

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Judicial Review of Agency Action

February 1997

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

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

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STATE OF CALIFORNIA

PETE WILSON, Governor

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February 27, 1997

To: The Honorable Pete Wilson
Governor of California, and
The Legislature of California

This recommendation would replace the various existing procedures for judicial review of agency action with a single straightforward statute for judicial review of all forms of state action, whether quasi-judicial, quasi-legislative, or otherwise, and of most nonlegislative forms of local agency action. It would clarify the standard of review and the rules for standing, exhaustion of administrative remedies, limitations periods, and other procedural matters.

This recommendation is submitted pursuant to Resolution Chapter 38 of the Statutes of 1996.

Respectfully submitted,

Allan L. Fink
Chairperson

ACKNOWLEDGMENTS

The Law Revision Commission developed this recommendation with the input of scores of individuals, agencies, and organizations, many of whom regularly attended Commission meetings and commented on drafts. The Commission appreciates their substantial involvement and contributions. The participation of a broad spectrum of experts and other persons interested in judicial review of agency action aids the Commission in preparing a better recommendation. The Commission benefits greatly from the public service performed by these individuals, agencies, and organizations.

Inclusion of the name of an individual, agency, or organization should not be taken as an indication of the person's position or opinion on any part of the recommendation. The Commission regrets any errors or omissions that may have been made in compiling these acknowledgments.

CONSULTANT

The Commission is indebted to its consultant on this project, Professor Michael Asimow of UCLA Law School. Professor Asimow prepared the background studies from which this recommendation evolved, and provided the Commission with invaluable advice at public meetings where the matter was considered.

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JUDICIAL REVIEW OF AGENCY ACTION

BACKGROUND

This recommendation on judicial review of agency action is the second major part of the Commission's continuing study of administrative law.¹ The first part, governing administrative adjudication by state agencies, was enacted in 1995.² The next part of the study will cover administrative rulemaking.

This recommendation proposes that California's antiquated provisions for judicial review of agency action by administrative mandamus be replaced with a single, straightforward statute for judicial review of all forms of state action and most forms of non-legislative local agency action.³ The goal is to allow litigants and courts to resolve swiftly the substantive issues in dispute, rather than to waste resources disputing tangential procedural issues.

1. The Commission retained Professor Michael Asimow of UCLA Law School to serve as a consultant and prepare background studies. Professor Asimow prepared three studies on judicial review of agency action for the Commission, which are included in this report: (1) Asimow, *Judicial Review of Administrative Decision: Standing and Timing* (Sept. 1992), printed *infra*, 27 Cal. L. Revision Comm'n Reports 229 (1997); (2) Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157 (1995), reprinted *infra*, 27 Cal. L. Revision Comm'n Reports 309 (1997); and (3) Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus* (Nov. 1993), printed *infra*, 27 Cal. L. Revision Comm'n Reports 403 (1997).

2. 1995 Cal. Stat. ch. 938. See *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 55 (1995).

3. The proposed law does not apply to judicial review of an ordinance or regulation enacted by a county board of supervisors or city council, whether legislative, executive, or administrative in nature.

REPLACING MANDAMUS AND OTHER FORMS OF JUDICIAL REVIEW

Under existing law, on-the-record adjudicatory decisions of state and local government are reviewed by superior courts under the administrative mandamus provisions of Code of Civil Procedure Section 1094.5.⁴ Regulations adopted by state agencies are reviewed by superior courts in actions for declaratory judgment.⁵ Various other agency actions are reviewed by traditional mandamus under Code of Civil Procedure Section 1085⁶ or by declaratory judgment.⁷ Many statutes set forth special review procedures for particular agencies.⁸

There are many problems with this patchwork scheme. First, it is often unclear whether judicial review should be sought by administrative mandamus, traditional mandamus,

4. Asimow, *A Modern Judicial Review Statute to Replace Administrative Mandamus*, 27 Cal. L. Revision Comm'n Reports 403 (1997); see also Code Civ. Proc. § 1094.6(a) (local agency).

5. Gov't Code § 11350(a); Code Civ. Proc. § 1060.

6. See, e.g., *Vernon Fire Fighters v. City of Vernon*, 107 Cal. App. 3d 802, 165 Cal. Rptr. 908 (1980); *Shuffer v. Board of Trustees*, 67 Cal. App. 3d 208, 136 Cal. Rptr. 527 (1977).

7. See, e.g., *Californians for Native Salmon Ass'n v. Department of Forestry*, 221 Cal. App. 3d 1419, 271 Cal. Rptr. 270 (1990). Agency action can also be reviewed in the context of enforcement actions or criminal actions brought against individuals for violation of regulatory statutes or rules.

8. Nonadjudicative decisions of the Public Utilities Commission are reviewed by the California Supreme Court. Pub. Util. Code § 1756; Cal. R. Ct. 58. Adjudicative decisions of the PUC are reviewed either by the Supreme Court or courts of appeal. Pub. Util. Code § 1756. Decisions of the Public Employment Relations Board and Agricultural Labor Relations Board are reviewed by the courts of appeal. Gov't Code §§ 3520, 3542, 3564; Lab. Code § 1160.8. Decisions of the State Energy Resources Conservation and Development Commission are reviewed in the same manner as decisions of the PUC. Pub. Res. Code § 25531. Decisions of the Department of Alcoholic Beverage Control, Alcoholic Beverage Control Appeals Board, and Workers' Compensation Appeals Board are reviewed either by the Supreme Court or the court of appeal. Bus. & Prof. Code §§ 23090, 23090.5; Lab. Code §§ 5950, 5955.

or declaratory relief. If an action for administrative mandamus can be brought, it must be brought under the administrative mandamus provisions.⁹ Parties regularly file under the wrong provisions. Some cases hold that if the trial court uses the wrong writ, the case must be reversed on appeal so it can be retried under the proper procedure, even if no one objects.¹⁰

Second, it is often difficult to decide which form of mandamus to use because of the problematic distinction between quasi-legislative and quasi-judicial action, especially in local land use planning and environmental decisions. Administrative mandamus is proper to review quasi-judicial action, while traditional mandamus or declaratory relief is proper to review quasi-legislative action.¹¹

Third, if administrative mandamus is unavailable because statutory requirements are not met, and traditional mandamus is unavailable because there has been no deprivation of a clear legal right or an abuse of discretion, the case will be unreviewable by the courts.

Both administrative and traditional mandamus involve complex rules of pleading and procedure. The proceeding may be commenced by a petition for issuance of an alternative writ of mandamus or by a notice of motion for a peremptory writ.¹² Trial courts must distinguish between these two forms of mandamus because there are many differences between them, including use of juries,¹³ statutes of limita-

9. See California Administrative Mandamus § 1.8, at 8 (Cal. Cont. Ed. Bar, 2d ed. 1989).

10. See, e.g., *Eureka Teachers Ass'n v. Board of Educ.*, 199 Cal. App. 3d 353, 244 Cal. Rptr. 240 (1988).

11. *Brock v. Superior Court*, 109 Cal. App. 2d 594, 241 P.2d 283 (1952).

12. See Code Civ. Proc. § 1088; California Administrative Mandamus § 9.1, at 307 (Cal. Cont. Ed. Bar, 2d ed. 1989).

13. *Compare* Code Civ. Proc. § 1090 *with* Code Civ. Proc. § 1094.5(a).

tions,¹⁴ exhaustion of remedies,¹⁵ stays,¹⁶ open or closed record,¹⁷ whether the agency must make findings,¹⁸ and possibly scope of review of factual issues.¹⁹

This awkward hybrid is the result of the historical development of judicial review procedures in California. At the time the administrative mandamus concept was devised in 1945, the California Constitution was thought to limit the ability of the Legislature to affect appellate jurisdiction of the courts.²⁰ Since that time, the Constitution has been amended to delete the reference to the “writ of review,” and has been construed to allow the Legislature greater latitude in prescribing appropriate forms of judicial review if court discretion to deny review is preserved.²¹

The Law Revision Commission recommends that the archaic judicial review system that has evolved over the years

14. See, e.g., *Griffin Homes, Inc. v. Superior Court*, 229 Cal. App. 3d 991, 1003-07, 280 Cal. Rptr. 792 (1991).

15. See *Bollengier v. Doctors Medical Ctr.*, 222 Cal. App. 3d 1115, 1125, 272 Cal. Rptr. 273 (1990).

16. See Code Civ. Proc. § 1094.5(g)-(h).

17. See Code Civ. Proc. § 1094.5(e); *Del Mar Terrace Conservancy, Inc. v. City Council*, 10 Cal. App. 4th 712, 725-26, 12 Cal. Rptr. 2d 785, 793 (1992).

