

1977

# California Administrative Procedure Act

Office of Administrative Hearings

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# administrative procedure act

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### DEDICATION

This publication is dedicated to Ralph N. Kleps upon his retirement as Administrative Director of the California Courts.

In 1943, Mr. Kleps directed the Judicial Council's survey of administrative procedure in California and was chief draftsman and advocate for enactment of the Administrative Procedure Act. From 1945 to 1950, he served as the first Director of the Office of Administrative Hearings.

No single person is more responsible for the high quality of administrative law in California or the high regard held for the Act throughout the Nation.

On behalf of the beneficiaries of Mr. Kleps' work, thank you.

77-11-22

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## PREFACE

The California Administrative Procedure Act is found in Government Code, Sections 11370 through 11528. This legislation, which is set forth on the following pages, is the result of years of effort by many individuals and groups and embodies the work of several sessions of the Legislature. The act is divided into three chapters, Chapter 4 dealing with the general organization and functions of the Office of Administrative Hearings, formerly the Office of Administrative Procedure, Chapter 4.5 dealing with rules and regulations which state agencies adopt, and Chapter 5 dealing with administrative adjudication or quasi-judicial hearings conducted by specific state agencies.

The act requires that agencies adopting rules and regulations must give advance notice to the public; it provides specially for cases of emergency. The act also provides for the central filing and publication of such rules and regulations.

The procedure outlined for adjudicatory hearings is designed to afford a fair hearing before an impartial and qualified tribunal. While certain sections indicate the course that hearings should follow and certain guides are established to determine what may be considered by the agencies, the procedure is more liberal and less restrictive than in proceedings before courts of law. Independent hearing officers are made available to state agencies, designed to insure that the person hearing the matter is independent of the contesting parties. Provision is made for judicial review of the decisions rendered under the act.

A great deal of background material is available concerning the act. The most important documents in this connection are:

- Procedures, 13th Annual Meeting of the State Bar of California (1940), p. 331.
- Tenth Biennial Report, Judicial Council of California (1944).
- Summary of California Statutory Provisions Conferring Quasi-Legislative Functions Upon State Agencies, Assembly Interim Committee on Administrative Regulations (1946). A supplement to the report was published in 1947.
- Report of the Assembly Interim Committee on Administrative Regulations; House Resolution No. 278, February 3, 1947.
- Preliminary and Partial Report and Second Preliminary and Partial Report of the Senate Interim Committee on Administrative Regulations (1953).
- First Report of the Senate Interim Committee on Administrative Regulations (1955).
- First Report of the Senate Interim Committee on Administrative Regulations and Adjudications on the use of Independent Hearing Officers for Administrative Adjudications (1957).
- Final Report of the Senate Interim Committee on Administrative Regulations and Adjudications (1959).

- First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Biennial Reports, Division of Administrative Procedure (1947, 1949, 1951, 1953, 1955, 1957, 1959, and 1961) and Ninth Biennial Report, Office of Administrative Procedure (1963), Tenth Report (1968).

As an important part of the California program of administrative procedure, the Office of Administrative Hearings has been and is directed to study the subject of administrative law and procedure in all its aspects; to submit its suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; to report its recommendations to the Governor and the Legislature at the commencement of each general session (Gov. Code, 11370.5). One part of the activity has been the preparation and publication of the act in pamphlet form, as a readily available and helpful reference. It is proposed to continue publication of this pamphlet with amendments to the law. Reference should be made to the annotations in the available commercial publications.

ADMINISTRATIVE PROCEDURE ACT  
(Gov. C., Title 2, Div. 3, Pt. 1, Ch. 4, Ch. 4.5 and Ch. 5)  
(Revised January 1, 1977)

CHAPTER 4. OFFICE OF ADMINISTRATIVE HEARINGS \*

Article 1. General

Sec. 11370. Short Title  
Sec. 11370.1. Director  
Sec. 11370.2. Office of Administrative  
Hearings

Sec. 11370.3. Appointment of Hearing Officers  
Sec. 11370.4. Costs of Office  
Sec. 11370.5. Functions of Office

**Short Title**

11370. Chapter 4, Chapter 4.5, and Chapter 5 of this part of the Government Code constitute, and may be cited as, the Administrative Procedure Act.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1961, Ch. 2048.

**Director**

11370.1. As used in the Administrative Procedure Act “director” means the executive officer of the Office of Administrative Hearings.

*History*—Added by Stats. 1961, Ch. 2048; amended by Stats. 1971, Ch. 1303.

**Office of Administrative Hearings**

11370.2. (a) There is in the Department of General Services the Office of Administrative Hearings which is under the direction and control of an executive officer who shall be known as the director.

(b) The director shall have the same qualifications as hearing officers, and shall be appointed by the Governor subject to confirmation of the Senate.

(c) Any and all references in any law to the Office of Administrative Procedure shall be deemed to be the Office of Administrative Hearings.

*History*—Added by Stats. 1961, Ch. 2048; amended by Stats. 1963, Ch. 1786; and by Stats. 1971, Ch. 1303.

**Appointment of Hearing Officers**

11370.3. The director shall appoint and maintain a staff of hearing officers qualified under Section 11502 of this code which is sufficient to fill the needs of the various state agencies. The director shall also appoint shorthand reporters and such other technical and clerical personnel as may be required to perform the duties of the office. The director shall assign a hearing officer for any proceeding arising under Chapter 5 of the Administrative Procedure Act and upon request from any agency may assign a hearing officer to conduct other administrative proceedings not arising under said chapter and shall assign hearing reporters as required. Any hearing officer or other employee so assigned shall be deemed an employee of the office and not of the agency to which he is assigned. When not engaged in hearing cases, hearing officers may be assigned by the director to perform other duties vested in or required of the office including those provided for in Section 11370.5.

*History*—Added by Stats. 1961, Ch. 2048; amended by Stats. 1971, Ch. 1303.

\* Heading of Chapter 4 amended by Stats. 1971, Ch. 1303.

**Costs of Office**

11370.4. The total cost to the state of maintaining and operating the Office of Administrative Hearings shall be determined by, and collected by the Department of General Services in advance or upon such other basis as it may determine from the state or other public agencies for which services are provided by the office.

*History*—Added by Stats. 1961, Ch. 2048; amended by Stats. 1963, Ch. 1553; by Stats. 1965, Ch. 462; and by Stats. 1971, Ch. 1303.

**Functions of Office**

11370.5. The office is authorized and directed to study the subject of administrative law and procedure in all its aspects; to submit its suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; and to report its recommendations to the Governor and Legislature at the commencement of each general session. All departments, agencies, officers and employees of the State shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control.

*History*—Added by Stats. 1961, Ch. 2048.

**CHAPTER 4.5. RULES AND REGULATIONS**

- Article 1. General
- Article 2. Filing and Publication
- Article 3. The California Administrative Register and Code
- Article 4. Procedure for Adoption of Regulations
- Article 5. Judicial Review
- Article 6. Exemptions

**Article 1. General**

- |   |                        |
|---|------------------------|
| Sec. 11371. Definitions                       | Sec. 11373. Proviso    |
| Sec. 11372. Office of Administrative Hearings | Sec. 11374. Limitation |

**Definitions**

11371. In this chapter unless otherwise specifically indicated:

(a) "State agency" does not include an agency in the judicial or legislative department of the State Government.

(b) "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of any such rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of the state agencies. "Regulation" does not mean or include any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued.

(c) "Order of repeal" means any resolution, order or other official act of a state agency which expressly repeals a regulation in whole or in part.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1949, Ch. 313; and by Stats. 1957, Ch. 916.

**Office of Administrative Hearings**

11372. "Department" as used in this chapter means the Office of Administrative Hearings.

