defined in Sections 12926 and 12926.1, that is not otherwise reasonably accommodated pursuant to the federal Americans with Disability Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(B) The member notifies the state body at the earliest opportunity possible, including at the start of a meeting, of their need to participate remotely,

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including providing a general description of the circumstances relating to their need to participate remotely at the given meeting.

(3) If a member notifies the body of the member's need to attend and participate remotely pursuant to paragraph (2), the body shall take action to approve the exception and shall request a general description of the circumstances relating to the member's need to participate remotely at the meeting, for each meeting in which the member seeks to participate remotely. The body shall not require the member to provide a general description that exceeds 20 words or to disclose any medical diagnosis or disability, or any personal medical information that is already exempt under existing law, such as the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code).

(4) If a member of the state body attends the meeting by teleconference from a remote location, the member shall disclose whether any other individuals 18 years of age or older are present in the room at the remote location with the member, and the general nature of the member's relationship with any such individuals.

(k)(1) Except as provided in paragraph (2), the members of the state body shall visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform.

(2) The visual appearance of a member of the state body on camera may cease only when the appearance would be technologically impracticable, including, but not limited to, when the member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video, or when the visual display of meeting materials, information, or speakers on the internet or other online platform requires the visual appearance of a member of a state body on camera to cease.

(3) If a member of the state body does not appear on camera due to challenges with internet connectivity, the member shall announce the reason for their nonappearance when they turn off their camera.

(l) All votes taken during the teleconferenced meeting shall be by rollcall.

(m) The state body shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(n) The portion of the teleconferenced meeting that is closed to the public shall not include the consideration of any agenda item being heard pursuant to Section 11125.5.

(o) Upon discovering that a means of remote public access and participation required by subdivision (d) has failed during a meeting and cannot be restored, the state body shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on the state body's internet website and by email to any person who has requested notice of

meetings of the state body by email under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, internet website, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(p) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

(Added by Stats.2023, c. 216 (S.B.544), § 1, eff. Jan. 1, 2024.)

**§ 11123.5. [Teleconference and remote participation options for advisory bodies]**

Section operative until January 1, 2026. See, also, section 11123.5 operative January 1, 2026.

(a) For purposes of this section, the following definitions apply:

(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.

(3) "Teleconference" has the same meaning as in Section 11123.

(b) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123 or Section 11123.2, any state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.

(c) A member of a state body as described in subdivision (b) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.

(d) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its internet website and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (f).

(e) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical

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meeting location designated pursuant to subdivision (f), but is not required to disclose information regarding any remote location.

(f) A state body described in subdivision (b) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting, observe and hear the meeting, and participate. At least one staff member of the state body shall be present at the primary physical meeting location during the meeting. The state body shall post the agenda at the primary physical meeting location, but need not post the agenda at a remote location.

(g) When a member of a state body described in subdivision (b) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely. The applicable teleconference phone number or internet website, or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (b) that is available to the public.

(h)(1) Except as provided in paragraph (2), the members of the state body shall visibly appear on camera during the open portion of a meeting that is publicly accessible via the internet or other online platform.

(2) The visual appearance of a member of a state body on camera may cease only when the appearance would be technologically impracticable, including, but not limited to, when the member experiences a lack of reliable broadband or internet connectivity that would be remedied by joining without video, or when the visual display of meeting materials, information, or speakers on the internet or other online platform requires the visual appearance of a member of a state body on camera to cease.

(3) If a member of the body does not appear on camera due to challenges with internet connectivity, the member shall announce the reason for their nonappearance when they turn off their camera.

(i) Upon discovering that a means of remote access required by subdivision (g) has failed during a meeting, the state body described in subdivision (b) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its internet website and by email to any person who has requested notice of meetings of the state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(j) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.

(k) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

(Added by Stats.2018, c. 881 (A.B.2958), § 1, eff. Jan. 1, 2019. Amended by Stats.2023, c. 216 (S.B.544), § 2, eff. Jan. 1, 2024.)

***Section operative January 1, 2026. See above for section 11123.5 operative until January 1, 2026.***

**§ 11123.5. [OPERATIVE JANUARY 1, 2026 – Teleconference and remote participation options for advisory bodies]**

(a) In addition to the authorization to hold a meeting by teleconference pursuant to subdivision (b) of Section 11123, any state body that is an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body may hold an open meeting by teleconference as described in this section, provided the meeting complies with all of the section's requirements and, except as set forth in this section, it also complies with all other applicable requirements of this article.

(b) A member of a state body as described in subdivision (a) who participates in a teleconference meeting from a remote location subject to this section's requirements shall be listed in the minutes of the meeting.

(c) The state body shall provide notice to the public at least 24 hours before the meeting that identifies any member who will participate remotely by posting the notice on its internet website and by emailing notice to any person who has requested notice of meetings of the state body under this article. The location of a member of a state body who will participate remotely is not required to be disclosed in the public notice or email and need not be accessible to the public. The notice of the meeting shall also identify the primary physical meeting location designated pursuant to subdivision (e).

(d) This section does not affect the requirement prescribed by this article that the state body post an agenda of a meeting at least 10 days in advance of the meeting. The agenda shall include information regarding the physical meeting location designated pursuant to subdivision (e), but is not required to disclose information regarding any remote location.

(e) A state body described in subdivision (a) shall designate the primary physical meeting location in the notice of the meeting where members of the public may physically attend the meeting and participate. A quorum of the members of the state body shall be in attendance at the primary physical meeting location, and members of the state body participating remotely shall not count towards establishing a quorum. All decisions taken during a meeting by teleconference shall be by rollcall vote. The state body shall post the agenda

at the primary physical meeting location, but need not post the agenda at a remote location.

(f) When a member of a state body described in subdivision (a) participates remotely in a meeting subject to this section's requirements, the state body shall provide a means by which the public may remotely hear audio of the meeting or remotely observe the meeting, including, if available, equal access equivalent to members of the state body participating remotely. The applicable teleconference phone number or internet website, or other information indicating how the public can access the meeting remotely, shall be in the 24-hour notice described in subdivision (a) that is available to the public.

(g) Upon discovering that a means of remote access required by subdivision (f) has failed during a meeting, the state body described in subdivision (a) shall end or adjourn the meeting in accordance with Section 11128.5. In addition to any other requirements that may apply, the state body shall provide notice of the meeting's end or adjournment on its internet website and by email to any person who has requested notice of meetings of the state body under this article. If the meeting will be adjourned and reconvened on the same day, further notice shall be provided by an automated message on a telephone line posted on the state body's agenda, or by a similar means, that will communicate when the state body intends to reconvene the meeting and how a member of the public may hear audio of the meeting or observe the meeting.

(h) For purposes of this section:

(1) "Participate remotely" means participation in a meeting at a location other than the physical location designated in the agenda of the meeting.

(2) "Remote location" means a location other than the primary physical location designated in the agenda of a meeting.

(3) "Teleconference" has the same meaning as in Section 11123.

(i) This section does not limit or affect the ability of a state body to hold a teleconference meeting under another provision of this article.

(j) This section shall become operative on January 1, 2026.

#### Credits

(Added by Stats.2023, c. 216 (S.B.544), § 3, eff. Jan. 1, 2024, operative Jan. 1, 2026.)

### **§ 11124. [No conditions for attendance]**

(a) No person shall be required, as a condition to attendance at a meeting of a state body, to register their name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to their attendance.

(b) If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all

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persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

(c) This section does not apply to an internet website or other online platform that may require the submission of information to log into a teleconferenced meeting, provided, however, that a person required to submit such information shall be permitted to submit a pseudonym or other anonymous information when using the internet website or other online platform to attend the meeting.

Credits

(Amended by Stats. 2023, c. 216 (S.B.544), § 4, eff. Jan. 1, 2024.)

**§ 11124.1. [Recording of meetings and inspection/deletion of state's recording]**

(a) Any person attending an open and public meeting of the state body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera in the absence of a reasonable finding by the state body that the recording cannot continue without noise, illumination, or obstruction of view that constitutes, or would constitute, a persistent disruption of the proceedings.

(b) Any audio or video recording of an open and public meeting made for whatever purpose by or at the direction of the state body shall be subject to inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), but may be erased or destroyed 30 days after the recording. Any inspection of an audio or video recording shall be provided without charge on equipment made available by the state body.

(c) No state body shall prohibit or otherwise restrict the broadcast of its open and public meetings in the absence of a reasonable finding that the broadcast cannot be accomplished without noise, illumination, or obstruction of view that would constitute a persistent disruption of the proceedings.

(Amended by Stats. 2021, Ch. 615, Sec. 161. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

**§ 11125. [Notice]**

(a) The state body shall provide notice of its meeting to any person who requests that notice in writing. Notice shall be given and also made available on the Internet at least 10 days in advance of the meeting, and shall include the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. The written notice shall additionally include the address of the Internet site where notices required by this article are made available.

(b) The notice of a meeting of a body that is a state body shall include a specific agenda for the meeting, containing a brief description of the items of

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business to be transacted or discussed in either open or closed session. A brief general description of an item generally need not exceed 20 words. A description of an item to be transacted or discussed in closed session shall include a citation of the specific statutory authority under which a closed session is being held. No item shall be added to the agenda subsequent to the provision of this notice, unless otherwise permitted by this article.

(c) Notice of a meeting of a state body that complies with this section shall also constitute notice of a meeting of an advisory body of that state body, provided that the business to be discussed by the advisory body is covered by the notice of the meeting of the state body, provided that the specific time and place of the advisory body's meeting is announced during the open and public state body's meeting, and provided that the advisory body's meeting is conducted within a reasonable time of, and nearby, the meeting of the state body.