18. See, e.g., *California Aviation Council v. City of Ceres*, 9 Cal. App. 4th 1384, 12 Cal. Rptr. 2d 163 (1992); *Eureka Teachers Ass’n v. Board of Educ.*, 199 Cal. App. 3d 353, 244 Cal. Rptr. 240 (1988).

19. Compare Code Civ. Proc. § 1094.5(c) (administrative mandamus to review adjudication) with *Strumsky v. San Diego County Employees Retirement Ass’n*, 11 Cal. 3d 28, 34 n.2, 520 P.2d 29, 112 Cal. Rptr. 805 (1974) (distinction between review of adjudicative and quasi-legislative act). See Asimow, *supra* note 4, at 411. But see *Del Mar Terrace Conservancy, Inc. v. City Council*, 10 Cal. App. 4th 712, 725, 12 Cal. Rptr. 2d 785, 793 (1992) (same standard of review in administrative and traditional mandamus).

20. Judicial Council of California, *Tenth Biennial Report* (1944).

21. See, e.g., *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.*, 24 Cal. 3d 335, 348-51, 595 P. 2d 579, 156 Cal. Rptr. 1 (1979). See also *Powers v. City of Richmond*, 10 Cal. 4th 85, 893 P.2d 1160, 40 Cal. Rptr. 2d 839 (1995).

be replaced by a simple and straightforward statute. The proposed law provides that final state or local agency action²² is reviewable by a petition for review filed with the appropriate court. Common law writs such as mandamus, certiorari, and prohibition, and equitable remedies such as injunction and declaratory judgment, would be replaced for judicial review of agency action by the unified scheme of the proposed law.²³ The proposed law makes clear the court continues to have discretion summarily to deny relief if the petition for review does not present a substantial issue for resolution by the court.²⁴

22. The proposed law does not apply to judicial review of ordinances, regulations, or legislative resolutions, enacted by a county board of supervisors or city council. These matters will continue to be reviewed by traditional mandamus or by an action for declaratory or injunctive relief. See, e.g., *Carlton Santee Corp. v. Padre Dam Mun. Water Dist.*, 120 Cal. App. 3d 14, 18-19, 174 Cal. Rptr. 413 (1981) (mandamus to review validity of water district ordinance); 2 G. Ogden, *California Public Agency Practice* § 50.02[3][a] (1996).

23. The proposed law provides that an action to prevent an illegal expenditure by a local governmental entity under Section 526a of the Code of Civil Procedure must be brought under the proposed law. See *infra* text accompanying note 50. See generally Asimow, *Judicial Review of Administrative Decision: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 235-36 (1997); Asimow, *supra* note 4, at 422. The proposed law also makes clear that it does not apply where a statute provides for judicial review by a trial de novo, does not apply to an action for refund of taxes under Section 5140 or 5148 or under Division 2 of the Revenue and Taxation Code, does not apply to an action under the California Tort Claims Act, does not apply to litigation in which the sole issue is a claim for money damages or compensation if the agency whose action is at issue does not have statutory authority to determine the claim, does not apply to validating proceedings under the Code of Civil Procedure, does not apply to judicial review of a decision of a court, does not apply to judicial review of an award in binding arbitration under Government Code Section 11420.10, does not apply to judicial review of agency proceedings pursuant to a court-ordered reference, and does not limit use of the writ of habeas corpus. The proposed law does apply to judicial review of property taxation under Division 1 of the Revenue and Taxation Code, other than under Section 5140 or 5148 of that code.

24. This discretion appears necessary to avoid constitutional issues. See *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.*, 24 Cal. 3d 335, 350-51, 595 P. 2d 579, 156 Cal. Rptr. 1 (1979).

AGENCIES TO WHICH PROPOSED LAW APPLIES

Existing statutes draw little or no distinction between judicial review of state and local agency action. The proposed law applies to all state and local government agencies, except three that are specifically exempted — the State Bar Court, Public Utilities Commission, and power plant siting decisions of the State Energy Resources Conservation and Development Commission. The State Bar Court is exempted because, under the constitutional doctrine of separation of powers, regulation of attorney discipline is a judicial function where the California Supreme Court has inherent and primary regulatory power.²⁵ The Public Utilities Commission is exempted because recently enacted²⁶ procedures for judicial review of PUC matters are significantly different from the proposed law.²⁷ Power plant siting decisions of the Energy Commission are exempted for reasons similar to the PUC exemption: these decisions are reviewed in the same manner as nonadjudicative decisions of the PUC,²⁸ and are therefore reviewed exclusively in the California Supreme Court.

Under existing law, decisions of some nongovernmental entities are subject to judicial review by administrative mandamus.²⁹ The proposed law generally continues this rule.

25. See 1 B. Witkin, *California Procedure Attorneys* §§ 356-57, at 438-40 (4th ed. 1996); Cal. R. Ct. 952 (rev. Mar. 15, 1991).

26. 1996 Cal. Stat. ch. 855.

27. Judicial review of nonadjudicative action of the Public Utilities Commission is exclusively in the California Supreme Court. Pub. Util. Code § 1756(a). Procedures for judicial review of adjudicative action of the PUC differ from the proposed law with respect to additional evidence, limitations period, type of relief, standard of review of application of law to fact, and venue. See *id.* §§ 1216, 1353, 1756, 1757, 1757.1, 1758, 1760.

28. Pub. Res. Code § 25531.

29. See, e.g., *Anton v. San Antonio Community Hosp.*, 19 Cal. 3d 802, 814, 567 P.2d 1162, 140 Cal. Rptr. 442 (1979); *Pomona College v. Superior Court*, 45 Cal. App. 4th 1716, 53 Cal. Rptr. 2d 662 (1996); *Delta Dental Plan v.*

RULES OF PROCEDURE

The proposed law provides a few key procedural rules for judicial review, and authorizes the Judicial Council to provide procedural detail by rule not inconsistent with the proposed law. The proposed law generalizes the rule in administrative mandamus that proceedings are heard by the court sitting without a jury.³⁰

Where no specific procedural rule is applicable, normal rules of civil procedure govern judicial review.³¹

STANDING TO SEEK JUDICIAL REVIEW

Existing California law on standing to seek judicial review of agency action is mostly uncodified.³² A petitioner for administrative or traditional mandamus to review a decision of a state or local agency must be beneficially interested in,³³ or aggrieved by,³⁴ the decision. This requirement is applied in various ways, depending on whether the action being

Banasky, 27 Cal. App. 4th 1598, 33 Cal. Rptr. 2d 381 (1994); Wallin v. Vienna Sausage Mfg. Co., 156 Cal. App. 3d 1051, 203 Cal. Rptr. 375 (1984); Bray v. International Molders & Allied Workers Union, 155 Cal. App. 3d 608, 202 Cal. Rptr. 269 (1984); Coppernoll v. Board of Directors, 138 Cal. App. 3d 915, 188 Cal. Rptr. 394 (1983).

30. Code Civ. Proc. § 1094.5(a). In traditional mandamus, the court has discretion to submit factual issues to a jury. Code Civ. Proc. § 1090. In practice, however, juries are seldom used in writ proceedings because factual issues are usually limited and most courts prefer to decide them without the aid of a jury. California Civil Writ Practice § 9.75, at 327 (Cal. Cont. Ed. Bar, 3d ed. 1996).

31. The proposed law provides that Code of Civil Procedure Section 426.30 relating to compulsory cross-complaints, and Section 1013(a) relating to extension of time where notice is mailed, do not apply to a judicial review proceeding.

32. Asimow, *Judicial Review of Administrative Decision: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 234 (1997).

33. Code Civ. Proc. § 1086.

34. Grant v. Board of Medical Examiners, 232 Cal. App. 2d 820, 827, 43 Cal. Rptr. 270, 275 (1965); Silva v. City of Cypress, 204 Cal. App. 2d 374, 22 Cal. Rptr. 453 (1962).

reviewed is administrative adjudication, rulemaking, or quasi-legislative, informal, or ministerial action.

Administrative Adjudication and State Agency Regulations

A person seeking administrative mandamus to review an adjudicative proceeding under the Administrative Procedure Act must have been a party in the adjudicative proceeding.³⁵ A person seeking administrative mandamus to review an adjudicative proceeding not under the Administrative Procedure Act must have been either a party or a person authorized to participate as an interested party.³⁶ The proposed law codifies these rules.

For review of a state agency regulation by declaratory relief, the petitioner must be an interested person,³⁷ i.e., a person subject to or affected by the regulation.³⁸ If a regulation is reviewed by mandamus, the petitioner may have public interest standing by showing that he or she is interested as a citizen in having the law executed and the duty in question enforced.³⁹ The proposed law generally continues these rules.