*History*—Added by Stats. 1947, Ch. 1175 and Ch. 1425; amended by Stats. 1961, Ch. 2048; and by Stats. 1971, Ch. 1303.

**Proviso**

11373. Except as provided in Section 11409, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any regulation. Each regulation adopted, to be effective, must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

*History*—Added by Stats. 1947, Ch. 1425.

**Limitation**

11374. Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Any existing rules or regulations conflicting with this section are hereby repealed.

*History*—Added by Stats. 1951, Ch. 479; amended by Stats. 1953, Ch. 548.

Article 2. Filing and Publication

- Sec. 11380. Procedure for Filing
- Sec. 11380.1. Style and Form of Filing
- Sec. 11380.2. Approval and Filing
- Sec. 11381. Fees
- Sec. 11382. Endorsement by Secretary of State
- Sec. 11382.5. Filing with County Clerks
- Sec. 11383. Presumptions from Filing
- Sec. 11384. Presumptions from Publication
- Sec. 11385. Voluntary Filing and Publication

**Procedure for Filing**

11380. Every state agency shall:

(a) Transmit to the department for filing with the Secretary of State and with the Rules Committee of each house of the Legislature a certified copy of every regulation adopted by it except one which:

- (1) Establishes or fixes rates, prices or tariffs.
- (2) Relates to the use of public works, including streets and highways, under the jurisdiction of any state agency when the effect of such order is indicated to the public by means of signs or signals.
- (3) Is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(b) Transmit to the department for filing with the Secretary of State and with the Rules Committee of each house of the Legislature a certified copy of every order of repeal of a regulation required to be filed under subdivision (a) of this section.

(c) Deliver to the department at the time of transmittal for filing a regulation or order of repeal four duplicate copies of the regulation or order of repeal together with a citation of the authority pursuant to which it or any part thereof was adopted.

(d) Deliver to the department a copy of the notice of proposed action required by Section 11423.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1947, Ch. 1425; by Stats. 1949, Ch. 313; by Stats. 1953, Ch. 1362; by Stats. 1959, Ch. 2180; and by Stats. 1974, Ch. 142.

*Cross-reference*—See H. & S. C., Secs. 18900 to 18915.

**Style and Form of Filing**

11380.1. The Secretary of State shall prescribe the style in which regulations shall be prepared and a standard size form to be used in filing regulations pursuant to Section 11380, which form shall be effective on January 1, 1954.

*History*—Added by Stats. 1953, Ch. 1362; amended by Stats. 1959, Ch. 1001.

**Approval and Filing**

11380.2. The department shall examine each regulation or order of repeal transmitted to it for filing and determine whether it complies with the form and style prescribed by the Secretary of State. If the department approves the regulation or order of repeal for filing, it shall endorse on the certified copy thereof its approval for filing and shall transmit such copy to the Secretary of State.

*History*—Added by Stats. 1953, Ch. 1362.

**Fees**

11381. No fee shall be charged by any state officer or public official for the performance of any official act in connection with the certification or filing of regulations pursuant to this article.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1945, Ch. 1334; and by Stats. 1947, Ch. 1425.

**Endorsement by Secretary of State**

11382. The Secretary of State shall endorse on the certified copy of each regulation or order of repeal filed with or delivered to him, the time and date of filing and shall maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1947, Ch. 1425; and by Stats. 1953, Ch. 1362.

**Filing with County Clerks**

11382.5. Within 10 days from the receipt of printed copies of the California Administrative Code or of the California Administrative Register from the State Printing Office, the department shall file one copy of the particular issue of the code or register in the office of the county clerk of each county in this State, or if the authority to accept filings on his behalf has been delegated by the county clerk of any county pursuant to Section 26803.5 of this code, in the office of the person to whom such authority has been delegated.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1949, Ch. 313; and by Stats. 1951, Ch. 1600.

**Presumptions from Filing**

11383. The filing of a certified copy of a regulation or an order of repeal with the Secretary of State raises the rebuttable presumption that:

- (a) It was duly adopted.
- (b) It was duly filed and made available for public inspection at the day and hour endorsed on it.
- (c) All requirements of this chapter and the regulations of the department relative to such regulation have been complied with.
- (d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1945, Ch. 1356; by Stats. 1947, Ch. 1425; and by Stats. 1953, Ch. 963.

**Presumptions from Publication**

11384. The publication of a regulation in the California Administrative Code or Register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the California Administrative Code or California Administrative Register.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1945, Ch. 1356; and by Stats. 1947, Ch. 1175 and Ch. 1425.

*Cross-reference*—Evid. C., Secs. 451, 452.



**Voluntary Filing and Publication**

11385. With the approval of the department any state agency may file with the Secretary of State and the department may publish in such manner as it believes proper any regulation or order of repeal of a regulation not required by this article to be filed with the Secretary of State.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1947, Ch. 1175 and Ch. 1425.

**Article 3. The California Administrative Register and Code**

Sec. 11409. Codification and Publication	Sec. 11411. Publication Date
Sec. 11409.5. County Clerks to Receive Code and Register	Sec. 11412. Form of Publication
Sec. 11409.7. Distribution to Legislature	Sec. 11414. Special Editions
Sec. 11410. Price at Which Sold	Sec. 11415. Format to Be Adhered To

**Codification and Publication**

11409. The department shall:

(a) Provide for the continuing compilation, codification and publication, with periodic supplements, of notices of proposed action pursuant to Section 11423, and all regulations required to be filed with the Secretary of State, or of appropriate references to any regulations the printing of which the department finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application.

The publication of compiled regulations shall be known as the "California Administrative Code," and the periodic supplements thereto, including notices of proposed action, shall be known as the "California Administrative Register."

(b) Prescribe regulations for carrying out the provisions of Articles 2 and 3 of this chapter. Among other things the regulations shall provide for the manner and form in which regulations, notice of the repeal of regulations, compilations, and codifications shall be prepared, printed, and indexed, to the end that all regulations, compilations, and codifications shall be prepared and published in a uniform manner and at the earliest practicable date and that each regulation published shall be accompanied by a reference to the statutory authority pursuant to which it was enacted.

*History*—Added by Stats. 1947, Ch. 1175 and Ch. 1425; amended by Stats. 1974, Ch. 142.

*Cross-reference*—See H. & S. C., Secs. 18900 to 18915.

**County Clerks to Receive Code and Register**

11409.5. The department shall supply a complete set of the California Administrative Code, and of the California Administrative Register, which have been or are published and of each supplement to such code or register to the county clerk of each county, or if the authority to accept filings on his behalf has been delegated by the county clerk of any county pursuant to Section 26803.5 of this code, to the person to whom such authority has been delegated.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1951, Ch. 1600.

*Cross-reference*—See Gov. C. Secs. 11382.5, 14880, 14900 and 26803.5.

**Distribution to Legislature**

11409.7. The department shall supply to each standing committee of both houses of the Legislature, a copy of each issue of the California Administrative Register which includes notices of proposed action, and any supplement thereto, published on or after the effective date of this section.

*History*—Added by Stats. 1974, Ch. 142; amended by Stats. 1976, Ch. 615.

**Price at Which Sold**

11410. The California Administrative Register and the California Administrative Code shall be sold by the Department of General Services at such prices as will reimburse the state for all costs incurred for printing, publication and distribution.

All money received from the sale of the California Administrative Register and the California Administrative Code shall be deposited in the treasury and credited to the General Fund, except that an amount necessary to cover the distribution costs shall be credited to the fund from which such costs have been paid.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1945, Ch. 1356; by Stats. 1947, Ch. 1175; and by Stats. 1965, Ch. 371.