(d) A person may request, and shall be provided, notice pursuant to subdivision (a) for all meetings of a state body or for a specific meeting or meetings. In addition, at the state body's discretion, a person may request, and may be provided, notice of only those meetings of a state body at which a particular subject or subjects specified in the request will be discussed.

(e) A request for notice of more than one meeting of a state body shall be subject to the provisions of Section 14911.

(f) The notice shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by any person with a disability. The notice shall include information regarding how, to whom, and by when a request for any disability-related modification or accommodation, including auxiliary aids or services may be made by a person with a disability who requires these aids or services in order to participate in the public meeting.

*(Amended by Stats. 2002, Ch. 300, Sec. 2. Effective January 1, 2003.)*

#### **§ 11125.1. [Agendas]**

(a) Notwithstanding Section 7922.000 or any other provisions of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of a state body by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 7924.100, 7924.105, 7924.110, 7924.510, or 7924.700 of this code, any provision listed in Section 7920.505 of this code, or Section 489.1 or 583 of the Public Utilities Code.

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(b) Writings that are public records under subdivision (a) and that are distributed to members of the state body prior to or during a meeting, pertaining to any item to be considered during the meeting, shall be made available for public inspection at the meeting if prepared by the state body or a member of the state body, or after the meeting if prepared by some other person. These writings shall be made available in appropriate alternative formats, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, upon request by a person with a disability.

(c) In the case of the Franchise Tax Board, prior to that state body taking final action on any item, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by the Franchise Tax Board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request notice in writing pursuant to subdivision (a) of Section 11125.

(3) Made available on the internet.

(d) Prior to the State Board of Equalization taking final action on any item that does not involve a named taxpayer or feepayer, writings pertaining to that item that are public records under subdivision (a) that are prepared and distributed by board staff or individual members to members of the state body prior to or during a meeting shall be:

(1) Made available for public inspection at that meeting.

(2) Distributed to all persons who request or have requested copies of these writings.

(3) Made available on the internet.

(e) Nothing in this section shall be construed to prevent a state body from charging a fee or deposit for a copy of a public record pursuant to Section 7922.530, except that no surcharge shall be imposed on persons with disabilities in violation of Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. The writings described in subdivision (b) are subject to the requirements of the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall not be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record covered by that act. This section shall not be construed to be applicable to any writings solely because they are properly discussed in a closed session of a state body. Nothing in this article shall be construed to require a state body to place any paid advertisement or any other paid notice in any publication.

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(f) "Writing" for purposes of this section means "writing" as defined under Section 7920.545.

*(Amended by Stats. 2021, Ch. 615, Sec. 162. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)*

**§ 11125.2. [Public report of personnel actions]**

Any state body shall report publicly at a subsequent public meeting any action taken, and any rollcall vote thereon, to appoint, employ, or dismiss a public employee arising out of any closed session of the state body.

*(Amended by Stats. 1981, Ch. 968, Sec. 10.3.)*

**§ 11125.3. [Requirements for action on items not appearing on agenda]**

(a) Notwithstanding Section 11125, a state body may take action on items of business not appearing on the posted agenda under any of the conditions stated below:

(1) Upon a determination by a majority vote of the state body that an emergency situation exists, as defined in Section 11125.5.

(2) Upon a determination by a two-thirds vote of the state body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there exists a need to take immediate action and that the need for action came to the attention of the state body subsequent to the agenda being posted as specified in Section 11125.

(b) Notice of the additional item to be considered shall be provided to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after a determination of the need to consider the item is made, but shall be delivered in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet as soon as is practicable after the decision to consider additional items at a meeting has been made.

*(Amended by Stats. 2001, Ch. 243, Sec. 9. Effective January 1, 2002.)*

**§ 11125.4. [Special meetings]**

(a) A special meeting may be called at any time by the presiding officer of the state body or by a majority of the members of the state body. A special meeting may only be called for one of the following purposes when compliance with the 10-day notice provisions of Section 11125 would impose a substantial hardship on the state body or when immediate action is required to protect the public interest:

(1) To consider "pending litigation" as that term is defined in subdivision (e) of Section 11126.

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- (2) To consider proposed legislation.
  - (3) To consider issuance of a legal opinion.
  - (4) To consider disciplinary action involving a state officer or employee.
  - (5) To consider the purchase, sale, exchange, or lease of real property.
  - (6) To consider license examinations and applications.
  - (7) To consider an action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.
  - (8) To consider its response to a confidential final draft audit report as permitted by Section 11126.2.
  - (9) To provide for an interim executive officer of a state body upon the death, incapacity, or vacancy in the office of the executive officer.
- (b) When a special meeting is called pursuant to one of the purposes specified in subdivision (a), the state body shall provide notice of the special meeting to each member of the state body and to all parties that have requested notice of its meetings as soon as is practicable after the decision to call a special meeting has been made, but shall deliver the notice in a manner that allows it to be received by the members and by newspapers of general circulation and radio or television stations at least 48 hours before the time of the special meeting specified in the notice. Notice shall be made available to newspapers of general circulation and radio or television stations by providing that notice to all national press wire services. Notice shall also be made available on the Internet within the time periods required by this section. The notice shall specify the time and place of the special meeting and the business to be transacted. The written notice shall additionally specify the address of the Internet Web site where notices required by this article are made available. No other business shall be considered at a special meeting by the state body. The written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the state body a written waiver of notice. The waiver may be given by telegram, facsimile transmission, or similar means. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Notice shall be required pursuant to this section regardless of whether any action is taken at the special meeting.
- (c) At the commencement of any special meeting, the state body must make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 would cause a substantial hardship on the body or that immediate action is required to protect the public interest. The finding shall set forth the specific facts that constitute the hardship to the body or the impending harm to the public interest. The finding shall be adopted by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members

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present. The finding shall be made available on the Internet. Failure to adopt the finding terminates the meeting.

(Amended by Stats. 2007, Ch. 92, Sec. 1. Effective January 1, 2008.)

#### **§ 11125.5. [Emergency meetings]**

(a) In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a state body may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4.

(b) For purposes of this section, "emergency situation" means any of the following, as determined by a majority of the members of the state body during a meeting prior to the emergency meeting, or at the beginning of the emergency meeting:

(1) Work stoppage or other activity that severely impairs public health or safety, or both.

(2) Crippling disaster that severely impairs public health or safety, or both.

(c) However, newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the state body, or a designee thereof, one hour prior to the emergency meeting by telephone. Notice shall also be made available on the Internet as soon as is practicable after the decision to call the emergency meeting has been made. If telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the presiding officer of the state body, or a designee thereof, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(d) The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the state body, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place, and also made available on the Internet for a minimum of 10 days, as soon after the meeting as possible.

(Amended by Stats. 1999, Ch. 393, Sec. 3. Effective January 1, 2000. As provided in Sec. 7 of Ch. 393, amendment is to be implemented on July 1, 2001, or other date authorized by Dept. of Information Technology pursuant to Executive Order D-3-99.)

#### **§ 11125.6. [Fish and Game Commission emergency meetings]**

(a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an

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emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

*(Added by Stats. 1998, Ch. 1052, Sec. 21. Effective January 1, 1999.)*

**§ 11125.7. *[Agenda item opportunity for public comment and free expression]***

(a) Except as otherwise provided in this section, the state body shall provide an opportunity for members of the public to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item. This section is not applicable if the agenda item has already been considered by a committee composed exclusively of members of the state body at a public meeting where interested members of the public were afforded the opportunity to address the committee on the item, before or during the

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committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the state body. Every notice for a special meeting at which action is proposed to be taken on an item shall provide an opportunity for members of the public to directly address the state body concerning that item prior to action on the item. In addition, the notice requirement of Section 11125 shall not preclude the acceptance of testimony at meetings, other than emergency meetings, from members of the public if no action is taken by the state body at the same meeting on matters brought before the body by members of the public.

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

(c) (1) Notwithstanding subdivision (b), when a state body limits time for public comment the state body shall provide at least twice the allotted time to a member of the public who utilizes a translator or other translating technology to ensure that non-English speakers receive the same opportunity to directly address the state body.

(2) Paragraph (1) shall not apply if the state body utilizes simultaneous translation equipment in a manner that allows the state body to hear the translated public testimony simultaneously.

(d) The state body shall not prohibit public criticism of the policies, programs, or services of the state body, or of the acts or omissions of the state body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

(e) This section is not applicable to any of the following:

(1) Closed sessions held pursuant to Section 11126.

(2) Decisions regarding proceedings held pursuant to Chapter 5 (commencing with Section 11500), relating to administrative adjudication, or to the conduct of those proceedings.

(3) Hearings conducted by the California Victim Compensation Board pursuant to Sections 13963 and 13963.1.

(4) Agenda items that involve decisions of the Public Utilities Commission regarding adjudicatory hearings held pursuant to Chapter 9 (commencing with Section 1701) of Part 1 of Division 1 of the Public Utilities Code. For all other agenda items, the commission shall provide members of the public, other than those who have already participated in the proceedings underlying the agenda item, an opportunity to directly address the commission before or during the commission's consideration of the item.

*(Amended by Stats. 2021, Ch. 63, Sec. 1. (AB 1291) Effective January 1, 2022.)*

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**§ 11125.8. [Victim Compensation and Government Claims Board]**

(a) Notwithstanding Section 11131.5, in any hearing that the California Victim Compensation Board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, no notice, agenda, announcement, or report required under this article need identify the applicant.