Quasi-Legislative, Informal, or Ministerial Action

A person seeking traditional mandamus to review agency action other than an adjudicative proceeding or state agency

35. *Temescal Water Co. v. Department of Public Works*, 44 Cal. 2d 90, 279 P.2d 1 (1955); *Covert v. State Bd. of Equalization*, 29 Cal. 2d 125, 173 P.2d 545 (1946).

36. *Bodinson Mfg. Co. v. California Employment Comm'n*, 17 Cal. 2d 321, 330, 109 P.2d 935, 9041 (1941). Public interest standing may apply to review an adjudication in some cases. See, e.g., *Environmental Law Fund, Inc. v. Town of Corte Madera*, 49 Cal. App. 3d 105, 114, 122 Cal. Rptr. 282 (1975).

37. Gov't Code § 11350(a).

38. *Sperry & Hutchinson Co. v. California State Bd. of Pharmacy*, 241 Cal. App. 2d 229, 232-33, 50 Cal. Rptr. 489 (1966).

39. *Green v. Obledo*, 29 Cal. 3d 126, 144-45, 624 P.2d 256, 172 Cal. Rptr. 206 (1981); *American Friends Service Comm. v. Procnunier*, 33 Cal. App. 3d 252, 256, 109 Cal. Rptr. 22 (1973). See also discussion *infra* under "Public interest standing" in text accompanying notes 49-50.

rulemaking must show that a substantial right is affected and that the person will suffer substantial damage if the action is not annulled.⁴⁰ This requirement is relaxed if a public right is involved and judicial review is sought to enforce a public duty, in which case it is enough that the person seeking review is interested as a citizen in having the laws executed and the public duty enforced.⁴¹

Private interest standing. By case law, a person has sufficient private interest to confer standing if the agency action is directed to that person, or if the person's interest is over and above that of members of the general public.⁴² Non-pecuniary interests such as environmental or esthetic claims are sufficient to meet the private interest test.⁴³ Associations such as unions, trade associations, or political associations have standing to sue on behalf of their members.⁴⁴ But if a person has not suffered some kind of harm from the agency action,

40. *Parker v. Bowron*, 40 Cal. 2d 344, 351, 254 P.2d 6, 9 (1953); *Grant v. Board of Medical Examiners*, 232 Cal. App. 2d 820, 827, 43 Cal. Rptr. 270, 275 (1965).

41. *Board of Social Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 101, 162 P.2d 627 (1945); California Administrative Mandamus § 5.1, at 210 (Cal. Cont. Ed. Bar, 2d ed. 1989).

42. *Carsten v. Psychology Examining Comm.*, 27 Cal. 3d 793, 796, 614 P.2d 276, 166 Cal. Rptr. 844 (1980); see *Professional Fire Fighters, Inc. v. City of Los Angeles*, 60 Cal. 2d 276, 284-85, 384 P.2d 158 (1963).

43. See, e.g., *Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 272, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975); *Albion River Watershed Protection Ass'n v. Department of Forestry*, 235 Cal. App. 3d 358, 286 Cal. Rptr. 573, 580-88 (1991); *Kane v. Redevelopment Agency*, 179 Cal. App. 3d 899, 224 Cal. Rptr. 922 (1986); *Citizens Ass'n for Sensible Dev. v. County of Inyo*, 172 Cal. App. 3d 151, 159, 217 Cal. Rptr. 893 (1985).

44. *Brotherhood of Teamsters v. Unemployment Ins. Appeals Bd.*, 190 Cal. App. 3d 1515, 1521-24, 236 Cal. Rptr. 78 (1987); *Residents of Beverly Glen, Inc. v. City of Los Angeles*, 34 Cal. App. 3d 117, 109 Cal. Rptr. 724 (1973). See also *County of Alameda v. Carleson*, 5 Cal. 3d 730, 737 n.6, 488 P.2d 953, 97 Cal. Rptr. 385 (1971).

the person lacks private interest standing to seek judicial review.⁴⁵ The proposed law codifies these rules.

Under the proposed law, the person seeking review need not personally have objected to the agency action, as long as the issue to be reviewed was raised before the agency by someone.⁴⁶ This avoids the undesirable effect of requiring a person seeking review to associate in the review process another person who did protest to the agency but is not now interested in the judicial review proceeding.

The proposed law denies a person who complained to an agency about a professional licensee standing to challenge an agency decision in favor of the licensee.⁴⁷

The proposed law makes clear that a local agency may have private interest standing to seek judicial review of state action, and relaxes the limiting rule that local government has standing for constitutional challenges under the commerce or supremacy clause but not under the due process, equal protection, or contract clauses. There is no sound reason to treat certain constitutional claims differently for standing purposes.⁴⁸

Public interest standing. The proposed law codifies case law in traditional mandamus that a person who lacks private interest standing may nonetheless sue to vindicate the public

45. *Parker v. Bowron*, 40 Cal. 2d 344, 254 P.2d 6 (1953); *Grant v. Board of Medical Examiners*, 232 Cal. App. 2d 820, 43 Cal. Rptr. 270 (1965); *Silva v. City of Cypress*, 204 Cal. App. 2d 374, 22 Cal. Rptr. 453 (1962).

46. See *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 267-68, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972) (administrative mandamus to set aside planning commission's issuance of conditional use and building permits).

47. An exception to this rule permits the complaining person to challenge the agency decision if the person was either a party to the administrative proceeding or had a right to become a party under a statute specific to that agency. However, under existing law a complaining person has no general right to become a party to an administrative proceeding. See California Administrative Hearing Practice § 2.45, at 85 (Cal. Cont. Ed. Bar 1984).

48. Asimow, *supra* note 32, at 242 n.31. The proposed law does not adopt the federal or Model Act zone of interest test. See generally *id.* at 242-43.

interest.⁴⁹ This promotes the policy of allowing a citizen to ensure that a government body does not impair or defeat the purpose of legislation establishing a public right. The proposed law adds safeguards to public interest standing by requiring the person to reside or conduct business in the agency's jurisdiction, requires that the person will adequately protect the public interest, and requires the person first to request the agency to correct its action and to show that the agency has not done so within a reasonable time.

The proposed law provides that a taxpayers' suit to restrain illegal or wasteful expenditures⁵⁰ must be brought under the proposed law, and continues the rule that a plaintiff in such an action has standing without the need to show any individual harm.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Under existing law, a litigant must fully complete all federal, state, and local administrative remedies before coming to court or defending against administrative enforcement unless an exception to the exhaustion of remedies rule applies.⁵¹ The proposed law codifies the exhaustion of remedies rule, including the rule that exhaustion of remedies is jurisdictional rather

49. See, e.g., *Green v. Obledo*, 29 Cal. 3d 126, 144-45, 624 P.2d 256, 172 Cal. Rptr. 206 (1981); *Hollman v. Warren*, 32 Cal. 2d 351, 196 P.2d 562 (1948); *Board of Social Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 162 P.2d 627 (1945); *California Homeless & Housing Coalition v. Anderson*, 31 Cal. App. 4th 450, 37 Cal. Rptr. 2d 639 (1995); *Environmental Law Fund, Inc. v. Town of Corte Madera*, 49 Cal. App. 3d 105, 122 Cal. Rptr. 282 (1975); *American Friends Service Committee v. Proconier*, 33 Cal. App. 3d 252, 109 Cal. Rptr. 22 (1973).

50. Code Civ. Proc. § 526a.

51. *South Coast Regional Comm'n v. Gordon*, 18 Cal. 3d 832, 558 P.2d 867, 135 Cal. Rptr. 781 (1977); *People v. Coit Ranch, Inc.*, 204 Cal. App. 2d 52, 57-58, 21 Cal. Rptr. 875 (1962).

than discretionary with the court.⁵² The proposed law provides exceptions to the exhaustion of remedies rule to the extent administrative remedies are inadequate⁵³ or where requiring their exhaustion would result in irreparable harm disproportionate to the public and private benefit from requiring exhaustion.⁵⁴ The proposed law continues the rule of existing statutes that a litigant is not required to request reconsideration from the agency before seeking judicial review.⁵⁵

The proposed law codifies the rule that, in order to be considered by the reviewing court, the exact issue must first have been presented to the agency. The proposed law reverses existing law by requiring exhaustion of remedies for a local tax assessment alleged to be a nullity. The proposed law eliminates the rule that in an adjudicative proceeding agency denial of a request for a continuance is judicially reviewable immediately.⁵⁶ Judicial review of such matters should not

52. "Jurisdictional" in this context does not mean that the court wholly lacks power to hear the matter before administrative remedies have been exhausted. Rather it means that a writ of prohibition or certiorari from a higher court will lie to prevent a lower court from hearing it. See *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 102 P.2d 329 (1941).