**Publication Date**

11411. The publication date shall be determined by the department, and all rules and regulations thereafter filed and all rules and regulations theretofore filed and in effect on the publication date shall be published.

*History*—Added by Stats. 1945, Ch. 111; amended by Stats. 1947, Ch. 1175 and Ch. 1425.

**Form of Publication**

11412. Nothing in this chapter limits or restricts the discretion of the department to determine the form in which the California Administrative Code, and the California Administrative Register shall be published. Either or both of said publications may be issued in such units, whether in bound volumes or in loose-leaf form, separately or in combination, at the same or at different times, as the department deems most economical and best adapted to make the current regulations available to interested persons and to the public.

*History*—Added by Stats. 1945, Ch. 1356; amended by Stats. 1947, Ch. 1175 and Ch. 1425.

**Special Editions**

11414. Nothing in this chapter precludes any state agency from purchasing copies of the California Administrative Code or of the California Administrative Register, or of any unit of either, nor from printing special editions of any such units and distributing the same at the cost or at less than the cost to the agency if it is authorized so to do by other provisions of law.

*History*—Added by Stats. 1945, Ch. 1356; amended by Stats. 1961, Ch. 361.

**Format to Be Adhered To**

11415. After the regulations of a state agency have been published by the department, any subsequent printings or reprinting of those regulations shall be printed in the format (including the numbering

system) prescribed by the department, unless the state agency obtains permission from the Department of General Services to print otherwise.

*History*—Added by Stats. 1945, Ch. 1356; amended by Stats. 1947, Ch. 1175 and Ch. 1425; and by Stats. 1965, Ch. 371.

**Article 4. Procedure for Adoption of Regulations**

Sec. 11420. Purpose of Article	Sec. 11423. Notice of Proposed Action
Sec. 11421. Emergency Regulations	Sec. 11424. Contents of Notice
Sec. 11422. Effective Date	Sec. 11425. Public Proceedings
Sec. 11422.1. Emergency: Limitation on Effective Period	Sec. 11426. Right to Petition
	Sec. 11427. Procedure on Petition

**Purpose of Article**

11420. It is the purpose of this article to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in Section 11421, the provisions of this article are applicable to the exercise of any quasi-legislative power conferred by any statute heretofore or hereafter enacted, but nothing in this article repeals or diminishes additional requirements imposed by any such statute. The provisions of this article shall not be superseded or modified by any subsequent legislation except to the extent that such legislation shall do so expressly.

*History*—Added by Stats. 1947, Ch. 1425.

**Emergency Regulations**

11421. (a) The provisions of this article shall not apply to any regulation not required to be filed with the Secretary of State under this chapter, and only this section and Section 11422 of this article shall apply to any regulation prescribing an agency's organization or procedure or to an emergency regulation adopted pursuant to subdivision (b) of this section.

(b) If in any particular case the state agency makes a finding, including a statement of facts constituting the emergency in writing that the adoption of a regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety or general welfare, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1949, Ch. 313; and by Stats. 1953, Ch. 515.

**Effective Date**

11422. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on the thirtieth day after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by such statute.

(b) It is a regulation prescribing an agency's organization or procedure, in which event it shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(c) It is an emergency regulation or order of repeal adopted pursuant

to subdivision (b) of Section 11421, in which case the finding and the statement of the facts constituting the emergency shall be filed with the Secretary of State and with the Rules Committee of each house of the Legislature together with the emergency regulation or order of repeal, which shall, in that event only, become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(d) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1949, Ch. 313; by Stats. 1953, Ch. 563; and by Stats. 1959, Ch. 2180.

**Emergency: Limitation on Effective Period**

11422.1. (a) No regulation adopted as an emergency shall remain in effect more than 120 days unless the adopting agency has complied with Sections 11423, 11424, and 11425, prior to the adoption of the emergency regulation, or has, within said 120-day period, given notice of the adoption of the emergency regulation in a manner substantially similar to that required for the proposed adoption of a regulation and has afforded interested persons the opportunity to present statements, arguments, or contentions in a manner substantially similar to that required by Section 11425. The agency shall, prior to the expiration of the 120-day period, transmit to the department for filing with the Secretary of State and with the Rules Committee of each house of the Legislature, a certification that either Sections 11423, 11424, and 11425 were complied with prior to adoption, or that compliance was had with this section within the said period.

(b) In the event an emergency regulation was filed as an amendment of an existing regulation, upon failure of the adopting agency to file a certificate of compliance as provided in (a) above, the regulation as it existed prior to such emergency amendment shall thereupon become effective and, after notice to the adopting agency by the Office of Administrative Hearings shall be reprinted in the California Administrative Code in the place of such emergency amendment.

(c) In the event a regulation is originally adopted and filed as an emergency and the adopting agency fails to file a certificate of compliance as provided in (a) above, such failure shall constitute a repeal thereof and, after notice to the adopting agency by the Office of Administrative Hearings, shall be deleted from the California Administrative Code.

*History*—Added by Stats. 1957, Ch. 1919; amended by Stats. 1959, Ch. 2180; by Stats. 1967, Ch. 1375; and by Stats. 1971, Ch. 1303.

**Notice of Proposed Action**

11423. At least 30 days prior to the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be:

(a) Published in such newspaper of general circulation, trade or industry publication, as the state agency shall prescribe.

(b) Filed with the Senate Committee on Rules and the Speaker of the Assembly.

(c) Mailed to every person who has filed a request for notice thereof

with the state agency.

(d) In cases in which the state agency is within a state department, mailed or delivered to the director of such department.

(e) When appropriate in the judgment of the state agency, (1) mailed to any person or group of persons whom the agency believes to be interested in the proposed action and, (2) published in such additional form and manner as the state agency shall prescribe.

(f) Delivered to the Office of Administrative Hearings for publication in the next issue of the California Administrative Register as prepared by that office.

Where the form or manner of notice is prescribed by statute in any particular case, in addition to filing and mailing notice as required herein, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by that statute.

The failure to mail notice to any person as provided in this section shall not invalidate any action taken by a state agency pursuant to this article. The provisions of Article 5 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to the publication of newspaper notices under this section.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1949, Ch. 313; by Stats. 1957, Ch. 1751; by Stats. 1959, Ch. 2180; by Stats. 1974, Ch. 142; and by Stats. 1976, Ch. 1231.

**Contents of Notice**

11424. The notice of proposed adoption, amendment, or repeal of a regulation shall include:

(a) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(b) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law which are being implemented, interpreted, or made specific.

(c) Either the express terms or an informative summary of the proposed action;

(d) An estimate, prepared as prescribed by the Department of Finance, of the cost to any local agency or school district that is required to be reimbursed under the provisions of Section 2231 of the Revenue and Taxation Code.

(e) Such other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1957, Ch. 1751; and by Stats. 1976, Ch. 1231.

**Public Proceedings**

11425. On the date and at the time and place designated in the notice the state agency shall afford any interested person or his duly authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present the same orally. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

In any hearing under this section the state agency or its duly authorized

representative shall have authority to administer oaths or affirmations, and may continue or postpone such hearing from time to time to such time and at such place as it shall determine.

*History*—Added by Stats. 1947, Ch. 1425.

**Right to Petition**

11426. Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption or repeal of a regulation as provided in this article. Such petition shall state clearly and concisely:

(a) The substance or nature of the regulation, amendment, or repeal requested;

(b) The reasons for the request;

(c) Reference to the authority of the state agency to take the action requested.

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1957, Ch. 1751.

**Procedure on Petition**

11427. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation pursuant to this article, a state agency shall within 30 days deny the petition in writing or schedule the matter for public hearing pursuant to Sections 11423, 11424, and 11425 of this article.