(b) In any hearing that the board conducts pursuant to Section 13963.1 and that the applicant or applicant's representative does not request be open to the public, the board shall disclose that the hearing is being held pursuant to Section 13963.1. That disclosure shall be deemed to satisfy the requirements of subdivision (a) of Section 11126.3.

(Amended by Stats. 2016, Ch. 31, Sec. 72. Effective June 27, 2016.)

**§ 11125.9. [Regional water boards additional notice requirements]**

Regional water quality control boards shall comply with the notification guidelines in Section 11125 and, in addition, shall do both of the following:

(a) Notify, in writing, all clerks of the city councils and county boards of supervisors within the regional board's jurisdiction of any and all board hearings at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting. Each clerk, upon receipt of the notification of a board hearing, shall distribute the notice to all members of the respective city council or board of supervisors within the regional board's jurisdiction.

(b) Notify, in writing, all newspapers with a circulation rate of at least 10,000 within the regional board's jurisdiction of any and all board hearings, at least 10 days prior to the hearing. Notification shall include an agenda for the meeting with contents as described in subdivision (b) of Section 11125 as well as the name, address, and telephone number of any person who can provide further information prior to the meeting, but need not include a list of witnesses expected to appear at the meeting.

(Added by Stats. 1997, Ch. 301, Sec. 1. Effective January 1, 1998.)

**§ 11126. [Closed session]**

(a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of their right to have a public hearing, rather than a closed

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session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

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(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board or the Cannabis Control Appeals Panel from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

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(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

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(B) Notwithstanding any other law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d) (1) Notwithstanding any other law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

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(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(3) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to subparagraph (A) of paragraph (2), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (B) or (C) of paragraph (2), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 7927.205.

(4) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(5) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and

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Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy for plans

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offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), former Part 6.3 (commencing with Section 12695), former Part 6.4 (commencing with Section 12699.50), former Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

*(Amended by Stats. 2021, Ch. 615, Sec. 163. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)*

#### **§ 11126.1. [Minutes of closed sessions]**

The state body shall designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions

made at the meeting. The minute book made pursuant to this section is not a public record subject to inspection pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1), and shall be kept confidential. The minute book shall be available to members of the state body or, if a violation of this chapter is alleged to have occurred at a closed session, to a court of general jurisdiction. The minute book may, but need not, consist of a recording of the closed session.

(Amended by Stats. 2021, Ch. 615, Sec. 164. (AB 474) Effective January 1, 2022. Operative January 1, 2023, pursuant to Sec. 463 of Stats. 2021, Ch. 615.)

#### **§ 11126.2. [Closed session for State Audit Reports]**

(a) Nothing in this article shall be construed to prohibit a state body that has received a confidential final draft audit report from the Bureau of State Audits from holding closed sessions to discuss its response to that report.

(b) After the public release of an audit report by the Bureau of State Audits, if a state body meets to discuss the audit report, it shall do so in an open session unless exempted from that requirement by some other provision of law. (Added by Stats. 2004, Ch. 576, Sec. 2. Effective January 1, 2005.)

#### **§ 11126.3. [Notice of closed session items and limitations on closed session]**

(a) Prior to holding any closed session, the state body shall disclose, in an open meeting, the general nature of the item or items to be discussed in the closed session. The disclosure may take the form of a reference to the item or items as they are listed by number or letter on the agenda. If the session is closed pursuant to paragraph (2) of subdivision (d) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the proceeding or disciplinary action contemplated. However, should the body determine that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties if the proceeding or disciplinary action is commenced or that to do so would fail to protect the private economic and business reputation of the person or entity if the proceeding or disciplinary action is not commenced, then the state body shall notice that there will be a closed session and describe in general terms the purpose of that session. If the session is closed pursuant to subparagraph (A) of paragraph (2) of subdivision (e) of Section 11126, the state body shall state the title of, or otherwise specifically identify, the litigation to be discussed unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(b) In the closed session, the state body may consider only those matters covered in its disclosure.

(c) The disclosure shall be made as part of the notice provided for the meeting pursuant to Section 11125 or pursuant to subdivision (a) of Section

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92032 of the Education Code and of any order or notice required by Section 11129.

(d) If, after the agenda has been published in compliance with this article, any pending litigation (under subdivision (e) of Section 11126) matters arise, the postponement of which will prevent the state body from complying with any statutory, court-ordered, or other legally imposed deadline, the state body may proceed to discuss those matters in closed session and shall publicly announce in the meeting the title of, or otherwise specifically identify, the litigation to be discussed, unless the body states that to do so would jeopardize the body's ability to effectuate service of process upon one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage. Such an announcement shall be deemed to comply fully with the requirements of this section.

(e) Nothing in this section shall require or authorize a disclosure of names or other information that would constitute an invasion of privacy or otherwise unnecessarily divulge the particular facts concerning the closed session or the disclosure of which is prohibited by state or federal law.

(f) After any closed session, the state body shall reconvene into open session prior to adjournment and shall make any reports, provide any documentation, and make any other disclosures required by Section 11125.2 of action taken in the closed session.

(g) The announcements required to be made in open session pursuant to this section may be made at the location announced in the agenda for the closed session, as long as the public is allowed to be present at that location for the purpose of hearing the announcement.

*(Amended by Stats. 2001, Ch. 243, Sec. 11. Effective January 1, 2002.)*

#### **§ 11126.4. [Gambling Control Commission]**

(a) Nothing in this article shall be construed to prevent the California Gambling Control Commission from holding a closed session when discussing matters involving trade secrets, nonpublic financial data, confidential or proprietary information, and other data and information, the public disclosure of which is prohibited by law or a tribal-state gaming compact.

(b) Discussion in closed session authorized by this section shall be limited to the confidential data and information related to the agendized item and shall not include discussion of any other information or matter.

(c) Before going into closed session the commission shall publicly announce the type of data or information to be discussed in closed session, which shall be recorded upon the commission minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

*(Added by Stats. 2005, Ch. 274, Sec. 1. Effective January 1, 2006.)*

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**§ 11126.4.5. [Tribal Grant Panel; closed session]**

(a) This article does not prohibit the Tribal Nation Grant Panel from holding a closed session when discussing matters involving information relating to the administration of Article 2.3 (commencing with Section 12019.30) of Chapter 1 of Part 2 that describes, directly or indirectly, the internal affairs of an eligible tribe, including, but not limited to, the finances and competitive business plans of an eligible tribe.

(b) Discussion in closed session authorized by this section shall be limited to the confidential information related to the agendized item and shall not include discussion of any other information or matter.

(c) Before going into closed session, the Tribal Nation Grant Panel shall publicly announce the type of information to be discussed in closed session, which shall be recorded in the minutes.

(d) Action taken on agenda items discussed pursuant to this section shall be taken in open session.

(e) For purposes of this section, the terms “Tribal Nation Grant Panel” and “eligible tribe” shall have the same meanings as set forth in Article 2.3 (commencing with Section 12019.30) of Chapter 1 of Part 2.

(Added by Stats. 2018, Ch. 801, Sec. 1. (AB 880) Effective January 1, 2019.)

**§ 11126.5. [Interruption of meetings]**

In the event that any meeting is willfully interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are willfully interrupting the meeting the state body conducting the meeting may order the meeting room cleared and continue in session. Nothing in this section shall prohibit the state body from establishing a procedure for readmitting an individual or individuals not responsible for willfully disturbing the orderly conduct of the meeting. Notwithstanding any other provision of law, only matters appearing on the agenda may be considered in such a session. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section.

(Amended by Stats. 1981, Ch. 968, Sec. 15.)

**§ 11126.7. [No fees]**

No fees may be charged by a state body for providing a notice required by Section 11125 or for carrying out any provision of this article, except as specifically authorized pursuant to this article.

(Amended by Stats. 1981, Ch. 968, Sec. 16.)

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**§ 11127. [All state bodies]**

Each provision of this article shall apply to every state body unless the body is specifically excepted from that provision by law or is covered by any other conflicting provision of law.

(Amended by Stats. 1981, Ch. 968, Sec. 17.)

**§ 11128. [Limitations on holding closed session]**

Each closed session of a state body shall be held only during a regular or special meeting of the body.

(Amended by Stats. 1981, Ch. 968, Sec. 18.)

**§ 11128.5. [Adjournment]**

The state body may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting, the clerk or secretary of the state body may declare the meeting adjourned to a stated time and place and he or she shall cause a written notice of the adjournment to be given in the same manner as provided in Section 11125.4 for special meetings, unless that notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special, or adjourned special meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by law or regulation.

(Added by Stats. 1997, Ch. 949, Sec. 11. Effective January 1, 1998.)

**§ 11129. [Continuances]**

Any hearing being held, or noticed or ordered to be held by a state body at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the state body in the same manner and to the same extent set forth in Section 11128.5 for the adjournment of meetings. A copy of the order or notice of continuance shall be conspicuously posted on or near the door of the place where the hearing was held within 24 hours after the time of the continuance; provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(Amended by Stats. 1997, Ch. 949, Sec. 12. Effective January 1, 1998.)

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**§ 11130. *[Remedies for violations]***

(a) The Attorney General, the district attorney, or any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of stopping or preventing violations or threatened violations of this article or to determine the applicability of this article to past actions or threatened future action by members of the state body or to determine whether any rule or action by the state body to penalize or otherwise discourage the expression of one or more of its members is valid or invalid under the laws of this state or of the United States, or to compel the state body to audio record its closed sessions as hereinafter provided.

(b) The court in its discretion may, upon a judgment of a violation of Section 11126, order the state body to audio record its closed sessions and preserve the audio recordings for the period and under the terms of security and confidentiality the court deems appropriate.