53. The inadequacy requirement includes and accommodates existing California exceptions to the exhaustion of remedies rule for futility, certain constitutional issues, and lack of notice. *Asimow*, *supra* note 32, at 279.

54. This provision was taken from the 1981 Model State Administrative Procedure Act, 15 U.L.A. 1 (1990). The proposed law expands the factors to be considered to include private as well as public benefit.

55. Gov't Code §§ 11523 (Administrative Procedure Act), 19588 (State Personnel Board). However, the common law rule in California may be otherwise. See *Alexander v. State Personnel Bd.*, 22 Cal. 2d 198, 137 P.2d 433 (1943). This rule would not preclude a litigant from requesting reconsideration or an agency on its own motion from reconsidering.

56. Gov't Code § 11524(c). Such a denial will be subject to general rules requiring exhaustion of remedies, and thus will be subject to a possible exception because administrative remedies are inadequate or because to require exhaustion would result in irreparable harm. Similarly, judicial review of discovery orders will be postponed until after conclusion of the administrative proceeding.

occur until after conclusion of administrative proceedings.⁵⁷

PRIMARY JURISDICTION

Under the doctrine of primary jurisdiction, a case properly filed in court may be shifted to an administrative agency that also has statutory power to resolve some or all of the issues in the case.⁵⁸ Thus the agency makes the initial decision in the case, but the court retains power to review the agency action.

The proposed law makes clear the doctrine of primary jurisdiction is distinct from exhaustion of remedies.⁵⁹ It provides that the court should send an entire case, or one or more issues in the case, to an agency for an initial decision only where the Legislature intended that the agency have exclusive or concurrent jurisdiction over that type of case or issue, or where the benefits to the court in doing so outweigh the extra delay and cost to the litigants.⁶⁰

57. *Cf. Stenocord Corp. v. City and County of San Francisco*, 2 Cal. 3d 984, 471 P.2d 966, 88 Cal. Rptr. 166 (1970) (complaint for recovery of taxes).

58. Asimow, *supra* note 32, at 281. The doctrine of primary jurisdiction must be distinguished from the doctrine of exhaustion of remedies. The rules are different with respect to burden of proof, presumption of jurisdiction, and applicability. *Id.* at 283-84.

59. Most California primary jurisdiction cases incorrectly describe the issue as one of exhaustion of remedies. Asimow, *supra* note 32, at 285. The proposed law should clear up much of the confusion. For recent cases analyzing the issue correctly, see *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 826 P.2d 730, 6 Cal. Rptr. 2d 487 (1992); *Miller v. Superior Court*, 50 Cal. App. 4th 1665, 58 Cal Rptr. 2d 584 (1996); *State Farm Fire & Casualty Co. v. Superior Court*, 45 Cal. App. 4th 1093, 53 Cal. Rptr. 2d 229 (1996).

60. If the agency has concurrent jurisdiction, the party seeking to have the matter or issue referred to the agency must persuade the court that the efficiencies outweigh the cost, complexity, and delay inherent in so doing. Asimow, *supra* note 32, at 284. The court in its discretion may ask the agency to file an amicus brief with its views on the matter as an alternative to sending the case to the agency. The court's discretion to refer the matter or issue to the agency for action gives courts considerable flexibility in the interests of justice. See *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 391-92, 826 P.2d 730, 6 Cal. Rptr. 2d 487, 496 (1992).

RIPENESS

The ripeness doctrine in administrative law counsels a court to refuse to hear an attack on the validity of an agency rule or policy until the agency takes further action to apply it in a specific fact situation.⁶¹ The ripeness doctrine is well accepted in California law,⁶² and the proposed law codifies it.

STATUTE OF LIMITATIONS FOR REVIEW OF ADJUDICATION

Existing statutes of limitations for judicial review of agency adjudication are scattered and inconsistent.⁶³ The limitations period for judicial review of adjudication under the Administrative Procedure Act is 30 days,⁶⁴ and for judicial review of a local agency decision other than by a school district is 90 days.⁶⁵ Other sections applicable to particular agencies provide different limitations periods for commencing judicial review.⁶⁶ Adjudicatory action not covered by any of these

61. Asimow, *supra* note 32, at 293.

62. See 2 G. Ogden, California Public Agency Practice § 51.01 (1996).

63. Asimow, *supra* note 32, at 296.

64. Gov't Code § 11523.

65. Code Civ. Proc. § 1094.6(b).

66. See, e.g., Code Civ. Proc. § 706.075 (90 days for withholding order for taxes); Food & Agric. Code §§ 59234.5, 60016 (30 days from notice of filing with court of notice of deficiency of assessment under commodity marketing program); Lab. Code §§ 1160.8 (30 days after ALRB decision), 5950 (45 days for decision of Workers' Compensation Appeals Board); Gov't Code §§ 3542 (30 days for PERB decisions), 19630 (one year for various state personnel decisions), 19815.8 (same), 65907 (90 days for decisions of zoning appeals board); Unemp. Ins. Code § 410 (six months for appeal of decision of Unemployment Insurance Appeals Board); Veh. Code § 14401(a) (90-days after notice of driver's license order); Welf. & Inst. Code § 10962 (one year after notice of decision of Department of Social Services). Various rules on tolling apply to these statutes. See Asimow, *supra* note 32, at 298 n.227.

provisions is subject to the three-year or four-year limitations periods for civil actions generally.⁶⁷

The proposed law continues the 30-day limitations period⁶⁸ for judicial review of adjudication under the Administrative Procedure Act, and generalizes it to apply to most state agency adjudication.⁶⁹ The proposed law continues the 90-day limitations period for local agency adjudication,⁷⁰ except that local agency adjudication under the Administrative Procedure Act will be 30 days as at present.⁷¹ Special limitations periods under the California Environmental Quality Act⁷² and some other provisions⁷³ are preserved. Except where a special

67. These actions are also subject to the defense of laches.

68. The period for judicial review starts to run from the date the agency decision becomes effective, generally 30 days after issuance of the decision. Gov't Code § 11519. The decision will inform the parties of the limitations period for judicial review. Failure to do so extends the period to six months.

69. The proposed law preserves a few limitations periods that are longer than the period prescribed in the proposed law: one-year for review of certain state personnel decisions (Gov't Code § 19630), six months for review of decisions of the Unemployment Insurance Appeals Board (Unemp. Ins. Code § 410), 90 days for review of certain driver's license orders (Veh. Code § 14401(a)), and one year for review of a welfare decision of the Department of Social Services (Welf. & Inst. Code § 10962).

70. The period starts to run from the date the decision is announced or the date the local agency notifies the parties of the last day to file a petition for review, whichever is later.

71. For local agency adjudication now under the Administrative Procedure Act, see Educ. Code §§ 44944 (suspension or dismissal of certificated employee of school district), 44948.5 (employment of certificated employee of school district), 87679 (employee of community college district).

72. Pub. Res. Code § 21167.

73. The proposed law does not override special limitations periods statutorily preserved for policy reasons, such as for judicial review of an administratively-issued withholding order for taxes (Code Civ. Proc. § 706.075), notice of deficiency of an assessment due from a producer under a commodity marketing program (Food & Agric. Code §§ 59234.5, 60016), State Personnel Board (Gov't Code § 19630), Department of Personnel Administration (Gov't Code § 19815.8), cancellation by a city or county of a contract limiting use of agricultural land under the Williamson Act (Gov't Code § 51286), California Environmental Quality Act (Pub. Res. Code § 21167), decision of local legislative body

statute applies, non-adjudicatory action remains subject to the general three or four year limitations period for civil actions.

The proposed law requires the agency to give written notice to the parties of the date by which review must be sought, or of the shortest potentially applicable time period.⁷⁴ This will be particularly helpful to a party who is not represented by counsel. Failure to give the notice will toll the running of the limitations period up to a maximum of 180 days after the decision is effective.⁷⁵

Under the existing Administrative Procedure Act and the existing statute for judicial review of a local agency decision, when a person seeking judicial review makes a timely request for the agency to prepare the record, the time to petition for review is extended until 30 days after the record is delivered.⁷⁶ The proposed law continues and generalizes this rule.

The proposed law does not change the case law rule that an agency may be estopped to plead the statute of limitations if a

adopting or amending a general or specific plan, zoning ordinance, regulation attached to a specific plan, or development agreement (Gov't Code § 65009), cease and desist order of the San Francisco Bay Conservation and Development Commission and complaint by BCDC for administrative civil liability (Gov't Code §§ 66639, 66641.7), Unemployment Insurance Appeals Board (Unemp. Ins. Code §§ 410, 1243), certain driver's license orders (Veh. Code § 14401(a)), or welfare decisions of the Department of Social Services (Welf. & Inst. Code § 10962).