*History*—Added by Stats. 1947, Ch. 1425.

Article 5. Judicial Review

**Court Review**

11440. Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the provisions of the Code of Civil Procedure and in addition to any other ground which may exist, such regulation may be declared to be invalid for a substantial failure to comply with the provisions of this chapter or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 11421 (b).

*History*—Added by Stats. 1947, Ch. 1425; amended by Stats. 1953, Ch. 515.

*Cross-reference*—See C.C.P. Sec. 1060 et seq.

Article 6. Exemptions

**Exemptions**

11445. Articles 4 and 5 of this chapter shall not apply to the Public Utilities Commission or the Industrial Accident Commission, and Articles 2 and 3 of this chapter shall apply only to the rules of procedure of said state agencies.

*History*—Added by Stats. 1947, Ch. 1425.

**CHAPTER 5. ADMINISTRATIVE ADJUDICATION**

Sec. 11500. Definitions	Sec. 11513. Evidence Rules
Sec. 11501. Application of Chapter	Sec. 11514. Evidence by Affidavit
Sec. 11502. Appointment of Hearing Officers	Sec. 11515. Official Notice
Sec. 11503. Accusation	Sec. 11516. Amendment of Accusation After Submission
Sec. 11504. Statement of Issues	Sec. 11517. Decision; Action on Proposed Decision
Sec. 11504.5. References to Accusations Include Statements of Issue	Sec. 11518. Form of Decision
Sec. 11505. Service of Accusation; What Included	Sec. 11519. Effective Date of Decision
Sec. 11506. Notice of Defense	Sec. 11520. Defaults
Sec. 11507. Amended or Supplemental Accusation	Sec. 11521. Reconsideration
Sec. 11507.5. Discovery Limitations	Sec. 11522. Petition for Reinstatement or Reduction of Penalty
Sec. 11507.6. Discovery Rights and Procedure	Sec. 11523. Judicial Review
Sec. 11507.7. Discovery, Judicial Remedy	Sec. 11524. Continuance
Sec. 11508. Time and Place of Hearing	Sec. 11525. Contempt
Sec. 11509. Form of Notice of Hearing	Sec. 11526. Mail Vote
Sec. 11510. Subpoenas	Sec. 11527. Payment of Costs
Sec. 11511. Depositions	Sec. 11528. Power to Administer Oaths
Sec. 11512. Presiding Hearing Officer: Reporter	

**Definitions**

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

(a) "Agency" includes the state boards, commissions and officers enumerated in Section 11501 and those 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 official capacity, who has been allowed to appear in the proceeding.

(c) "Respondent" means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) "Hearing officer" means a hearing officer 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 constitutes an agency.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491.

**Application of Chapter**

11501. (a) The procedure of any agency shall be conducted pursuant to the provisions of this chapter only as to those functions to which this chapter is made applicable by the statutes relating to the particular agency.

(b) The enumerated agencies referred to in Section 11500 are:  
Board of Dental Examiners of California.

Board of Medical Quality Assurance of the State of California, each of

- its three divisions, and the Medical Quality Review Committees.
- Board of Osteopathic Examiners of the State of California.
- California Board of Nursing Education and Nurse Registration.
- State Board of Optometry.
- California State Board of Pharmacy.
- State Department of Health.
- Board of Examiners in Veterinary Medicine.
- State Board of Accountancy.
- California State Board of Architectural Examiners.
- State Board of Barber Examiners.
- State Board of Registration for Professional Engineers.
- Registrar of Contractors.
- State Board of Cosmetology.
- State Board of Funeral Directors and Embalmers.
- Structural Pest Control Board.
- Department of Navigation and Ocean Development.
- Director of Consumer Affairs.
- Bureau of Collection and Investigative Services.
- State Fire Marshal.
- State Board of Registration for Geologists.
- Director of Food and Agriculture.
- Labor Commissioner.
- Real Estate Commissioner.
- Commissioner of Corporations.
- Department of Benefit Payments.
- Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun.
- Board of Pilot Commissioners for Humboldt Bay and Bar.
- Board of Pilot Commissioners for the Harbor of San Diego.
- Fish and Game Commission.
- State Board of Education.
- Insurance Commissioner.
- Savings and Loan Commissioner.
- State Board of Dry Cleaners.
- Board of Behavioral Science Examiners.
- State Board of Chiropractic Examiners.
- State Board of Guide Dogs for the Blind.
- Department of Aeronautics.
- Board of Administration, Public Employees' Retirement System.
- Department of Motor Vehicles.
- Bureau of Home Furnishings.
- Cemetery Board.
- Department of Conservation.
- Department of Water Resources acting pursuant to Section 414 of the Water Code.
- Board of Vocational Nurse and Psychiatric Technician Examiners of the State of California.
- Certified Shorthand Reporters Board.

Bureau of Repair Services.  
California State Board of Landscape Architects.  
Department of Alcoholic Beverage Control.  
California Horse Racing Board.  
School districts under Section 13443 of the Education Code.  
State Fair Employment Practice Commission.  
Bureau of Employment Agencies.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; by Stats. 1949, Ch. 314; by Stats. 1951, Ch. 1215; by Stats. 1953, Ch. 961; by Stats. 1955, Ch. 453; by Stats. 1957, Ch. 1932; by Stats. 1957, Ch. 1933; by Stats. 1961, Ch. 104; by Stats. 1961, Ch. 2071; by Stats. 1963, Ch. 1394; by Stats. 1965, Ch. 1456; by Stats. 1970, Ch. 346; by Stats. 1971, Ch. 716; by Stats. 1972, Ch. 749; by Stats. 1973, Ch. 142; by Stats. 1973, Ch. 1212; by Stats. 1974, Ch. 1159; and by Stats. 1976, Ch. 1185.

*Editorial Note:* Other agencies not specifically enumerated but covered by the provisions of Section 11501 (a) to which this chapter is made applicable include: Teachers' Retirement System (Section 22217, Education Code), Fair Political Practices Commission (Section 83116, Government Code), Occupational Safety and Health Standards Board (Section 146, Labor Code), Occupational Safety and Health Appeals Board (Sections 6603-6607, Labor Code), Air Resources Board (Sections 40807, 43641, Health and Safety Code), Office of the Attorney General (Section 12534, Government Code), Cancer Advisory Council (Sections 1720 and 1704(e), Health and Safety Code), Secretary of Resources Agency (Section 25845(b), Health and Safety Code) and Commission on Teacher Preparation and Licensing (Section 44246, Education Code).

### **Appointment of Hearing Officers**

11502. All hearings of state agencies required to be conducted under this chapter shall be conducted by hearing officers on the staff of the Office of Administrative Hearings. The Director of the Office of Administrative Hearings has power to appoint a staff of hearing officers for the office as provided in Section 11370.3 of the Government Code. Each hearing officer shall have been admitted to practice law in this state for at least five years immediately preceding his appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1961, Ch. 2048; and by Stats. 1971, Ch. 1303.

### **Accusation**

11503. A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

*History*—Added by Ch. 1945, Ch. 867; amended by Stats. 1947, Ch. 491.

### **Statement of Issues**

11504. A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement

specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing, and in addition any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation; provided, that, if the hearing is held at the request of the respondent, the provisions of Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6 and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; and by Stats. 1968, Ch. 808.

### **References to Accusations Include Statements of Issue**

11504.5. In the following sections of this chapter, all references to accusations shall be deemed to be applicable to statements of issues except in those cases mentioned in subdivision (a) of Section 11505 and Section 11506 where compliance is not required.

*History*—Added by Stats. 1963, Ch. 856.