(c) (1) Each recording so kept shall be immediately labeled with the date of the closed session recorded and the title of the clerk or other officer who shall be custodian of the recording.

(2) The audio recordings shall be subject to the following discovery procedures:

(A) In any case in which discovery or disclosure of the audio recording is sought by the Attorney General, the district attorney, or the plaintiff in a civil action pursuant to this section or Section 11130.3 alleging that a violation of this article has occurred in a closed session that has been recorded pursuant to this section, the party seeking discovery or disclosure shall file a written notice of motion with the appropriate court with notice to the governmental agency that has custody and control of the audio recording. The notice shall be given pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure.

(B) The notice shall include, in addition to the items required by Section 1010 of the Code of Civil Procedure, all of the following:

(i) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the date and time of the meeting recorded, and the governmental agency that has custody and control of the recording.

(ii) An affidavit that contains specific facts indicating that a violation of the act occurred in the closed session.

(3) If the court, following a review of the motion, finds that there is good cause to believe that a violation has occurred, the court may review, in camera, the recording of that portion of the closed session alleged to have violated the act.

(4) If, following the in camera review, the court concludes that disclosure of a portion of the recording would be likely to materially assist in the resolution of the litigation alleging violation of this article, the court shall, in its discretion,

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make a certified transcript of the portion of the recording a public exhibit in the proceeding.

(5) Nothing in this section shall permit discovery of communications that are protected by the attorney-client privilege.

*(Amended by Stats. 2009, Ch. 88, Sec. 43. Effective January 1, 2010.)*

#### **§ 11130.3. [Remedies]**

(a) Any interested person may commence an action by mandamus, injunction, or declaratory relief for the purpose of obtaining a judicial determination that an action taken by a state body in violation of Section 11123 or 11125 is null and void under this section. Any action seeking such a judicial determination shall be commenced within 90 days from the date the action was taken. Nothing in this section shall be construed to prevent a state body from curing or correcting an action challenged pursuant to this section.

(b) An action shall not be determined to be null and void if any of the following conditions exist:

(1) The action taken was in connection with the sale or issuance of notes, bonds, or other evidences of indebtedness or any contract, instrument, or agreement related thereto.

(2) The action taken gave rise to a contractual obligation upon which a party has, in good faith, detrimentally relied.

(3) The action taken was in substantial compliance with Sections 11123 and 11125.

(4) The action taken was in connection with the collection of any tax.

*(Amended by Stats. 1999, Ch. 393, Sec. 5. Effective January 1, 2000.)*

#### **§ 11130.5. [Court costs and attorney fees]**

A court may award court costs and reasonable attorney's fees to the plaintiff in an action brought pursuant to Section 11130 or 11130.3 where it is found that a state body has violated the provisions of this article. The costs and fees shall be paid by the state body and shall not become a personal liability of any public officer or employee thereof.

A court may award court costs and reasonable attorney's fees to a defendant in any action brought pursuant to Section 11130 or 11130.3 where the defendant has prevailed in a final determination of the action and the court finds that the action was clearly frivolous and totally lacking in merit.

*(Amended by Stats. 1985, Ch. 936, Sec. 2.)*

#### **§ 11130.7. [Misdemeanor for violations]**

Each member of a state body who attends a meeting of that body in violation of any provision of this article, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this article, is guilty of a misdemeanor.

*(Amended by Stats. 1997, Ch. 949, Sec. 14. Effective January 1, 1998.)*

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**§ 11131. [May not use facility allowing discrimination]**

No state agency shall conduct any meeting, conference, or other function in any facility that prohibits the admittance of any person, or persons, on the basis of ancestry or any characteristic listed or defined in Section 11135, or that is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase. As used in this section, "state agency" means and includes every state body, office, officer, department, division, bureau, board, council, commission, or other state agency.

(Amended by Stats. 2007, Ch. 568, Sec. 32. Effective January 1, 2008.)

**§ 11131.5. [Shield identity of victims of certain crimes]**

No notice, agenda, announcement, or report required under this article need identify any victim or alleged victim of crime, tortious sexual conduct, or child abuse unless the identity of the person has been publicly disclosed.

(Added by Stats. 1997, Ch. 949, Sec. 16. Effective January 1, 1998.)

**§ 11132. [No closed session except as authorized]**

Except as expressly authorized by this article, no closed session may be held by any state body.

(Added by Stats. 1987, Ch. 1320, Sec. 4.)

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## **CHAPTER 4.5. ADMINISTRATIVE ADJUDICATION: GENERAL PROVISIONS [11400. - 11475.70.]**

(Chapter 4.5 added by Stats. 1995, Ch. 938, Sec. 21.)

### **Article 1. Preliminary Provisions [11400. - 11400.20.]**

(Article 1 added by Stats. 1995, Ch. 938, Sec. 21.)

**§ 11400.(a)** This chapter and Chapter 5 (commencing with Section 11500) constitute the administrative adjudication provisions of the Administrative Procedure Act.

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

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(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938. Note: This section prescribes the same operative date for Chapter 4.5, commencing with Section 11400.)

**§ 11400.20.** (a) Before, on, or after July 1, 1997, an agency may adopt interim or permanent regulations to govern an adjudicative proceeding under this chapter or Chapter 5 (commencing with Section 11500). Nothing in this section authorizes an agency to adopt regulations to govern an adjudicative proceeding required to be conducted by an administrative law judge employed by the Office of Administrative Hearings, except to the extent the regulations are otherwise authorized by statute.

(b) Except as provided in Section 11351:

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

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

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

(Amended by Stats. 1996, Ch. 390, Sec. 5. Effective August 19, 1996. Operative July 1, 1997, by Sec. 11 of Ch. 390.)

## **Article 2. Definitions [11405.10. - 11405.80.]**

(Article 2 added by Stats. 1995, Ch. 938, Sec. 21.)

**§ 11405.10.** Unless the provision or context requires otherwise, the definitions in this article govern the construction of this chapter.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11405.60.** “Party” includes the agency that is taking action, the person to which the agency action is directed, and any other person named as a party or allowed to appear or intervene in the proceeding. If the agency that is taking action and the agency that is conducting the adjudicative proceeding are separate agencies, the agency that is taking action is a party and the agency that is conducting the adjudicative proceeding is not a party.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11405.70.** “Person” includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

### **Article 3. Application of Chapter [11410.10. - 11410.60.]**

(Article 3 added by Stats. 1995, Ch. 938, Sec. 21.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11410.20.** Except as otherwise expressly provided by statute:

- (a) This chapter applies to all agencies of the state.
- (b) This chapter does not apply to the Legislature, the courts or judicial branch, or the Governor or office of the Governor.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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**§ 11410.60.** (a) As used in this section, "quasi-public entity" means an entity, other than a governmental agency, whether characterized by statute as a public corporation, public instrumentality, or otherwise, that is expressly created by statute for the purpose of administration of a state function.

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

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

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

(3) The decision is not otherwise subject to administrative review in an adjudicative proceeding to which this chapter applies.

(c) For the purpose of application of this chapter to a decision by a quasi-public entity:

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

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

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

(d) This section shall be strictly construed to effectuate the intent of the Legislature to apply this chapter only to a decision by a quasi-public entity that is expressly created by statute for the purpose of administration of a state function.

(e) This section shall not apply to a decision made on authority of an approved plan of operations of a quasi-public entity that is subject to the regulation or supervision of the Insurance Commissioner.

(Added by Stats. 1997, Ch. 220, Sec. 9. Effective August 4, 1997.)

#### **Article 4. Governing Procedure [11415.10. - 11415.60.]**

*(Article 4 added by Stats. 1995, Ch. 938, Sec. 21.)*

**§ 11415.10.** (a) The governing procedure by which an agency conducts an adjudicative proceeding is determined by the statutes and regulations applicable to that proceeding. If no other governing procedure is provided by statute or regulation, an agency may conduct an adjudicative proceeding under the administrative adjudication provisions of the Administrative Procedure Act.

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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**§ 11415.20.** A state statute or a federal statute or regulation applicable to a particular agency or decision prevails over a conflicting or inconsistent provision of this chapter.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

- (1) Suspend, in whole or in part, any administrative adjudication provision of the Administrative Procedure Act.
- (2) Adopt a rule of procedure that will avoid the loss or delay.
- (b) The Governor shall rescind an executive order issued under this section as soon as it is no longer necessary to prevent the loss or delay of funds or services from the federal government.
- (c) If an administrative adjudication provision is suspended or rule of procedure is adopted pursuant to this section, the Governor shall promptly report the suspension or adoption to the Legislature. The report shall include recommendations concerning any legislation that may be necessary to conform the provision to federal law.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11415.40.** Except to the extent prohibited by another statute or regulation, a person may waive a right conferred on the person by the administrative adjudication provisions of the Administrative Procedure Act.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11415.60.** (a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement

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negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.

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

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

*(Amended by Stats. 1996, Ch. 390, Sec. 7. Effective August 19, 1996. Operative July 1, 1997, by Sec. 11 of Ch. 390.)*

## **Article 5. Alternative Dispute Resolution [11420.10. - 11420.30.]**

*(Article 5 added by Stats. 1995, Ch. 938, Sec. 21.)*

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

(1) Mediation by a neutral mediator.