74. The requirement of notice to the party of the time within judicial review must be sought is drawn from existing statutes. See Code Civ. Proc. § 1094.6(f) (local agency action); Unemp. Ins. Code § 410 (notice of right to review); Veh. Code § 14401(b) (notice of right to review). The notice requirement does not apply to proceedings under the California Environmental Quality Act.

75. Concerning the effective date of the decision, see *supra* note 68.

76. Gov't Code § 11523; Code Civ. Proc. § 1094.6(d). Both statutes require that the record be requested within ten days after the decision becomes final to trigger the extension provision. The proposed law extends this 10-day period to 15 days.

party's failure to seek review within the prescribed period was due to misconduct of agency employees.⁷⁷

STANDARD OF REVIEW

Review of Agency Interpretation of Law

Under existing law, courts use independent judgment to review an agency interpretation of law.⁷⁸ This is qualified by the rule that, depending on the context, courts should give great weight to a consistent construction of a statute by the agency responsible for its implementation.⁷⁹ Deference is given to the agency's interpretation if the court finds it appropriate to do so based on a number of factors. These factors are generally of two kinds — factors indicating that the agency has a comparative interpretive advantage over the courts, and factors indicating that the interpretation in question is probably correct.⁸⁰

77. See *Ginns v. Savage*, 61 Cal. 2d 520, 393 P.2d 689, 39 Cal. Rptr. 377 (1964).

78. See, e.g., *20th Century Ins. Co. v. Garamendi*, 8 Cal. 4th 216, 271, 878 P.2d 566, 600, 32 Cal. Rptr. 2d 807, 841 (1994); *Pacific Southwest Realty Co. v. County of Los Angeles*, 1 Cal. 4th 155, 171, 820 P.2d 1046, 1056, 2 Cal. Rptr. 2d 536, 546 (1991); *California Ass'n of Psychology Providers v. Rank*, 51 Cal. 3d 1, 11, 793 P.2d 2, 6-7, 270 Cal. Rptr. 796, 800-801 (1990); *Dyna-Med, Inc. v. Fair Employment & Housing Comm'n*, 43 Cal. 3d 1379, 1388-89, 743 P.2d 1323, 1327-28, 241 Cal. Rptr. 67, 71-72 (1987); *Vaessen v. Woods*, 35 Cal. 3d 749, 756-57, 677 P.2d 1183, 1187-89, 200 Cal. Rptr. 893, 897-99 (1984), *cert. denied*, 470 U.S. 1049 (1985); *Carmona v. Division of Indus. Safety*, 13 Cal. 3d 303, 309-10, 530 P.2d 161, 165-66, 118 Cal. Rptr. 473, 477-78 (1975).

79. See, e.g., *Dix v. Superior Court*, 53 Cal. 3d 442, 460, 807 P.2d 1063, 1072, 279 Cal. Rptr. 834, 843 (1991); *Whitcomb Hotel, Inc. v. California Employment Comm'n*, 24 Cal. 2d 753, 757-58, 151 P.2d 233, 236 (1944); *Scates v. Rydingsword*, 229 Cal. App. 3d 1085, 1097, 280 Cal. Rptr. 544, 550-51 (1991); *Guinnane v. San Francisco Planning Comm'n*, 209 Cal. App. 3d 732, 738, 257 Cal. Rptr. 742, 746, *cert. denied*, 493 U.S. 936 (1989).

80. Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1195 (1995).

In the comparative advantage category are factors that assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another. A court is more likely to defer to an agency's interpretation of a statute that the agency enforces than to its interpretation of some other statute, the common law, the constitution, or judicial precedent.⁸¹

Factors indicating that the interpretation in question is probably correct include the degree to which the agency's interpretation appears to have been carefully considered by responsible agency officials. For example, an interpretation of a statute contained in a regulation adopted after public notice and comment is more deserving of deference than an interpretation contained in an advice letter prepared by a single staff member.⁸² Deference is called for if the agency has consistently maintained the interpretation in question, especially if the interpretation is long-standing. A vacillating position, however, is entitled to no deference.⁸³ An interpretation is more worthy of deference if it first occurred contemporaneously with enactment of the statute being interpreted.⁸⁴ Defer-

81. Asimow, *supra* note 80, at 1195-96.

82. See *Hudgins v. Neiman Marcus Group, Inc.*, 34 Cal. App. 4th 1109, 1125-26, 41 Cal. Rptr. 2d 46, 56 (1995).

83. *Brewer v. Patel*, 20 Cal. App. 4th 1017, 1021-22, 25 Cal. Rptr. 2d 65, 68-69 (1993).

84. See *Woosley v. State*, 3 Cal. 4th 758, 776, 13 Cal. Rptr. 2d 30, 38-39 (1992), *cert. denied*, 113 S. Ct. 2416 (1993); *California Ass'n of Psychology Providers v. Rank*, 51 Cal. 3d 1, 17, 793 P.2d 2, 11, 270 Cal. Rptr. 796, 805 (1990); *Dyna-Med, Inc. v. Fair Employment & Housing Comm'n*, 43 Cal. 3d

ence may also be appropriate if the Legislature reenacted the statute in question with knowledge of the agency's prior interpretation.⁸⁵

When a court reviews a regulation, it normally separates the issues, exercising independent judgment with appropriate deference on interpretive issues, such as whether the regulation conflicts with the governing statute, but applying the abuse of discretion standard on whether the regulation is reasonably necessary to effectuate the purpose of the statute.⁸⁶

The Commission finds existing law on the standard of review of agency interpretation of law to be generally satisfactory. The proposed law continues independent judgment review of agency interpretation of law, with appropriate deference to the agency's interpretation.⁸⁷ The proposed law

1379, 1388-89, 743 P.2d 1323, 1326-28, 241 Cal. Rptr. 67, 70-72 (1987); *International Business Machines v. State Bd. of Equalization*, 26 Cal. 3d 923, 930, 163 Cal. Rptr. 782, 785 (1980); *Nipper v. California Auto. Assigned Risk Plan*, 19 Cal. 3d 35, 44-45, 560 P.2d 743, 747-48, 136 Cal. Rptr. 854, 858-59 (1977); *Whitcomb Hotel, Inc. v. California Employment Comm'n*, 24 Cal. 2d 753, 757, 151 P.2d 233, 235 (1944).

85. See *Moore v. California State Bd. of Accountancy*, 2 Cal. 4th 999, 1017-18, 831 P.2d 798, 808-09, 9 Cal. Rptr. 2d 358, 368-69 (1992); *Nelson v. Dean*, 27 Cal. 2d 873, 882, 168 P.2d 16, 21-22 (1946).

86. See *Moore v. California State Bd. of Accountancy*, 2 Cal. 4th 999, 1015, 831 P.2d 798, 807, 9 Cal. Rptr. 2d 358, 367 (1992); *California Ass'n of Psychology Providers v. Rank*, 51 Cal. 3d 1, 11, 793 P.2d 2, 270 Cal. Rptr. 796 (1990).

87. The proposed law exempts three labor law agencies from the statutory standard of review of questions of law (independent judgment with appropriate deference). These agencies are the Agricultural Labor Relations Board, Public Employment Relations Board, and Workers' Compensation Appeals Board. Thus the standard of review of questions of law for these agencies will continue to be determined by case law. See, e.g., *Banning Teachers Ass'n v. Public Employment Relations Bd.*, 44 Cal. 3d 799, 804, 750 P.2d 313, 244 Cal. Rptr. 671 (1988); *Agricultural Labor Relations Bd. v. Superior Court*, 16 Cal. 3d 392, 400, 411, 546 P.2d 687, 128 Cal. Rptr. 183 (1976); *Judson Steel Corp. v. Workers' Compensation Appeals Bd.*, 22 Cal. 3d 658, 668, 586 P.2d 564, 150 Cal. Rptr. 250 (1978); *United Farm Workers v. Agricultural Labor Relations Bd.*, 41 Cal. App. 4th 303, 48 Cal. Rptr. 2d 696, 703 (1995). These labor agencies are exempted because they must accommodate conflicting and contentious

does not address the standard of review of agency application of law to fact, leaving existing law unaffected.⁸⁸

Review of Agency Factfinding

Basic fact-finding involves determining what happened (or will happen in the future), when it happened, the state of mind of the participants, and the like. Some basic facts are established by direct testimony, some by inference from circumstantial evidence. For example, suppose the agency finds from direct or circumstantial evidence that *E*, an employee of *R*, was driving home from a night school course at the time of the accident. *R* paid for the cost of the night school and encouraged but did not require *E* to take the course. Determinations of basic fact such as these can be made without knowing anything of the applicable law.⁸⁹

Under existing law, in reviewing factual determinations in an adjudication by an agency not given judicial power by the California Constitution, courts use independent judgment if the proceeding substantially deprives a party's fundamental vested right.⁹⁰ California is the only jurisdiction in the United

economic interests, and the Legislature appears to have wanted legal interpretations by these agencies within their regulatory authority to be given greater deference by the courts.