### **Service of Accusation; What Included**

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

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

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, [here insert name of agency] may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: [here insert name and address of agency]. You may, but need not, be represented by counsel at any or

all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 in the possession, custody or control of the agency, you may contact: [here insert name and address of appropriate person].

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

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1968, Ch. 808; and by Stats. 1970, Ch. 828.

**Notice of Defense**

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

- (1) Request a hearing;
- (2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- (3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense;
- (4) Admit the accusation in whole or in part;
- (5) Present new matter by way of defense.

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

(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in subdivision (a) (3), all objections to the form of the accusation shall be deemed waived.

(c) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

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

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1963, Ch. 931.

**Amended or Supplemental Accusation**

11507. At any time before the matter is submitted for decision the

agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

*History*—Added by Stats. 1945, Ch. 867.

*Cross-reference*—See Gov. C. Sec. 11516.

**Discovery Limitations**

11507.5. The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

*History*—Added by Stats. 1968, Ch. 808.

**Discovery Rights and Procedure**

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

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

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

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

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

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

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

For the purpose of this section, "statements" include written statements by the person, signed or otherwise authenticated by him, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

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

*History*—Added by Stats. 1968, Ch. 808.

#### ***Discovery, Judicial Remedy***

11507.7. (a) Any party claiming his request for discovery pursuant to Section 11507.6 has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the administrative hearing will be held, naming as respondent the party refusing or failing to comply with Section 11507.6. The petition shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why such matter is discoverable under this section, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 15 days after the respondent party first evidenced his failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, whichever period is longer. If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(c) The administrative proceeding shall be stayed during the pendency of the proceedings before the superior court only if the court issues an order to show cause and only if a copy of the order to show cause is filed with the Office of Administrative Hearings forthwith upon issuance thereof.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that such matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under such provisions, the court may order lodged with it such matters as are provided in subdivision (b) of Section 915 of the Evidence Code and examine such matters in accordance with the provisions thereof.

(e) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument

and additional evidence as the court may allow.

(f) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order denying or granting the petition, provided, however, the court may on its own motion for good cause extend such time an additional 30 days. The order of the court shall be in writing setting forth the matters or parts thereof the petitioner is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, such order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(g) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the superior court's order serve and file in the appropriate court of appeal a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. Where such review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. Where such review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(h) Where the superior court finds that a party or his attorney, without substantial justification, failed or refused to comply with Section 11507.6, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

*History*—Added by Stats. 1968, Ch. 808; amended by Stats. 1971, Ch. 1303.

#### ***Time and Place of Hearing***

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held in San Francisco if the transaction occurred or the respondent resides within the First Appellate District, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth Appellate District, and in the County of Sacramento if the transaction occurred or the respondent resides within the Third or Fifth Appellate District.

(b) Notwithstanding subdivision (a):

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

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

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

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1963, Ch. 710; and by Stats. 1967, Ch. 17.

*Cross-reference*—See Gov. C. Sec. 20133, and Ed. C. Sec. 22217, as to retirement hearings. See also Gov. C. Sec. 18574. See B. & P.C. Sec. 24300 as to Alcoholic Beverage Control hearings.

### **Form of Notice of Hearing**

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

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

You are hereby notified that a hearing will be held before [here insert name of agency] at [here insert place of hearing] on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_, upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [here insert appropriate office of agency].

*History*—Added by Stats. 1945, Ch. 867.

### **Subpoenas**

11510. (a) Before the hearing has commenced the agency, or the assigned hearing officer, shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena duces tecum. After the hearing has commenced the agency itself hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) The process issued pursuant to subdivision (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend at a place out of the county in which he resides unless the distance be less than 150 miles from his place of residence except that the agency, upon affidavit of any party showing that the testimony of such witness is material and necessary, may endorse on the subpoena an order requiring the attendance of such witness.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the State or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil

actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of three dollars (\$3) for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1961, Ch. 106; by Stats. 1963, Ch. 843; and by Stats. 1968, Ch. 808.

### **Depositions**

11511. On verified petition of any party, an agency may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of his testimony; a showing that the witness will be unable or can not be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the State and where the agency has ordered the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

*History*—Added by Stats. 1945, Ch. 867.

### **Presiding Hearing Officer; Reporter**

11512. (a) Every hearing in a contested case shall be presided over by a hearing officer. The agency itself shall determine whether the hearing officer is to hear the case alone or whether the agency itself is to hear the case with the hearing officer.

(b) When the agency itself hears the case the hearing officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the hearing officer. When the hearing officer alone hears a case he shall exercise all powers relating to the conduct of the hearing.

(c) A hearing officer or agency member shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any hearing officer or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns an agency member the issue shall be determined by the other members of the agency. Where the request concerns the hearing officer the issue shall be determined by the



agency itself if the agency itself hears the case with the hearing officer, otherwise the issue shall be determined by the hearing officer. No agency member shall withdraw voluntarily or be subject to disqualification if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

(d) The proceedings at the hearing shall be reported by a phonographic reporter.

(e) Whenever, after the agency itself has commenced to hear the case with a hearing officer presiding, a quorum no longer exists, the hearing officer who is presiding shall complete the hearing as if sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517 of the Government Code.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1973, Ch. 231.

### **Evidence Rules**

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

(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 to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he 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. 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 such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(d) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter, approved by the hearing officer conducting the proceeding as proficient in the English language and the language in which the witness will testify, to serve as interpreter during the hearing. The cost of the interpreter shall be paid by the agency having jurisdiction over the matter if the hearing officer so directs, otherwise by the party providing the interpreter. The Office of Administrative Hearings may compile and publish a list of interpreters known to be proficient in various languages. Any person whose name appears upon such a list shall be deemed to be approved by the hearing officer hearing the case.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1965, Ch. 299; and by Stats. 1972, Ch. 1390.

### **Evidence by Affidavit**

11514. (a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but it shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of the proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

*History*—Added by Stats. 1945, Ch. 867; repealed and added by Stats. 1947, Ch. 491.

### **Official Notice**

11515. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

*History*—Added by Stats. 1945, Ch. 867.

*Cross-reference*—Evid. C. Secs. 451, 452; Gov. C. Secs. 11383, 11384.

### **Amendment of Accusation After Submission**

11516. The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

*History*—Added by Stats. 1945, Ch. 867.

### *Decision; Action on Proposed Decision*

11517. (a) If a contested case is heard before an agency itself the hearing officer who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency. Where a contested case is heard before an agency itself, no member thereof who did not hear the evidence shall vote on the decision.

(b) If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in such form that it may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record and a copy of the proposed decision shall be served by the agency on each party in the case and his attorney. The agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(c) If the proposed decision is not adopted as provided in subdivision (b), the agency itself may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party and his attorney as prescribed in subdivision (b). The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself no agency member may vote unless he heard the additional oral evidence.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1955, Ch. 1661; and by Stats. 1971, Ch. 653.

### *Form of Decision*

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

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491.

### *Effective Date of Decision*

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

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

(c) If respondent was required to register with any public officer, a

notification of any suspension or revocation shall be sent to such officer after the decision has become effective.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1949, Ch. 314; and by Stats. 1976, Ch. 476.

### *Defaults*

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

(b) Nothing herein shall be construed to deprive the respondent of the right to make any showing by way of mitigation.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; and by Stats. 1963, Ch. 931.

### *Reconsideration*

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if such date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If no action is taken on a petition within the time allowed for ordering reconsideration the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself no agency member may vote unless he heard the evidence.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1953, Ch. 964.

### *Petition for Reinstatement or Reduction of Penalty*

11522. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

*History*—Added by Stats. 1945, Ch. 867.