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

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

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

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

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(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(b) No reference to nonbinding arbitration proceedings, a decision of the arbitrator that is rejected by a party's request for a de novo adjudicative proceeding, the evidence produced, or any other aspect of the arbitration may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

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

(d) Evidence otherwise admissible outside of alternative dispute resolution under this article is not inadmissible or protected from disclosure solely by reason of its introduction or use in alternative dispute resolution under this article.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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## **Article 6. Administrative Adjudication Bill of Rights [11425.10. - 11425.60.]**

*(Article 6 added by Stats. 1995, Ch. 938, Sec. 21.)*

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

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

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

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

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

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

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

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

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

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

(b) The requirements of this section apply to the governing procedure by which an agency conducts an adjudicative proceeding without further action by the agency, and prevail over a conflicting or inconsistent provision of the governing procedure, subject to Section 11415.20. The governing procedure by which an agency conducts an adjudicative proceeding may include provisions equivalent to, or more protective of the rights of the person to which the agency action is directed than, the requirements of this section.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11425.20.** (a) A hearing shall be open to public observation. This subdivision shall not limit the authority of the presiding officer to order closure of a hearing

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or make other protective orders to the extent necessary or proper for any of the following purposes:

- (1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including, but not limited to, laws protecting privileged, confidential, or other protected information.
  - (2) To ensure a fair hearing in the circumstances of the particular case.
  - (3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in Section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.
- (b) To the extent a hearing is conducted by telephone, television, or other electronic means, and is not closed as otherwise required by law, the requirement that the meeting is open to public observation pursuant to subdivision (a) is satisfied if members of the public have an opportunity to do both of the following:
    - (1) At reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency.
    - (2) Be physically or virtually present at the place where the presiding officer is conducting the hearing. For purposes of this section, the term "present" can be satisfied either by providing a designated location from which members of the public can observe the meeting via a live audio or a video feed of the hearing made available to the public on the internet or by teleconference.
  - (c) This section does not apply to a prehearing conference, settlement conference, or proceedings for alternative dispute resolution other than binding arbitration.

*(Amended by Stats. 2021, Ch. 401, Sec. 11. (AB 1578) Effective January 1, 2022.)*

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

- (1) The person has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.
  - (2) The person is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage.
- (b) Notwithstanding subdivision (a):
    - (1) A person may serve as presiding officer at successive stages of an adjudicative proceeding.
    - (2) A person who has participated only as a decisionmaker or as an advisor to a decisionmaker in a determination of probable cause or other equivalent preliminary determination in an adjudicative proceeding or its preadjudicative stage may serve as presiding officer in the proceeding.

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

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

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

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

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

(d) An agency that conducts an adjudicative proceeding may provide by regulation for peremptory challenge of the presiding officer.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially

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noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

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

(Amended by Stats. 1996, Ch. 390, Sec. 8. Effective August 19, 1996. Operative July 1, 1997, by Sec. 11 of Ch. 390.)

## **Article 7. Ex Parte Communications [11430.10. - 11430.80.]**

(Article 7 added by Stats. 1995, Ch. 938, Sec. 21.)

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

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11430.20.** A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

(a) The communication is for the purpose of assistance and advice to the presiding officer from a person who has not served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage. An assistant or advisor may evaluate the evidence in the record but shall not furnish, augment, diminish, or modify the evidence in the record.

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

(c) The communication is for the purpose of advising the presiding officer concerning any of the following matters in an adjudicative proceeding that is nonprosecutorial in character:

(1) The advice involves a technical issue in the proceeding and the advice is necessary for, and is not otherwise reasonably available to, the presiding officer, provided the content of the advice is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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record and give all parties an opportunity to address it in the manner provided in Section 11430.50.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

(b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11430.70.** (a) Subject to subdivisions (b) and (c), the provisions of this article governing ex parte communications to the presiding officer also govern ex parte communications in an adjudicative proceeding to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated.

(b) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized ratemaking proceeding if the content of the communication is disclosed on the record and all parties are given an opportunity to address it in the manner provided in Section 11430.50.

(c) An ex parte communication to the agency head or other person or body to which the power to hear or decide in the proceeding is delegated is permissible in an individualized determination of an application for site certification pursuant to Chapter 6 (commencing with Section 25500) of Division 15 of the Public Resources Code, that is before the State Energy Resources Conservation and Development Commission, if the communication is made by an employee of another state agency and is made for the purpose of enabling the presiding officer to effectively manage the proceeding.

(Amended by Stats. 2010, 8th Ex. Sess., Ch. 9, Sec. 4. Effective March 22, 2010.)

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

*[Orange shaded text has not been incorporated into Water Boards' procedures per California Code of Regulations, title 23, section 648.]*

## **Article 8. Language Assistance [11435.05. - 11435.65.]**

(Article 8 added by Stats. 1995, Ch. 938, Sec. 21.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

- (1) Agricultural Labor Relations Board.
- (2) State Department of Alcohol and Drug Programs.
- (3) State Athletic Commission.

- (4) California Unemployment Insurance Appeals Board.
- (5) Board of Parole Hearings.
- (6) State Board of Barbering and Cosmetology.
- (7) State Department of Developmental Services.
- (8) Public Employment Relations Board.
- (9) Franchise Tax Board.
- (10) State Department of Health Care Services.
- (11) Department of Housing and Community Development.
- (12) Department of Industrial Relations.
- (13) State Department of State Hospitals.
- (14) Department of Motor Vehicles.
- (15) Notary Public Section, Office of the Secretary of State.
- (16) Public Utilities Commission.
- (17) Office of Statewide Health Planning and Development.
- (18) State Department of Social Services.
- (19) Workers' Compensation Appeals Board.
- (20) Division of Juvenile Justice.
- (21) Division of Juvenile Parole Operations.
- (22) Department of Insurance.
- (23) State Personnel Board.
- (24) California Board of Podiatric Medicine.
- (25) Board of Psychology.

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

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

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

*(Amended by Stats. 2013, Ch. 76, Sec. 82. Effective January 1, 2014.)*

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(c) Notwithstanding any other provision of this section, in a hearing before the Workers' Compensation Appeals Board or the Division of Workers' Compensation relating to workers' compensation claims, the payment of the costs of providing an interpreter shall be governed by the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Workers' Compensation, as appropriate.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(c) (1) In addition to the certification procedure provided pursuant to subdivision (a), the Administrative Director of the Division of Workers' Compensation may establish, maintain, administer, and publish annually an updated list of certified administrative hearing interpreters who, based on testing by an independent organization designated by the administrative director, have been determined to meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40, for purposes of administrative hearings conducted pursuant to proceedings of the Workers' Compensation Appeals Board. The independent testing organization shall have no financial interest in the training of interpreters or in the employment of interpreters for administrative hearings.

(2) (A) A fee, as determined by the administrative director, shall be collected from each interpreter seeking certification. The fee shall not exceed

the reasonable regulatory costs of administering the testing and certification program and of publishing the list of certified administrative hearing interpreters on the Division of Workers' Compensation' Internet Web site.

(B) The Legislature finds and declares that the services described in this section are of such a special and unique nature that they may be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130. The Legislature further finds and declares that the services described in this section are a new state function pursuant to paragraph (2) of subdivision (b) of Section 19130.  
*(Amended by Stats. 2012, Ch. 363, Sec. 2. Effective January 1, 2013.)*

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

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

(c) (1) In addition to the certification procedure provided pursuant to subdivision (a), the Administrative Director of the Division of Workers' Compensation may establish, maintain, administer, and publish annually an updated list of certified medical examination interpreters who, based on testing by an independent organization designated by the administrative director, have been determined to meet the minimum standards in interpreting skills and linguistic abilities in languages designated pursuant to Section 11435.40, for purposes of medical examinations conducted pursuant to proceedings of the Workers' Compensation Appeals Board, and medical examinations conducted pursuant to Division 4 (commencing with Section 3200) of the Labor Code. The independent testing organization shall have no financial interest in the training of interpreters or in the employment of interpreters for medical examinations.

(2) (A) A fee, as determined by the administrative director, shall be collected from each interpreter seeking certification. The fee shall not exceed the reasonable regulatory costs of administering the testing and certification program and of publishing the list of certified medical examination interpreters on the Division of Workers' Compensation's Internet Web site.

(B) The Legislature finds and declares that the services described in this section are of such a special and unique nature that they may be contracted out pursuant to paragraph (3) of subdivision (b) of Section 19130. The Legislature further finds and declares that the services described in this section are a new state function pursuant to paragraph (2) of subdivision (b) of Section 19130.  
*(Amended by Stats. 2013, Ch. 287, Sec. 1. Effective January 1, 2014.)*

**§ 11435.40.** (a) The Department of Human Resources shall designate the languages for which certification shall be established under Sections 11435.30 and 11435.35. The languages designated shall include, but not be limited to, Spanish, Tagalog, Arabic, Cantonese, Japanese, Korean, Portuguese, and Vietnamese until the Department of Human Resources finds that there is an insufficient need for interpreting assistance in these languages.

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

- (1) The language needs of non-English-speaking persons appearing before the administrative agencies, as determined by consultation with the agencies.
- (2) The cost of developing a language examination.
- (3) The availability of experts needed to develop a language examination.
- (4) Other information the department deems relevant.

(Amended by Stats. 2012, Ch. 360, Sec. 6. Effective January 1, 2013.)

**§ 11435.45.** (a) The Department of Human Resources shall establish and charge fees for applications to take interpreter examinations and for renewal of certifications. The purpose of these fees is to cover the annual projected costs of carrying out this article. The fees may be adjusted each fiscal year by a percent that is equal to or less than the percent change in the California Necessities Index prepared by the Commission on State Finance.

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

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

(Amended by Stats. 2012, Ch. 360, Sec. 7. Effective January 1, 2013.)