88. See, e.g., *S. G. Borello & Sons, Inc. v. Department of Indus. Relations*, 48 Cal. 3d 341, 349, 769 P.2d 399, 256 Cal. Rptr. 543 (1989); *Halaco Engineering Co. v. South Central Coast Regional Comm'n*, 42 Cal. 3d 52, 74-77, 720 P.2d 15, 227 Cal. Rptr. 667 (1986); Asimow, *supra* note 80, at 1213-14.

89. Asimow, *supra* note 80, at 1211.

90. E.g., *Bixby v. Pierno*, 4 Cal. 3d 130, 481 P.2d 242, 93 Cal. Rptr. 234 (1971); see generally Asimow, *supra*, note 80. *Bixby* involved judicial review of a decision of the Commissioner of Corporations approving a recapitalization plan of a family-owned corporation as "fair, just and equitable," an exercise of agency discretion. *Bixby v. Pierno*, *supra*, 4 Cal. 3d at 150-51. Exercise of agency discretion is subject to abuse of discretion review under the proposed law. See discussion in text *infra* accompanying notes 101-07. The substantial evidence test of the proposed law for factfinding applies only to the basic facts underlying the decision, not to application of law to basic facts or to the decision itself.

States that uses independent judgment so broadly as a standard for judicial review of agency action.⁹¹

The independent judgment test was imposed by a 1936 California Supreme Court decision on the ground that constitutional doctrines of separation of powers or due process required it.⁹² The test applied to review of fact-finding by state agencies not established by the California Constitution, because it was thought those agencies could not constitutionally exercise judicial power. But courts have subsequently rejected any constitutional basis for the independent judgment test,⁹³ so the Legislature or the courts are now free to abolish it. Nonetheless, courts have continued to apply the independent judgment test to decisions of nonconstitutional state agencies where fundamental vested rights are involved. Thus the substantial evidence test is applied to review decisions of constitutional state agencies, and of nonconstitutional state agencies where fundamental vested rights are not involved. Independent judgment review is applied to nonconstitutional state agencies where substantial vested rights are involved. There is no rational policy basis for distinguishing between agencies established by the constitution and those that are not.

Independent judgment review of state agency adjudication substitutes factual conclusions of a trial judge, often a non-expert generalist, for those of the administrative law judge and agency heads who are usually experienced in their professional field. Especially in cases involving technical material

91. Some states use independent judgment review for particular situations. See, e.g., *Weeks v. Personnel Bd. of Review*, 373 A.2d 176 (R.I. 1977) (discharge of police officer). Colorado uses independent judgment review if a school board dismisses a teacher after the hearing officer recommended retention. Colo. Rev. Stat. § 22-63-302(10)(c) (Supp. 1995). See also Mo. Rev. Stat. § 536.140.2 (1990); Asimow, *supra* note 80, at 1164 n.13.

92. *Standard Oil Co. v. State Bd. of Equalization*, 6 Cal. 2d 557, 59 P.2d 119 (1936).

93. *Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.*, 24 Cal. 3d 335, 595 P.2d 579, 156 Cal. Rptr. 1 (1979).

or the clash of expert witnesses, administrative law judges and agency heads are more likely to be in a position to reach the correct decision than a trial judge reviewing the record.⁹⁴

Independent judgment review is inefficient because it requires parties to litigate the peripheral issue of whether or not independent judgment review applies. This involves the loose standard of the degree of “vestedness” and “fundamentalness” of the right affected. Independent judgment review requires closer scrutiny of the record, and the transcript may be lengthy. Independent judgment review also encourages more people to seek judicial review than would do so under a substantial evidence standard.⁹⁵

Except in one limited case, the proposed law eliminates independent judgment review of state agency fact-finding, and instead requires the court to uphold agency findings if supported by substantial evidence in the record as a whole.⁹⁶ Under the exception, if the agency head changes a determination of fact made in an adjudicative proceeding conducted by an administrative law judge employed by the Office of Administrative Hearings, the proposed law preserves independent judgment review of that determination of fact.

Under existing law, fact-finding in adjudication by local agencies is reviewed by the same standard as for state agencies that do not derive judicial power from the California Constitution — independent judgment if a fundamental

94. Asimow, *supra* note 80, at 1181-82.

95. Asimow, *supra* note 80, at 1184-85.

96. An important benefit of the substantial evidence test is that it greatly broadens the power of the appellate court in appeals from trial court decisions reviewing administrative action. Asimow, *supra* note 80, at 1168-69. The proposed law codifies the existing rule that a person challenging agency action has the burden of persuasion on overturning agency action. See California Administrative Mandamus §§ 4.157, 12.7 (Cal. Cont. Ed. Bar, 2d ed. 1989).

vested right is involved, otherwise substantial evidence.⁹⁷ The proposed law continues these rules for local agency adjudication, i.e., proceedings involving an evidentiary hearing to determine a legal interest of a particular person.⁹⁸

Review of Agency Exercise of Discretion

An agency has discretion when the law allows it to choose between several alternative policies or courses of action. Examples include an agency's power to choose a severe or lenient penalty, whether there is good cause to deny a license, whether to grant permission for various sorts of land uses, or to approve a corporate reorganization as fair. An agency might have power to prescribe the permitted level of a toxin in drinking water, to decide whether to favor the environment at the expense of economic development or vice versa, or to decide whom to investigate or charge when resources are limited.⁹⁹

Existing law is replete with conflicting doctrines on these important issues. California courts may review agency discretionary decisions on grounds of legality, procedural irregularity, or abuse of discretion despite broad statutory delegations

97. *Strumsky v. San Diego County Employees Retirement Ass'n*, 11 Cal. 3d 28, 520 P.2d 29, 112 Cal. Rptr. 805 (1974).

98. The argument for abandoning independent judgment review is weaker for local agency adjudication than for state agency adjudication. Local agency adjudication is often informal, and lacking procedural protections that apply to state agency hearings, including the administrative adjudication bill of rights. Gov't Code §§ 11410.20 (application to state), 11425.10-11425.60 (administrative adjudication bill of rights) (operative July 1, 1997). Independent judgment review has been justified as needed to salvage administrative procedures which would otherwise violate due process. *Bixby v. Pierno*, 4 Cal. 3d 130, 140 n.6, 481 P.2d 242, 93 Cal. Rptr. 234 (1971). A local agency may voluntarily apply the administrative adjudication bill of rights to its adjudications, Gov't Code § 11410.40 (operative July 1, 1997), but is not required to do so. The Commission has not made a detailed study of procedures in adjudications of the many types of local agencies. In the absence of such a study, the Commission believes existing law should be continued.

99. Asimow, *supra* note 80, at 1224.

of discretionary authority.¹⁰⁰ Under existing law, the court reviews adjudicative and quasi-legislative action by traditional mandamus generally on a closed record, but in reviewing ministerial or informal action, extra-record evidence is freely admissible if the facts are in dispute.¹⁰¹ The agency must give reasons for the discretionary action in the case of review of adjudicatory action,¹⁰² but not in the case of quasi-legislative action.¹⁰³

In reviewing discretionary action, a court first decides whether the agency's choice was legally permissible and whether the agency followed legally required procedures, using independent judgment with appropriate deference.¹⁰⁴ Within these limits, the agency has power to choose between alternatives, and a court must not substitute its judgment for the agency's, since the Legislature gave discretionary power to the agency, not the court. But the court should reverse if the agency's choice was an abuse of discretion. Review for abuse of discretion consists of two distinct inquiries: the ade-

100. See *Saleeby v. State Bar*, 39 Cal. 3d 547, 563, 702 P.2d 525, 534, 216 Cal. Rptr. 367, 376 (1985); *Paulsen v. Golden Gate Univ.*, 25 Cal. 3d 803, 808-09, 602 P.2d 778, 780-81, 159 Cal. Rptr. 858, 860-61 (1979); *Shuffer v. Board of Trustees*, 67 Cal. App. 3d 208, 220, 136 Cal. Rptr. 527, 534 (1977); *Manjares v. Newton*, 64 Cal. 2d 365, 370, 49 Cal. Rptr. 805, 809 (1966).

101. *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 575-79, 888 P.2d 1268, 38 Cal. Rptr. 2d 139, 147-50 (1995); see also discussion *infra* under "Evidence Outside the Administrative Record" in text accompanying notes 115-21.

102. *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 522 P.2d 12, 113 Cal. Rptr. 836 (1974).