### *Judicial Review*

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure,

subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section any such petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. The complete record of the proceedings, or such parts thereof as are designated by the petitioner, shall be prepared by the agency and shall be delivered to petitioner, within 30 days after a request therefor by him, upon the payment of the fee specified in Section 69950 of the Government Code as now or hereinafter amended for the transcript, the cost of preparation of other portions of the record and for certification thereof. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by a hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him. The agency may file with the court the original of any document in the record in lieu of a copy thereof.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; by Stats. 1953, Ch. 962; by Stats. 1955, Ch. 246; by Stats. 1965, Ch. 1458; and by Stats. 1971, Ch. 984.

*Cross-reference*—See C.C.P. Sec. 1094.5, post; B. & P.C. Sec. 7013.

#### **Continuance**

11524. The agency may grant continuances. When a hearing officer of the Office of Administrative Hearings has been assigned to such hearing, no continuance may be granted except by him or by the hearing officer in charge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1953, Ch. 962; by Stats. 1963, Ch. 842; and by Stats. 1971, Ch. 1303.

#### **Contempt**

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

*History*—Added by Stats. 1945, Ch. 867.

#### **Mail Vote**

11526. The members of an agency qualified to vote on any question may vote by mail.

*History*—Added by Stats. 1945, Ch. 867.

#### **Payment of Costs**

11527. Any sums authorized to be expended under this chapter by any agency shall be a legal charge against the funds of the agency.

*History*—Added by Stats. 1945, Ch. 867.

#### **Power to Administer Oaths**

11528. In any proceedings under this chapter any agency, agency member, secretary of an agency, hearing reporter, or hearing officer has power to administer oaths and affirmations and to certify to official acts.

*History*—Added by Stats. 1945, Ch. 867; amended by Stats. 1969, Ch. 191.

## APPENDIX

### Business and Professions Code

#### *Recognition of Prison Training in Considering Qualifications for License*

23.9. Notwithstanding any other provision of this code, any individual who, while imprisoned in a state prison or other correctional institution, is trained, in the course of a rehabilitation program approved by the particular licensing agency concerned and provided by the prison or other correctional institution, in a particular skill, occupation, or profession for which a state license, certificate, or other evidence of proficiency is required by this code shall not, when released from the prison or institution, be denied the right to take the next regularly scheduled state examination or any examination thereafter required to obtain the license, certificate, or other evidence of proficiency and shall not be denied such license, certificate, or other evidence of proficiency, because of his imprisonment or the conviction from which the imprisonment resulted, or because he obtained his training in prison or in the correctional institution, if the licensing agency, upon recommendation of the Adult Authority or the Department of the Youth Authority, as the case may be, finds that he is a fit person to be licensed.

*History*—Added by renumbering Section 23.8, by Stats. 1971, Ch. 582.

#### *Denial of License for Lack of Good Character*

116. Any agency in the department which is authorized by law to deny an application for a license upon the ground that the applicant lacks good character, may without a hearing deny an application upon such ground, if within one year previously, and after proceedings conducted in accordance with the provisions of Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, such agency has denied an application from the same applicant upon the ground that such applicant lacks good character.

*History*—Added by Stats. 1955, Ch. 1151.

#### *Record of Conviction of Crime Involving Moral Turpitude; Effect as Evidence*

117. Notwithstanding any other provisions of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime involving moral turpitude, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is of an offense involving moral turpitude.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

*History*—Added by Stats. 1961, Ch. 934.

*Withdrawal of Application for License; Suspension, Expiration or Forfeiture of License; Authority of Board*

118. (a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

*History*—Added by Stats. 1961, Ch. 1079.

*Application of Division to Specific Grounds*

475. (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

- (1) Knowingly making a false statement of fact required to be revealed in an application for license;
- (2) Conviction of a crime;
- (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; and

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in subdivision (a) (1) and (2) above.

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Inapplicability of Division to Attorneys and Persons Subject to Alcoholic Beverage Control Act*

476. Nothing in this division shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000).

*History*—Added by Stats. 1972, Ch. 903.

*Board and License Defined*

477. As used in this division: (a) "board" includes "bureau," "commission," "department," "division," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Grounds for Denial*

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime; or
- (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
- (3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a crime if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code, and if his probation has been terminated and the information or accusation has been dismissed pursuant to Section 1203.4 of the Penal Code.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

*History*—Added by Stats. 1972, Ch. 903; repealed and added by Stats. 1974, Ch. 1321; amended by Stats. 1976, Ch. 947.

*Criteria to Determine Crime Related to Business or Profession*

481. Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Criteria to Evaluate Rehabilitation*

482. Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Attestation by Other Persons to Good Moral Character*

484. No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Reapplication; Informing Applicant of Requirements*

486. Where the board has denied an application for a license under this chapter it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

- (a) The earliest date on which the applicant may reapply for a license.
- (b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Time of Hearing*

487. If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing but in no case shall more than two such orders be made or requests be granted.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Conviction of a Crime*

490. A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued, or the ground of knowingly making a false statement of fact required to be revealed in an application for such license.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

*Information to ex-Licensee*

491. Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

- (a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.
- (b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

*History*—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321; and by Stats. 1975, Ch. 678.

Code of Civil Procedure

*Review of Administrative Orders or Decisions; Filing Record; Extent of Inquiry; Abuse of Discretion; Relevant Evidence; Judgment; Stay*

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board or officer may be filed with the petition, may be filed with respondent's points and authorities or may be ordered to be filed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, such expense shall be taxable as costs.

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

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

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

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

(f) Except as provided in subdivision (g), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration

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

(g) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensing board respecting any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, except Chapter 11 (commencing with Section 4800) thereof, or licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing such notice whichever occurs first; provided that such stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and the licensing board is unlikely to prevail ultimately on the merits; and provided further that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which such appeal is taken; provided that, in cases where a stay is in effect at the time of filing the notice of appeal, such stay shall be continued by operation of law for a period of twenty (20) days from the filing of such notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which such appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or

complied with during the pendency of such proceedings.

*History*—Added by Stats. 1945, Ch. 868; amended by Stats. 1949, Ch. 358; by Stats. 1974, Ch. 668; and by Stats. 1975 (2nd Ex. Sess.), Ch. 1.

## Education Code

### Elementary and Secondary Schools

#### *Grounds for Dismissal of Permanent Employee*

44932. No permanent employee shall be dismissed except for one or more of the following causes:

- (a) Immoral or unprofessional conduct.
- (b) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
- (c) Dishonesty.
- (d) Incompetency.
- (e) Evident unfitness for service.
- (f) Physical or mental condition unfitting him to instruct or associate with children.
- (g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.
- (h) Conviction of a felony or of any crime involving moral turpitude.
- (i) Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (j) Violation of any provision in Sections 7001 to 7007, inclusive, of this code.
- (k) Knowing membership by the employee in the Communist Party.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### *Other Grounds for Dismissal*

44933. A permanent employee may be dismissed on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### *Charges and Notice of Intention to Discharge Employee*

44934. Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon a written statement of charges formulated by the governing board, charging that there exists cause for the dismissal of a permanent employee of the district, the governing board may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss him at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article.

Any written statement of charges of unprofessional conduct or in-

competency shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or incompetency.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### ***Service of Notice and Attachments***

44936. The notice shall not be given between May 15th and September 15th in any year. It shall be in writing and be served upon the employee personally or by United States registered mail addressed to him at his last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### ***Unprofessional Conduct or Incompetency; Notice of Charges***

44938. The governing board of any school district shall not act upon any charges of unprofessional conduct or incompetency unless during the preceding term or half school year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3 of this part, if applicable to the employee. "Unprofessional conduct" and "incompetency" as used in this section means, and refers only to, the unprofessional conduct and incompetency particularly specified as a cause for dismissal in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### ***Conduct of Hearing; Decision***

44944. (a) In the event a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee's demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, provided, however, that the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency therein, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to seven calendar days before the date upon

which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance; provided, however, that such extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be a hearing officer of the State Office of Administrative Procedure who shall be chairman and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to select a commission member at least seven calendar days prior to the date of the hearing, such failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by the school district for all costs incident to the selection.