**§ 11435.50.** The Department of Human Resources may remove the name of a person from the list of certified interpreters if any of the following conditions occurs:

- (a) The person is deceased.
- (b) The person notifies the department that the person is unavailable for work.
- (c) The person does not submit a renewal fee as required by Section 11435.45.

(Amended by Stats. 2012, Ch. 360, Sec. 8. Effective January 1, 2013.)

**§ 11435.55.** (a) An interpreter used in a hearing shall be certified pursuant to Section 11435.30. However, if an interpreter certified pursuant to Section

11435.30 cannot be present at the hearing, the hearing agency shall have discretionary authority to provisionally qualify and use another interpreter.

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

## **Article 9. General Procedural Provisions [11440.10. - 11440.60.]**

(Article 9 added by Stats. 1995, Ch. 938, Sec. 21.)

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

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

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11440.20.** Service of a writing or electronic document on, or giving of a notice to, a person in a procedure provided in this chapter is subject to the following provisions:

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

(b) Unless a provision specifies the form of mail, service or notice by mail may be by first-class mail, registered mail, or certified mail, by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation, in the discretion of the sender.  
*(Amended by Stats. 2021, Ch. 401, Sec. 12. (AB 1578) Effective January 1, 2022.)*

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

((b) (1) Except as provided in paragraph (2), the presiding officer may not conduct all of a hearing by telephone, television, or other electronic means if a party objects.

((2) If a party objects pursuant to paragraph (1) to a hearing being conducted by electronic means, the presiding officer shall consider the objections and may, in the presiding officer's discretion, structure the hearing to address the party's specific objections and may require the presiding officer, parties, and witnesses, or a subset of parties and witnesses based on the specific objections, to be present in a physical location during all or part of the hearing.

((c) Subdivision (b) is not a limitation on the presiding officer transmitting the hearing by telephone, television, or other electronic means or receiving comments via electronic means from participants who are not parties or witnesses.

*(Amended by Stats. 2021, Ch. 401, Sec. 13. (AB 1578) Effective January 1, 2022.)*

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

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

(2) The evidence is not admissible at the hearing unless offered to attack the credibility of the complainant as provided for under subdivision (b).

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Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11440.45.** (a) In any proceedings pursuant to this chapter or Chapter 5 (commencing with Section 11500), the portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident and made to that person or to the family of that person shall be inadmissible as evidence of an admission of liability. A statement of fault, however, which is part of, or in addition to, any of the above shall not be inadmissible pursuant to this section.

(b) For purposes of this section:

(1) "Accident" means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(2) "Benevolent gestures" means actions which convey a sense of compassion or commiseration emanating from humane impulses.

(3) "Family" means the spouse, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted children of parent, or spouse's parents of an injured party.

*(Added by Stats. 2002, Ch. 92, Sec. 1. Effective January 1, 2003.)*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11440.60.** (a) For purposes of this section, the following terms have the following meaning:

(1) "Quasi-judicial proceeding" means any of the following:

(A) A proceeding to determine the rights or duties of a person under existing laws, regulations, or policies.

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- (B) A proceeding involving the issuance, amendment, or revocation of a permit or license.
  - (C) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.
  - (D) A proceeding at which action is taken involving the purchase or sale of property, goods, or services by an agency.
  - (E) A proceeding at which an action is taken awarding a grant or a contract.
- (2) "Written communication" means any report, study, survey, analysis, letter, or any other written document.
- (b) Any person submitting a written communication, which is specifically generated for the purpose of being presented at the agency hearing to which it is being communicated, to a state agency in a quasi-judicial proceeding that is directly paid for by anyone other than the person who submitted the written communication shall clearly indicate any person who paid to produce the written communication.
- (c) A state agency may refuse or ignore a written communication submitted by an attorney or any other authorized representative on behalf of a client in a quasi-judicial proceeding, unless the written communication clearly indicates the client on whose behalf the communication is submitted to the state agency.

*(Added by Stats. 1997, Ch. 192, Sec. 1. Effective January 1, 1998.)*

## **Article 10. Informal Hearing [11445.10. - 11445.60.]**

*(Article 10 added by Stats. 1995, Ch. 938, Sec. 21.)*

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

(b) The Legislature finds and declares the following:

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

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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**§ 11445.20.** Subject to Section 11445.30, an agency may use an informal hearing procedure in any of the following proceedings, if in the circumstances its use does not violate another statute or the federal or state Constitution:

- (a) A proceeding where there is no disputed issue of material fact.
- (b) A proceeding where there is a disputed issue of material fact, if the matter is limited to any of the following:
  - (1) A monetary amount of not more than one thousand dollars (\$1,000).
  - (2) A disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than 10 days.
  - (3) A disciplinary sanction against an employee that does not involve discharge from employment, demotion, or suspension for more than 5 days.
  - (4) A disciplinary sanction against a licensee that does not involve an actual revocation of a license or an actual suspension of a license for more than five days. Nothing in this section precludes an agency from imposing a stayed revocation or a stayed suspension of a license in an informal hearing.
- (c) A proceeding where, by regulation, the agency has authorized use of an informal hearing.
- (d) A proceeding where an evidentiary hearing for determination of facts is not required by statute but where the agency determines the federal or state Constitution may require a hearing.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11445.30.** (a) The notice of hearing shall state the agency's selection of the informal hearing procedure.

- (b) Any objection of a party to use of the informal hearing procedure shall be made in the party's pleading.
- (c) An objection to use of the informal hearing procedure shall be resolved by the presiding officer before the hearing on the basis of the pleadings and any written submissions in support of the pleadings. An objection to use of the informal hearing procedure in a disciplinary proceeding involving an occupational license shall be resolved in favor of the licensee.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

- (b) In an informal hearing the presiding officer shall regulate the course of the proceeding. The presiding officer shall permit the parties and may permit others to offer written or oral comments on the issues. The presiding officer may limit the use of witnesses, testimony, evidence, and argument, and may

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limit or eliminate the use of pleadings, intervention, discovery, prehearing conferences, and rebuttal.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

## **Article 11. Subpoenas [11450.05. - 11450.50.]**

(Article 11 added by Stats. 1995, Ch. 938, Sec. 21.)

**§ 11450.05.** (a) This article applies in an adjudicative proceeding required to be conducted under Chapter 5 (commencing with Section 11500).

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(b) An agency may use the subpoena procedure provided in this article in an adjudicative proceeding not required to be conducted under Chapter 5 (commencing with Section 11500), in which case all the provisions of this article apply including, but not limited to, issuance of a subpoena at the request of a party or by the attorney of record for a party under Section 11450.20.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11450.50.** (a) In the case of the production of a party to the record of a proceeding or of a person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena on the witness is not required if written notice requesting the witness to attend, with the time and place of the hearing, is served on the attorney of the party or person.

(b) Service of written notice to attend under this section shall be made in the manner and is subject to the conditions provided in Section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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## **Article 12. Enforcement of Orders and Sanctions [11455.10. - 11455.30.]**

*(Article 12 added by Stats. 1995, Ch. 938, Sec. 21.)*

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

- (a) Disobedience of or resistance to a lawful order.
- (b) Refusal to take the oath or affirmation as a witness or thereafter refusal to be examined.
- (c) Obstruction or interruption of the due course of the proceeding during a hearing or near the place of the hearing by any of the following:
  - (1) Disorderly, contemptuous, or insolent behavior toward the presiding officer while conducting the proceeding.
  - (2) Breach of the peace, boisterous conduct, or violent disturbance.
  - (3) Other unlawful interference with the process or proceedings of the agency.
- (d) Violation of the prohibition of ex parte communications under Article 7 (commencing with Section 11430.10).
- (e) Failure or refusal, without substantial justification, to comply with a deposition order, discovery request, subpoena, or other order of the presiding officer, or moving, without substantial justification, to compel discovery.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11455.30.** (a) The presiding officer may order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or

tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure.

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

*[Orange shaded text has not been incorporated into Water Boards' procedures per California Code of Regulations, title 23, section 648.]*

### **Article 13. Emergency Decision [11460.10. - 11460.80.]**

(Article 13 added by Stats. 1995, Ch. 938, Sec. 21.)

**§ 11460.10.** Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the emergency decision procedure provided in this article.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

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

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(c) An emergency decision issued under this article is limited to temporary, interim relief. The temporary, interim relief is subject to judicial review under Section 11460.80, and the underlying issue giving rise to the temporary, interim relief is subject to an adjudicative proceeding pursuant to Section 11460.60.  
*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

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

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

*[Orange shaded text has not been incorporated into Water Boards' procedures per California Code of Regulations, title 23, section 648.]*

#### **Article 14. Declaratory Decision [11465.10. - 11465.70.]**

*(Article 14 added by Stats. 1995, Ch. 938, Sec. 21.)*

**§ 11465.10.** Subject to the limitations in this article, an agency may conduct an adjudicative proceeding under the declaratory decision procedure provided in this article.

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

**§ 11465.20.** (a) A person may apply to an agency for a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the agency.

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

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

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

(3) The decision involves a matter that is the subject of pending administrative or judicial proceedings.

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

(2) Set the matter for specified proceedings.

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

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

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

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

(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

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

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

(4) The disposition of an application.

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

## **Article 15. Conversion of Proceeding [11470.10. - 11470.50.]**

*(Article 15 added by Stats. 1995, Ch. 938, Sec. 21.)*

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

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

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11470.20.** If the presiding officer or other agency official responsible for the original proceeding would not have authority over the new proceeding to which

it is to be converted, the agency head shall appoint a successor to preside over or be responsible for the new proceeding.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11470.30.** To the extent practicable and consistent with the rights of parties and the requirements of this article relating to the new proceeding, the record of the original agency proceeding shall be used in the new agency proceeding.