103. *California Aviation Council v. City of Ceres*, 9 Cal. App. 4th 1384, 12 Cal. Rptr. 2d 163 (1992); *City of Santa Cruz v. Local Agency Formation Comm'n*, 76 Cal. App. 3d 381, 386-91, 142 Cal. Rptr. 873, 875-77 (1978). *Cf.* *California Hotel & Motel Ass'n v. Industrial Welfare Comm'n*, 25 Cal. 3d 200, 216, 599 P.2d 31, 157 Cal. Rptr. 840, 850 (1979) (statement of basis for decision required by statute).

104. See *California Ass'n of Psychology Providers v. Rank*, 51 Cal. 3d 1, 11, 793 P.2d 2, 270 Cal. Rptr. 796, 800-01 (1990).

quacy of the factual underpinning of the discretionary decision, and the rationality of the choice.¹⁰⁵

In reviewing the adequacy of the factual underpinning, it is not clear whether the abuse of discretion test is merely another way to state the substantial evidence test, or whether the substantial evidence test gives the court greater leeway in reviewing the agency decision, but the prevailing view is that they are synonymous.¹⁰⁶ Legislative history of a 1982 enactment¹⁰⁷ also suggests that substantial evidence is the appropriate test whenever the issue is the factual basis for agency discretionary action.

The proposed law requires the factual underpinnings of a discretionary decision to be reviewed by the same standards for other fact-finding — substantial evidence or independent judgment¹⁰⁸ — whether the decision arose out of formal or informal adjudication, quasi-legislative action such as rule-making, or some other function.¹⁰⁹

Review of Agency Procedure

Under existing law, California courts use independent judgment on the question of whether agency action complied with procedural requirements of statutes or the constitution.¹¹⁰ California courts have occasionally mandated administrative

105. Asimow, *supra* note 80, at 1228-29.

106. Asimow, *supra* note 80, at 1229.

107. 1982 Cal. Stat. ch. 1573, § 10 (amending Gov't Code § 11350); Asimow, *supra* note 80, at 1230.

108. See discussion *supra* in text accompanying notes 89-98.

109. The proposed law rejects case law indicating that an exercise of agency discretion can be disturbed only if evidentiary support is "entirely lacking" or that review is less intensive in abuse of discretion cases than in other cases. See generally Asimow, *supra* note 80, at 1240.

110. See *California Hotel & Motel Ass'n v. Industrial Welfare Comm'n*, 25 Cal. 3d 200, 209-16, 599 P.2d 31, 36-41, 157 Cal. Rptr. 840, 845-50 (1979); *City of Fairfield v. Superior Court*, 14 Cal. 3d 768, 776, 537 P.2d 375, 379, 122 Cal. Rptr. 543, 547 (1975).

procedures not required by any statute, either in the interest of fair procedures¹¹¹ or to facilitate judicial review.¹¹²

The Commission believes that California courts should retain the power to impose administrative procedures not found in a statute. This power is necessary to prevent procedural unfairness to parties. However, while courts should continue to use independent judgment on procedural issues, they should normally accord considerable deference to agency decisions about how to implement procedural provisions in statutes. Agency expertise is just as relevant in establishing procedure as in fact-finding and determining law and policy.¹¹³

The proposed law permits the court to exercise independent judgment in reviewing agency procedures, with deference to the agency's determination of what procedures are appropriate.¹¹⁴

EVIDENCE OUTSIDE THE ADMINISTRATIVE RECORD

Under existing law, in administrative mandamus¹¹⁵ to review an adjudicative proceeding, the court may remand to

111. See, e.g., *Ettinger v. Board of Medical Quality Assurance*, 135 Cal. App. 3d 853, 185 Cal. Rptr. 601 (1982).

112. *Saleeby v. State Bar*, 39 Cal. 3d 547, 566-68, 702 P.2d 525, 536-38, 216 Cal. Rptr. 367, 378-80 (1985); *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 522 P.2d 12, 113 Cal. Rptr. 836 (1974).

113. *Asimow*, *supra* note 80, at 1246.

114. An agency's procedural choices under a general statute applicable to a variety of agencies, such as the Administrative Procedure Act, should be entitled to less deference than a choice made under a statute unique to that agency. *Asimow*, *supra* note 80, at 1247. The proposed law provides that the standard of review of agency procedure does not apply to judicial review of state agency rulemaking under the Administrative Procedure Act. The Law Revision Commission is studying this question as part of its administrative rulemaking study.

115. Traditional mandamus is rarely, if ever, appropriate to review an adjudicative proceeding. See *California Administrative Mandamus* § 1.8, at 8 (Cal. Cont. Ed. Bar, 2d ed. 1989).

the agency to admit additional evidence only if in the exercise of reasonable diligence the evidence could not have been produced at, or was improperly excluded from, the administrative hearing.¹¹⁶ For independent judgment review, the court may either admit the evidence itself or remand if one of those two conditions is satisfied.¹¹⁷

In traditional mandamus to review ministerial or informal action, extra-record evidence is freely admissible if the facts are in dispute.¹¹⁸ The court simply takes evidence and determines the issues. In traditional mandamus to review quasi-legislative action, extra-record evidence is admissible only if the evidence existed before the agency decision and it was not possible in the exercise of reasonable diligence to present it at the administrative proceeding.¹¹⁹

The proposed law codifies a closed record requirement for review of agency action where the agency gave interested persons notice and an opportunity to submit oral or written comment and maintained a record or file of its proceedings. These requirements will generally be satisfied for most administrative adjudication and quasi-legislative action. If these requirements are not satisfied, the court may either receive the evidence itself or remand to the agency to do so. This will apply to most ministerial and informal action.

If the agency failed to give interested persons notice and an opportunity to submit oral or written comment, or did not maintain a record or file of its proceedings, the proposed law permits the court to remand to the agency to reconsider in light of additional evidence that in the exercise of reasonable

116. Code Civ. Proc. § 1094.5(e).

117. *Id.*

118. *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 575-76, 888 P.2d 1268, 38 Cal. Rptr. 2d 139, 147-48 (1995).

119. *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 578, 888 P.2d 1268, 38 Cal. Rptr. 2d 139, 149 (1995).

diligence could not have been produced at, or was improperly excluded from, the agency proceeding.¹²⁰ This is consistent with the agency's role as the primary factfinder and the court's role as a reviewing body. The court may receive the evidence itself without remanding the case to the agency in any of the following circumstances:

(1) The evidence is needed to decide whether those taking the agency action were improperly constituted as a decision-making body or whether there were grounds to disqualify them, whether the procedure or decisionmaking process was unlawful.

(2) The standard of review of an adjudicative proceeding is the independent judgment of the court.

(3) No hearing was held by the agency and the court finds that remand to the agency would be unlikely to result in a better record for review and the interests of economy and efficiency would be served by receiving the evidence itself.¹²¹

PROPER COURT FOR REVIEW; VENUE

Under existing law, most judicial review of agency action is in superior court.¹²² Either the Supreme Court or the court of appeal reviews decisions of the Workers' Compensation Appeals Board,¹²³ Department of Alcoholic Beverage Control,¹²⁴ and Alcoholic Beverage Control Appeals Board.¹²⁵ The court of appeal reviews decisions of the Agricultural

120. The proposed law deals only with admissibility of new evidence on issues involved in the agency proceeding. It does not limit evidence on issues unique to judicial review, such as petitioner's standing or capacity, or affirmative defenses such as laches for unreasonable delay in seeking judicial review.

121. This provision does not apply to judicial review of rulemaking.

122. Asimow, *supra* note 4, at 423.

123. Lab. Code §§ 5950, 5955.

124. Bus. & Prof. Code §§ 23090, 23090.5.

125. *Id.*

Labor Relations Board¹²⁶ and Public Employment Relations Board.¹²⁷ The proposed law does not alter this scheme.

Under existing law, venue in superior court for administrative mandamus is in the county where the cause of action arose.¹²⁸ The proposed law adds Sacramento County as an additional permissible county when a state agency is involved.¹²⁹ For judicial review of local agency action, the proposed law provides that venue is in the county of jurisdiction of the agency. This is probably not a substantive change, since the cause of action is likely to arise in the county of the local agency's jurisdiction. For judicial review of action of a nongovernmental entity,¹³⁰ the proposed law provides that venue is in the county where the entity is located.

STAYS PENDING REVIEW

Under the existing APA, an agency has power to stay its own decision.¹³¹ Whether or not the agency does so, the superior court has discretion to stay the agency action, but should

126. Lab. Code § 1160.8.

127. Gov't Code §§ 3520, 3542, 3564.

128. See Code Civ. Proc. § 393(1)(b); *Duval v. Contractors State License Bd.*, 125 Cal. App. 2d 532, 271 P.2d 194 (1954); California Administrative Mandamus § 8.16, at 269 (Cal. Cont. Ed. Bar, 2d ed. 1989).