The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal and shall hold a currently



valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) The decision of the Commission on Professional Competence shall be made by a majority vote and the commission shall prepare a written decision containing findings of fact, determinations of issues and a disposition either:

- (1) That the employee should be dismissed.
- (2) That the employee should not be dismissed.

The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

The governing board and the employee shall have the right to be represented by counsel.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in California, such member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member's employing district.

(e) If the governing board orders the dismissal of the employee, the governing board and the employee shall share equally the expenses of the hearing, including the cost of the hearing officer; and the state shall pay any costs incurred under subdivision (d) (2) above, and the reasonable expenses, as determined by the hearing officer, of the member selected by the governing board and the member selected by the employee, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The State Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations and forms for the submission of such claims. The employee and the governing board shall pay their own attorney fees.

If the governing board orders that the employee not be dismissed, the governing board shall pay all expenses of the hearing, including the cost of the hearing officer, and any costs incurred under subdivision (d) (2) above, and the reasonable expenses, as determined by the hearing officer, of the member selected by the governing board and the member selected by the employee, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

### *Dismissal of Probationary Employees During School Year*

44948. Governing boards of school districts shall dismiss probationary employees during the school year for cause only, as in the case of permanent employees.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

### *Cause, Notice and Right to Hearing Required for Dismissal of Probationary Employee*

44949. (a) No later than March 15 and before an employee is given notice by the governing board that his services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that such notice be given to the employee, and stating the reasons therefor.

If a probationary employee has been in the employ of the district for less than 45 days on March 15, the giving of such notice may be deferred until the 45th day of employment and all time period and deadline dates herein prescribed shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties; however, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him for the ensuing year. A request for a hearing must be in writing and must be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified therein, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his failure to do so shall constitute his waiver of his right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that: (1) the respondent shall file his notice of defense, if any, within five days after service upon him of the accusation and he shall be notified of such five-day period for filing in the accusation; (2) the discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate; and (3) the hearing shall be conducted by a hearing officer who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges

sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the hearing officer shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the hearing officer, shall be paid by the governing board from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a probationary employee for the ensuing school year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the schools and the pupils thereof and provided that cause shall include termination of services for the reasons specified in Section 44955. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the probationary employee by the governing board that his service will not be required for the ensuing year, shall be given no later than May 15.

(f) If a governing board notifies a probationary employee that his services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee's written request, provide him with a statement of its reasons for not reemploying him for the ensuing school year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) In the event that the governing board does not give notice provided for in subdivision (e) of this section on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Government Code Section 11524, the dates prescribed in subdivisions (c), (d), (e) and (h) which occur on or after the date of granting the continuance shall be extended for a period of time equal to such continuance.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### **Reduction in Number of Permanent Employees**

44955. No permanent employee shall be deprived of his position for causes other than those specified in Sections 44892, 44907 and 44923, and

Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his position for cause other than as specified in Sections 44948 and 44949, except in accordance with the provisions of Sections 44955 to 44961, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by reason of either of such conditions to decrease the number of permanent employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the certificated employees of said district, permanent as well as probationary, at the close of the school year; provided, that the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Notice of such termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845 of this code. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### **Community Colleges**

##### ***Arbitration Proceedings; Discovery, Evidence, and Decision***

87675. The arbitrator shall conduct proceedings in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. He shall determine whether there is cause to dismiss or penalize the employee. If he finds cause, he shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and he shall determine whether his decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

***Conduct of Proceedings; Accusation; Notice of Defense***

87679. The administrative hearing officer shall conduct proceedings in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

***Grounds for Dismissal of Permanent Employee***

87732. No regular employee shall be dismissed except for one or more of the following causes:

- (a) Immoral or unprofessional conduct.
- (b) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
- (c) Dishonesty.
- (d) Incompetency.
- (e) Evident unfitness for service.
- (f) Physical or mental condition unfitting him to instruct or associate with children.
- (g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the board of governors or by the governing board of the community district employing him.
- (h) Conviction of a felony or of any crime involving moral turpitude.
- (i) Conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
- (j) Violation of any provision in Sections 7000 to 7007, inclusive.
- (k) Knowing membership by the employee in the Communist Party.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

***Unprofessional Conduct or Incompetency; Notice of Charges***

87734. The governing board of any community college district shall not act upon any charges of unprofessional conduct or incompetency

unless during the preceding term or half school year prior to the date of the filing of the charge, and at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 4 (commencing with Section 87660) of this chapter, if applicable to the employee. "Unprofessional conduct" and "incompetency" as used in this section means, and refers only to, the unprofessional conduct and incompetency particularly specified as a cause for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

***Cause, Notice and Right to Hearing Required for Dismissal of Probationary Employee***

87740. (a) No later than March 15 and before an employee is given notice by the governing board that his services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that such notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of such notice may be deferred until the 45th day of employment and all time periods and deadline dates herein prescribed shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties; however, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him for the ensuing year. A request for a hearing must be in writing and must be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified therein, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his failure to do so shall constitute his waiver of his right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the

Government Code and the governing board shall have all the power granted to an agency therein, except that: (1) the respondent shall file his notice of defense, if any, within five days after service upon him of the accusation and he shall be notified of such five-day period for filing in the accusation; (2) the discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate; and (3) the hearing shall be conducted by a hearing officer who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the hearing officer shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the hearing officer, shall be paid by the governing board from the district funds. The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section, as may be necessary to effectuate this section.

(d) The governing board's determination not to reemploy a contract employee for the ensuing school year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the schools and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that his service will not be required for the ensuing year, shall be given no later than May 15.

(f) If a governing board notifies a contract employee that his services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee's written request, provide him with a statement of its reasons for not reemploying him for the ensuing school year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) In the event that the governing board does not give notice provided for in subdivision (e) of this section on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Government Code Section 11524, the dates prescribed in subdivisions (c), (d), (e) and (h) which occur on or after the date of granting the continuance shall be extended for a period of time equal to such continuance.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

#### ***Reduction in Number of Permanent Employees***

87743. No regular employee shall be deprived of his position for causes other than those specified in Sections 87453, 87467 and 87484, and Sections 87732 to 87739, inclusive, and no contract employee shall be deprived of his position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by reason of either of such conditions to decrease the number of regular employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the certificated employees of said district, regular as well as contract, at the close of the school year; provided, that the services of no regular employee may be terminated under the provisions of this section while any contract employee, or any other employee with less seniority, is retained to render a service which said regular employee is certificated and competent to render.

Notice of such termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 87413 and 87414. In the event that a regular or contract employee is not given the notices and a right to a hearing as provided for in Section 87740, he shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

*History*—Added as part of recodification by Stats. 1976, Ch. 1010.

### Government Code

#### *Claims for Money or Damages Against State; Law Governing Presentation in Certain Cases*

905.2. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the state:

(a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

(b) For which the appropriation made or fund designated is exhausted.

(c) For money or damages (1) on express contract, or (2) for an injury for which the state is liable.

(d) For which settlement is not otherwise provided for by statute or constitutional provision.

*History*—Added by Stats. 1963, Ch. 1715; amended by Stats. 1976, Ch. 96.