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

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

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

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

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

*(Added by Stats. 1995, Ch. 938, Sec. 21. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938 and Section 11400.10.)*

**§ 11475.** The rules imposed by this article may be referred to as the Administrative Adjudication Code of Ethics.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

*[Orange shaded text has not been incorporated into Water Boards' procedures per California Code of Regulations, title 23, section 648.]*

## **Article 16. Administrative Adjudication Code of Ethics [11475. - 11475.70.]**

*(Article 16 added by Stats. 1998, Ch. 95, Sec. 1.)*

**§ 11475.10.** (a) This article applies to the following persons:

(1) An administrative law judge. As used in this subdivision, "administrative law judge" means an incumbent of that position, as defined by the State Personnel Board, for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article shall apply notwithstanding any general statutory provision that this chapter does not apply to some or all of a state agency's adjudicative proceedings.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

**§ 11475.20.** Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution for the conduct of judges governs the hearing and nonhearing conduct of an administrative law judge or other presiding officer to which this article applies.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

**§ 11475.30.** For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

(a) "Appeal" means administrative review.

(b) "Court" means the agency conducting an adjudicative proceeding.

(c) "Judge" means administrative law judge or other presiding officer to which this article applies. Related terms, including "judicial," "judiciary," and "justice," mean comparable concepts in administrative adjudication.

(d) "Law" includes regulation and precedent decision.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

**§ 11475.40.** The following provisions of the Code of Judicial Ethics do not apply under this article:

(a) Canon 3B(7), to the extent it relates to ex parte communications.

(b) Canon 3B(10).

(c) Canon 3D(3).

(d) Canon 4C.

(e) Canons 4E(1), 4F, and 4G.

(f) Canons 5A–5D. However, the introductory paragraph of Canon 5 applies to persons subject to this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

(g) Canon 6.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

**§ 11475.50.** A violation of an applicable provision of the Code of Judicial Ethics, or a violation of the restrictions and prohibitions on accepting honoraria, gifts, or travel that otherwise apply to elected state officers pursuant to Chapter 9.5

(commencing with Section 89500) of Title 9, by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

**§ 11475.60.** (a) Except as provided in subdivision (b), a person to whom this article applies shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article applies shall comply with Canon 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event within a period of one year after the article becomes applicable.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

**§ 11475.70.** Nothing in this article shall be construed or is intended to limit or affect the rights of an administrative law judge or other presiding officer under Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1.

*(Added by Stats. 1998, Ch. 95, Sec. 1. Effective January 1, 1999.)*

## **CHAPTER 5. ADMINISTRATIVE ADJUDICATION: FORMAL HEARING [11500. - 11529.]**

*(Heading of Chapter 5 amended by Stats. 1995, Ch. 938, Sec. 22.)*

**§ 11500.** In this chapter unless the context or subject matter otherwise requires:

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

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

(c) “Respondent” means any person against whom an accusation or District Statement of Reduction in Force is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

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

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

*(Amended by Stats. 2013, Ch. 90, Sec. 2. Effective January 1, 2014.)*

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**§ 11513.(a)** Oral evidence shall be taken only on oath or affirmation.

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

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

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing.

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

*(Amended by Stats. 1995, Ch. 938, Sec. 40. Effective January 1, 1996. Operative July 1, 1997, by Sec. 98 of Ch. 938.)*

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## WATER CODE

### **DIVISION 1. GENERAL STATE POWERS OVER WATER**

#### **[100. - 540.]**

*(Division 1 enacted by Stats. 1943, Ch. 368.)*

#### **[INTERMEDIATE “PART” LEVEL OMITTED BY LEGISLATURE]**

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#### **CHAPTER 2. STATE ADMINISTRATION GENERALLY [120. - 190.]**

*(Chapter 2 enacted by Stats. 1943, Ch. 368.)*

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#### **Article 3. State Water Resources Control Board [174. - 189.5.]**

*(Heading of Article 3 amended by Stats. 1967, Ch. 284.)*

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**§ 183.** The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it, and for such purposes has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code.

Any hearing or investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held.

All hearings held by the board or by any member thereof shall be open and public

(Amended by Stats. 1971, Ch. 1288.)

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**§ 185.** The board shall adopt rules for the conduct of its affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(Amended by Stats. 1982, Ch. 454, Sec. 184.)

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## **DIVISION 2. WATER [1000. - 5976.]**

(Division 2 enacted by Stats. 1943, Ch. 368.)

### **PART 1. GENERAL PROVISIONS [1000. - 1126.2.]**

(Part 1 enacted by Stats. 1943, Ch. 368.)

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### **CHAPTER 3. WITNESSES AND PRODUCTION OF EVIDENCE [1075. - 1106.]**

(Chapter 3 enacted by Stats. 1943, Ch. 368.)

#### **Article 1. Definitions [1075. - 1076.]**

(Article 1 enacted by Stats. 1943, Ch. 368.)

**§ 1075.** As used in this chapter, “proceeding” means any inquiry, investigation, hearing, ascertainment, or other proceeding ordered or undertaken by the board pursuant to this code.

(Amended by Stats. 1969, Ch. 482.)

**§ 1076.** As used in this chapter, “evidence” means any paper, book, map, account, or document.

(Enacted by Stats. 1943, Ch. 368.)

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**Article 2. Attendance and Fees [1080. - 1086.]**

(Article 2 enacted by Stats. 1943, Ch. 368.)

**§ 1080.** The board may administer oaths and issue subpoenas for the attendance and giving of testimony by witnesses and for the production of evidence in any proceeding in any part of the State.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1081.** Each witness who appears by order of the board shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which shall be paid by the party at whose request the witness is subpoenaed.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1082.** When any witness who has not been required to attend at the request of any party is subpoenaed by the board his fees and mileage shall be paid from the funds appropriated for the use of the board and available for the purpose.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1083.** Any witness subpoenaed, except one whose fees and mileage are payable from the funds of the board, may, at the time of service, demand the fees to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1084.** If the witness demands the fees to which he is entitled at the time of service and they are not at that time paid or tendered he shall not be required to attend as directed in the subpoena.

(Enacted by Stats. 1943, Ch. 368.)

**§ 1085.** All fees and mileage to which any witness is entitled under the provisions of this chapter may be collected by action therefor instituted by the person to whom they are payable.

(Enacted by Stats. 1943, Ch. 368.)

**§ 1086.** No witness shall be compelled to attend as a witness before the board under this division out of the county in which he resides, unless the distance is less than 150 miles from his place of residence to the place of hearing, except that the board, upon affidavit of any party showing that the testimony of such witness is material and necessary, may indorse on the subpoena an order requiring the attendance of such witness.

(Amended by Stats. 1959, Ch. 667.)

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**Article 3. Compelling Attendance [1090. - 1097.]**

(Article 3 enacted by Stats. 1943, Ch. 368.)

**§ 1090.** The superior court of the county in which any proceeding is held by the board may compel the attendance and giving of testimony by witnesses and the production of evidence as required by any subpoena issued by the board.  
(Amended by Stats. 1957, Ch. 1932.)

**§ 1091.** In case of the refusal of any witness to attend or testify or produce any evidence required by a subpoena issued by it, the board may report by petition to the superior court in and for the county in which the proceeding is pending.  
(Amended by Stats. 1957, Ch. 1932.)

**§ 1092.** The petition shall set forth the following:

(a) That due notice has been given of the time and place of attendance of the witness or for the production of evidence and that the witness has been summoned in the manner prescribed in this chapter.

(b) That the witness has failed and refused to attend or produce the evidence required by the subpoena before the board in the proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of the proceeding.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1093.** The petition shall ask an order of court compelling the witness to attend, testify, and produce the evidence before the board.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1094.** The court, upon the petition of the board, shall enter an order directing the witness to appear before the court at a time and place fixed by the court in the order and not more than 10 days from the date of the order, and then and there show cause, if any he have, why he refused to obey the subpoena, or refused to answer questions propounded to him by the board, or neglected, failed, or refused to produce before the board the evidence called for in the subpoena.

(Amended by Stats. 1957, Ch. 1932.)

**§ 1095.** A copy of the order and of the petition shall be served upon the witness.

(Enacted by Stats. 1943, Ch. 368.)

**§ 1096.** If it appears to the court that the subpoena was regularly issued, the court shall thereupon enter an order that the witness appear before the board at the time and place fixed in the order and testify or produce the required evidence or both testify and produce.

(Amended by Stats. 1957, Ch. 1932.)

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**§ 1097.** Upon failure to obey the order the witness shall be dealt with as for contempt of court.

(Enacted by Stats. 1943, Ch. 368.)

#### **Article 4. Depositions [1100. - 1100.]**

(Article 4 enacted by Stats. 1943, Ch. 368.)

**§ 1100.** The board or any party to a proceeding before it may, in any investigation or hearing, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

(Amended by Stats. 2004, Ch. 182, Sec. 60. Effective January 1, 2005. Operative July 1, 2005, by Sec. 64 of Ch. 182.)

#### **Article 5. Immunity [1105. - 1106.]**

(Article 5 enacted by Stats. 1943, Ch. 368.)

**§ 1105.** (a) Except as provided in subdivision (c), no person shall be excused from testifying or from producing any evidence in any investigation or inquiry by or hearing before the board upon the ground that the testimony or evidence required of him or her may tend to incriminate him or her or subject him or her to any penalty.

(b) The board may grant immunity to any person who is compelled to testify or to produce documentary evidence before the board and who invokes the privilege against self-incrimination.

(c) If the board does not grant immunity after a person invokes the privilege against self-incrimination, the board shall excuse the person from giving any testimony or producing any evidence to which the privilege against self-incrimination applies, and the board shall dismiss, continue, or limit the scope of the proceedings as necessary to ensure that the unavailability of the testimony or evidence does not deny due process of law to any party.

(Amended by Stats. 1994, Ch. 45, Sec. 1. Effective January 1, 1995.)

**§ 1106.** No person who is granted immunity under subdivision (b) of Section 1105 shall be criminally prosecuted or be subjected to any criminal penalty for or on account of any act, transaction, matter, or thing material to the matter under investigation by the board concerning which he or she has been compelled as a witness to testify or to produce documentary evidence pursuant to the granting of immunity; but no person so testifying or producing shall be exempt from prosecution and punishment for any perjury committed by him or her in that testimony.

(Amended by Stats. 1994, Ch. 45, Sec. 2. Effective January 1, 1995.)

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## CHAPTER 3.5. STATE WATER RESOURCES CONTROL BOARD ADMINISTRATIVE HEARINGS OFFICE [1110. – 1114.]

*(Chapter added by Stats. 2018, Ch. 668, Sec. 1. (AB 747) Effective July 1, 2019.)*

**§ 1110.** (a) There is within the board an Administrative Hearings Office. The board shall administer the Administrative Hearings Office as an independent organizational unit consistent with the role of the Administrative Hearings Office as a neutral, fair, and efficient forum for adjudications. The Administrative Hearings Office shall be overseen by a presiding hearing officer.

(b) The purpose of the Administrative Hearings Office is to provide qualified, impartial hearing officers, to ensure that water rights matters, including water-related cannabis enforcement matters, are resolved in a timely manner, and to provide the board flexibility to assign hearing officers to other matters, such as those involving water right change petitions and other matters concerning water right permits and licenses.

(c) The Administrative Hearings Office shall conduct adjudicative hearings pursuant to this chapter in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. Except as otherwise provided in Section 1113 or the regulations of the board, this section does not limit the discretion of the board where Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code makes the applicability of a procedure or requirement discretionary.

*(Added by Stats. 2018, Ch. 668, Sec. 1. (AB 747) Effective July 1, 2019.)*

**§ 1111.** (a) The Administrative Hearings Office shall include attorneys qualified to act as hearing officers in adjudicative proceedings involving water rights matters. The hearing officers shall have qualifications equivalent to those of administrative law judges and knowledge and experience in water law.

(b) The board shall designate a hearing officer to serve as the presiding hearing officer.

(c) The presiding hearing officer shall have authority to supervise the Administrative Hearings Office, including, but not limited to, the authority to do all of the following:

- (1) Hire personnel, including technical experts.
- (2) Assign matters to hearing officers.
- (3) Reassign matters as convenience and necessity require.
- (4) Serve as a hearing officer.

*(Amended by Stats. 2019, Ch. 497, Sec. 282. (AB 991) Effective January 1, 2020. Operative July 1, 2019, pursuant to Section 2 of Stats. 2018, Ch. 668.)*

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**§ 1112.** (a) Except as provided in subdivision (b), a hearing officer from the Administrative Hearings Office shall preside over a hearing in any of the following matters:

- (1) A complaint issued under Section 1055.
- (2) A notice of a proposed cease and desist order issued under Section 1834.
- (3) A notice of a revocation of a permit issued under Section 1410 or revocation of a license issued under Section 1675.

(b) Subdivision (a) does not apply if the hearing notice includes, in addition to a proceeding under subdivision (a), consideration of a decision or order on a matter not subject to subdivision (a).

(c) In an adjudicative hearing presided over by the board or a board member, all of the following shall apply:

- (1) Upon request by the board, a hearing officer from the Administrative Hearings Office shall assist the board or board member in conducting the hearing.
- (2) The board may assign an adjudicative hearing, in whole or in part, to the Administrative Hearings Office.

(3) A hearing officer may perform additional work requested by the board, including, but not limited to, presiding over hearings on nonadjudicative matters, mediations, and overseeing investigations.

(d) A hearing officer may only perform the work specified in subdivision (c) if the additional work does not conflict with the officer's primary responsibility to serve as a hearing officer for matters listed in subdivision (a) and to resolve those matters in a timely manner.

*(Added by Stats. 2018, Ch. 668, Sec. 1. (AB 747) Effective July 1, 2019.)*

**§ 1113.** In accordance with subdivision (c) of Section 1110, the Administrative Adjudication Code of Ethics (Article 16 (commencing with Section 11475) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code) shall apply to hearing officers of the Administrative Hearings Office.

*(Added by Stats. 2018, Ch. 668, Sec. 1. (AB 747) Effective July 1, 2019.)*

**§ 1114.** (a) Proposed and final orders in an adjudicative proceeding presided over by a hearing officer from the Administrative Hearings Office shall be prepared in accordance with this section.

(b) In a proceeding presided over by a hearing officer for administrative civil liability under Section 1847 or 5107, both of the following shall apply:

- (1) Within 90 days after the matter is submitted, the hearing officer shall adopt a final order that meets the requirements of Section 11425.50 of the Government Code. If the hearing officer finds that a delay is required by special circumstances, the hearing officer shall issue an order delaying the final order for no more than 30 days and specifying the reasons for the delay. Failure of the

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hearing officer to adopt a final order within the time required shall not prejudice the rights of any party in the case.

(2) A final order adopted under this subdivision is subject to review as provided in Chapter 4 (commencing with Section 1120).

(c) In a proceeding presided over by a hearing officer other than a proceeding under subdivision (b), all of the following apply:

(1) Within 90 days after the matter is submitted, the hearing officer shall prepare a proposed order in a form that meets the requirements of Section 11425.50 of the Government Code and may be adopted by the board as the final order in the case. If the hearing officer finds that a delay is required by special circumstances, the hearing officer shall issue an order delaying the proposed order for no more than 30 days and specifying the reasons for the delay. Failure of the hearing officer to deliver a proposed order within the time required shall not prejudice the rights of any party in the case. A copy of the proposed order shall be served on all parties to the proceeding and posted on the board's Internet Web site on the same day that it is provided to the board.

(2) Within 90 days after receipt of the hearing officer's proposed order, the board may do any of the following:

(A) Adopt the proposed order in its entirety.

(B) Reduce or otherwise mitigate the proposed administrative civil liability and adopt the balance of the proposed order.

(C) Make technical or other minor changes in the proposed order and adopt it as the board's order. Action under this subparagraph is limited to a clarifying change or a change of a similar nature that does not materially change the factual or legal basis of the proposed order.

(D) Reject the proposed order and remand the case to the same hearing officer if reasonably available, otherwise to another hearing officer from the Administrative Hearings Office, for further proceedings. If the board remands the matter to a hearing officer pursuant to this subparagraph, the hearing officer shall prepare a revised proposed order, as provided in paragraph (1), based upon the record of the prior hearing and any additional evidence admitted in the proceeding. A copy of the revised proposed order shall be served on all parties to the proceeding and posted on the board's Internet Web site on the same day it is provided to the board. The board may remand a proceeding pursuant to this subparagraph only once.

(E) Reject the proposed order, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties, the board may decide the case upon the record without including the transcript. If the board acts pursuant to this subparagraph, all of the following provisions apply:

(i) The board shall make available a copy of the record to the parties and may require payment of fees covering only the direct costs of making the copy.

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- (ii) The board shall afford the parties the opportunity to present either oral or written argument before the board.
  - (iii) The authority of the board to decide a case pursuant to this subparagraph includes the authority to adopt portions of the hearing officer's recommended order, as provided in subparagraphs (A) to (C), inclusive, while deciding for itself the remaining issues in the case.
  - (iv) If the board elects to proceed under this subparagraph, the board shall issue its final order no later than 90 days after rejection of the proposed order, or no later than 90 days after its receipt of the transcript if the board has ordered a transcript of the proceedings before the hearing officer.
  - (v) If the board finds that further delay is required by special circumstances, the board shall issue an order delaying the issuance of its final order by no more than 30 days and specifying the reasons for that delay.
- (3) After 90 days following receipt of the proposed order, if the board fails to act as prescribed in paragraph (2) or fails to issue a rejection under subparagraph (E) of paragraph (2), the proposed order shall be deemed adopted by the board.
  - (4) Within 30 days of receipt of the hearing officer's proposed order, any interested party may submit a written request to the board describing which of the actions authorized by paragraph (2) the party requests the board to take, including an explanation of the reasons for the party's request. The board shall consider all requests submitted pursuant to this paragraph when it acts on the hearing officer's proposed order.
- (d) (1) The time limits for issuance of a proposed order and board action under this section do not apply to a proceeding that the hearing officer determines to be complex because it involves any of the following:
    - (A) Novel and difficult legal or factual issues.
    - (B) A large number of parties.
    - (C) Numerous witnesses.
    - (D) A large amount of documentary evidence.
    - (E) Coordination with related proceedings.
  - (2) A proceeding is deemed to be complex if it is a reference from a court under Section 2000 or a statutory adjudication under Section 2525.
  - (3) If a hearing officer determines a proceeding to be complex, or a proceeding is deemed to be complex pursuant to paragraph (2), the hearing officer shall establish a hearing management plan and monitor the proceeding to ensure timely disposition.

*(Added by Stats. 2018, Ch. 668, Sec. 1. (AB 747) Effective July 1, 2019.)*