#### *Permission for Radio and Television Stations to Broadcast and Telecast Administrative Proceedings*

6091. Radio and television stations shall be permitted to broadcast and telecast, either directly or by means of transcriptions and film, the proceedings of all meetings and hearings, other than adjudicative proceedings conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, of all state, county, and municipal administrative agencies that are required by law to be open to the public, provided that cameras and other equipment used at the meeting or hearing must operate silently and not require auxiliary lighting.

Any such agency may waive the provisions requiring silent operation of the cameras and other equipment or excluding auxiliary lighting for such cameras and other equipment.

The chairman or presiding officer of the agency may require pooling of equipment when he deems it necessary to limit the number of pieces of equipment for the orderly conduct of the meeting.

Meetings of, or hearings by, administrative agencies to consider the appointment, employment or dismissal of a public officer or employee or to hear appeals by or complaints or charges brought against such officer or employee shall not be subject to the provisions of this chapter.

*History*—Added by Stats. 1965, Ch. 1517.)

#### *Code of Ethics*

8920. (a) No Member of the Legislature, state elective or appointive officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.

(b) No Member of the Legislature shall, during the term for which he

was elected:

(1) Accept other employment which he has reason to believe will either impair his independence of judgment as to his official duties or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties;

(2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or use any such information for the purpose of pecuniary gain;

(3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person regarding a licensing or regulatory matter, before any state board or agency which is established by law for the primary purpose of licensing or regulating the professional activity of persons licensed, pursuant to state law; provided, that this section shall not be construed to prohibit a member who is an attorney at law from practicing in such capacity before the Workmen's Compensation Appeals Board or the Commissioner of Corporations, and receiving compensation therefor, or from practicing for compensation before any state board or agency in connection with, or in any matter related to, any case, action, or proceeding filed and pending in any state or federal court; and provided that this section shall not act to prohibit a member from making inquiry for information on behalf of a constituent before a state board or agency, if no fee or reward is given or promised in consequence thereof; and provided that the prohibition contained in this subdivision shall not apply to a partnership in which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee resulting from the transaction; and provided that the prohibition contained in this subdivision shall not apply in connection with any matter pending before any state board or agency on the operative date of this subdivision if the affected Member of the Legislature is attorney of record or representative in the matter prior to such operative date;

(4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California;

(5) Participate, by voting or any other action, on the floor of either house, or in committee or elsewhere, in the enactment or defeat of legislation in which he has a personal interest, except as follows:

(i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in

substance that he has a personal interest in the legislation to be voted on and notwithstanding such interest, he is able to cast a fair and objective vote on such legislation, he may cast his vote without violating any provision of this article;

(ii) If the member believes that, because of his personal interest, he should abstain from participating in the vote on the legislation, he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest. In the event a rule of the house, requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

The provisions of this section do not apply to persons who are members of the state civil service as defined by Article XXIV, Section 4, of the Constitution of the State of California.

*History*—Added by Stats. 1966 (1st Ex. Sess.), Ch. 163; ratified at General Election November 8, 1966; amended by Stats. 1967, Ch. 814.

***Monetary Claims on Contracts Totaling \$50,000 or Less; Determination***

14378. Every contract subject to this chapter or Chapter 14 (commencing with Section 25200) of Division 18 of Part 4 of the Education Code shall provide that monetary claims totaling in the aggregate fifty thousand dollars (\$50,000) or less on any contract and filed in accordance with procedures set forth in such contract may, at the option of the contractor or the department, be subject to determination of rights under the contract in accordance with Section 14379.

*History*—Added by Stats. 1969, Ch. 1462; amended by Stats. 1976, Ch. 1398.

***Determination of Rights by Hearing Officer; Notice; Appointment of Hearing Officer; Costs; Finality of Decision***

14379. Every contract awarded by any agency of the State of California pursuant to the provisions of this chapter or Chapter 14 (commencing with Section 25200) of Division 18 of Part 4 of the Education Code shall include in the general conditions of such contract at the time of award a clause in the following form:

“(a) Any dispute arising under or relating to the performance of this contract, which is not disposed of by agreement and is a claim subject to Section 14378 of the Government Code, shall be decided by the head of the agency awarding the contract or his duly authorized representative, who shall reduce his decision to writing in regard to the dispute and mail or otherwise furnish a copy thereof to the contractor. The decision of such party shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the contractor elects to file with the head of the agency a written appeal. Promptly upon receiving the appeal from the contractor, the head of the agency shall furnish a copy thereof to the Office of Administrative Hearings of the State of California. Pursuant to the rules and regulations adopted by the Office of Administrative Hearings pursuant to Section 14350 [14380] of the Government Code, a

hearing shall be held upon the appeal. When such an appeal is taken, the preliminary decision which is the subject of the appeal shall not be pleaded as a defense, and the hearing afforded shall be a hearing de novo upon the merits. In addition, the provisions of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of the Code of Civil Procedure shall be applicable to the hearings and the parties to the hearing shall have all the rights for discovery provided for by such provisions. However, such hearing shall be held only in the county wherein the work was performed under such contract unless the contractor and the state agency by written stipulation filed with the Office of Administrative Hearings agree to such hearing in some other county. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the written decision of the head of the agency or its authorized representative which is the subject of the contractor's appeal. Any such decision shall be subject to judicial review.

“(b) This “disputes” clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official or representative on a question of law.

“(c) When the Office of Administrative Hearings conducts a hearing on an appeal pursuant to paragraph (a), the hearing officer may apportion the costs of conducting such hearing between the parties in a manner which, in his discretion, is appropriate.

“(d) Either party to this contract may, subject to the provisions of paragraph (a), seek judicial review of the decision rendered by the Office of Administrative Hearings.”

*History*—Added by Stats. 1969, Ch. 1462; amended by Stats. 1971, Ch. 1303; repealed and added by Stats. 1976, Ch. 1397.)

***Rules and Regulations to Implement Claims Procedure***

14380. The Office of Administrative Hearings shall adopt rules and regulations, pursuant to Chapter 4.5, Part 1, Division 3, Title 2 of the Government Code, to implement the claims procedure authorized by this article.

*History*—Added by Stats. 1969, Ch. 1462; amended by Stats. 1971, Ch. 1303.

***Compliance with Air Pollution Control Rules, Regulations, Ordinances and Statutes***

14381. Every contract subject to this chapter shall contain a provision requiring each contractor to comply with all air pollution control rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances, and statutes specified in Section 11017.

*History*—Added by Stats. 1970, Ch. 1386.

*Cross-reference*—See Cal. Adm. C., Title 1, Chapter 2, Sec. 101 et seq.

***Contracts with Office of Administrative Hearings***

27727. Any county or other local public entity may contract with the Office of Administrative Hearings of the State of California, and such

office is hereby authorized to contract for such services for a hearing officer to conduct proceedings pursuant to this chapter.

*History*—Added by Stats. 1965, Ch. 480; amended by Stats. 1971, Ch. 1303.

***Meetings to Be Open and Public; Attendance***

54953. All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

*History*—Added by Stats. 1953, Ch. 1588.

***Executive Sessions; Exclusion of Witnesses; Employee***

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding executive sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities, or from holding executive sessions during a regular or special meeting to consider the appointment, employment or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. The legislative body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purposes of this section, the term "employee" shall not include any person appointed to an office by the legislative body of a local agency; provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided, further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organization as defined in Section 54952 from holding executive sessions to consider (a) matters affecting the national security, or (b) the appointment, employment or dismissal of an employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. Said body also may exclude from any such public or private meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

*History*—Added by Stats. 1953, Ch. 1588; amended by Stats. 1957, Ch. 1314; by Stats. 1959, Ch. 647; by Stats. 1961, Ch. 1671; and by Stats. 1975, Ch. 957.

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