129. Most state agencies have their headquarters offices in Sacramento. The Sacramento County Superior Court is likely to have or develop expertise in judicial review proceedings. The provision for venue in Sacramento County does not apply to judicial review of a decision of a private hospital board under the proposed law. The proposed law also preserves the special venue rule for review of driver's license proceedings. See Veh. Code § 13559 (licensee's county of residence).

130. See discussion *supra* in text accompanying note 29.

131. Gov't Code § 11519(b).

not impose or continue a stay if to do so would be against the public interest.¹³²

A stricter standard applies in medical, osteopathic, or chiropractic cases in which a hearing was provided under the APA. The stricter standard also applies to non-health care APA cases in which the agency head adopts the proposed decision of the administrative law judge in its entirety or adopts the decision and reduces the penalty. Under the stricter standard, a stay should not be granted unless the court is satisfied that the public interest will not suffer and the agency is unlikely to prevail ultimately on the merits.¹³³ The court may condition a stay order on the posting of a bond.

If the trial court denies the writ of mandamus and a stay is in effect, the appellate court can continue the stay.¹³⁴ If the trial court grants the writ, the agency action is stayed pending appeal unless the appellate court orders otherwise.¹³⁵

The proposed law simplifies this scheme by providing one standard regardless of the type of agency action being reviewed. Under the proposed law, the factors to be considered by the court in determining whether to grant a stay include, in addition to the public interest and the likelihood of success on the merits, the degree to which the applicant for a stay will suffer irreparable injury from denial of a stay and the

132. Code Civ. Proc. § 1094.5(g). However, the court may not prevent or enjoin the collection of any tax. Cal. Const. art. XIII, § 32.

133. See Code Civ. Proc. § 1094.5(h).

134. If a stay is in effect when a notice of appeal is filed, the stay is continued in effect by operation of law for 20 days from the filing of the notice. Code Civ. Proc. § 1094.5(g).

135. In cases not arising under the administrative mandamus statute, the trial and appellate courts presumably have their usual power to grant a stay. Asimow, *supra* note 4, at 436; see California Civil Writ Practice §§ 7.51-7.53, at 267-69 (Cal. Cont. Ed. Bar, 3d ed. 1996).

degree to which the grant of a stay would harm third parties.¹³⁶

COSTS

The proposed law consolidates and generalizes provisions on the fee for preparing a transcript and other portions of the record, recovering costs of suit by the prevailing party, and proceedings in forma pauperis.¹³⁷

136. These revisions will make the standard for granting a stay similar to the standard for granting a preliminary injunction. Asimow, *supra* note 4, at 437.

137. See Code Civ. Proc. §§ 1094.5(a), 1094.6(c); Gov't Code § 11523. The proposed law continues the existing provision in Code of Civil Procedure Section 1094.5(a) for proceedings in forma pauperis to review an adjudicative proceeding, but does not expand it to apply to review of matters other than adjudication. The proposed law also recodifies Government Code Section 800 (attorney fees where agency action was arbitrary or capricious) in the Code of Civil Procedure without substantive change.

JUDICIAL REVIEW OF AGENCY ACTION

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PROPOSED LEGISLATION

Code Civ. Proc. §§ 1120-1123.950 (added). Judicial review of agency action

SEC. _____. Title 2 (commencing with Section 1120) is added to Part 3 of the Code of Civil Procedure, to read:

TITLE 2. JUDICIAL REVIEW OF AGENCY ACTION

CHAPTER 1. GENERAL PROVISIONS

Article 1. Preliminary Provisions

§ 1120. Entities to which title applies

1120. (a) Except as provided by statute, this title governs judicial review of agency action of any of the following entities:

(1) The state, including any agency or instrumentality of the state, whether exercising executive powers or otherwise.

(2) A local agency, including a county, city, district, public authority, public agency, or other political subdivision in the state.

(3) A public corporation in the state.

(b) This title governs judicial review of a decision of a nongovernmental entity if any of the following conditions is satisfied:

(1) A statute expressly so provides.

(2) The decision is made in a proceeding to which Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code applies.

(3) The decision is made in an adjudicative proceeding required by law, is quasi-public in nature, and affects fundamental vested rights, and the proceeding is of a kind likely to result in a record sufficient for judicial review.

Comment. Section 1120 makes clear that the judicial review provisions of this title apply to actions of local agencies as well as state government. *But see* Section 1121(d) (title does not apply to judicial review of a local agency ordinance, regulation, or legislative resolution). The term “local agency” is defined in Government Code Section 54951. See Section 1121.260 & Comment. The introductory clause of Section 1120 recognizes that some proceedings are exempted by statute from application of this title. See Bus. & Prof. Code § 6089 (State Bar Court); Gov’t Code § 11420.10 (award in binding arbitration under Administrative Procedure Act); Pub. Res. Code § 25531.5 (Energy Commission); Pub. Util. Code § 1768 (Public Utilities Commission). See also Gov’t Code § 19576.1 (disciplinary decisions not subject to judicial review). This title also does not apply to proceedings where the substantive right originates in the constitution, such as inverse condemnation. See California Government Tort Liability Practice § 2.97, at 181-82 (Cal. Cont. Ed. Bar, 3d ed. 1992). See also Section 1123.160 (condition of relief).

Paragraph (1) of subdivision (b) applies this title to judicial review of a decision of a nongovernmental entity if a statute expressly so provides. For a statute applying this title to a nongovernmental entity, see Health & Safety Code § 1339.63 (adjudication by private hospital board).

Paragraph (2) of subdivision (b) recognizes that Government Code Sections 11400-11470.50 apply to some private entities. See Gov’t Code § 11410.60 [in SB 68, administrative adjudication by quasi-public entities, introduced at the 1997 session].

Paragraph (3) of subdivision (b) is drawn from a portion of the first sentence of former Section 1094.5(a) (decision made in “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”) and from case law on the availability of administrative mandamus to review a decision of a nongovernmental entity. See, e.g., *Anton v. San Antonio Community Hospital*, 19 Cal. 3d 802, 814, 567 P.2d 1162, 140 Cal. Rptr. 442 (1979); *Pomona College v. Superior Court*, 45 Cal. App. 4th 1716, 53 Cal. Rptr. 2d 662 (1996); *Delta Dental Plan v. Banasky*, 27 Cal. App. 4th 1598, 33 Cal. Rptr. 2d 381 (1994); *Wallin v. Vienna Sausage Mfg. Co.*, 156 Cal. App. 3d 1051, 203 Cal. Rptr. 375 (1984); *Bray v. International Molders & Allied Workers Union*, 155 Cal. App. 3d 608, 202 Cal. Rptr. 269 (1984); *Coppernoll v. Board of Directors*, 138 Cal. App. 3d 915, 188 Cal. Rptr. 394 (1983). The requirement in paragraph (3) that the proceeding be of a kind likely to result in a record sufficient for judicial review is new, and is necessary to avoid the unfairness that might result from

applying the closed record requirement of this title. See Sections 1123.810, 1123.850.

Subdivision (b) applies this title only to nongovernmental action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person, and not to quasi-legislative acts. See Section 1121.250 (“decision” defined). If this title is not available to review a decision of a nongovernmental entity because the requirements of subdivision (b) are not met, traditional mandamus may be available under Section 1085. See California Civil Writ Practice §§ 6.16-6.17, at 203-05 (Cal. Cont. Ed. Bar, 3d ed. 1996). If the person seeking review uses the wrong procedure, the court should ordinarily permit amendment of the pleadings to use the proper procedure. See, e.g., *Scott v. City of Indian Wells*, 6 Cal. 3d 541, 549-50, 492 P.2d 1137, 99 Cal. Rptr. 745 (1972) (reversible error to sustain general demurrer to complaint for declaratory relief without leave to amend when proper remedy is administrative mandamus).

References in section Comments in this title to the “1981 Model State APA” mean the Model State Administrative Procedure Act (1981) promulgated by the National Conference of Commissioners on Uniform State Laws. See 15 U.L.A. 1 (1990).

§ 1121. Proceedings to which title does not apply

1121. This title does not apply to any of the following:

(a) Judicial review of agency action by any of the following means:

(1) Where a statute provides for trial de novo.

(2) Action for refund of taxes or fees under Section 5140 or 5148 of the Revenue and Taxation Code, or under Division 2 (commencing with Section 6001) of the Revenue and Taxation Code.

(3) Action under Division 3.6 (commencing with Section 810) of the Government Code, relating to claims and actions against public entities and public employees.

(b) Litigation in which the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.

(c) Judicial review of a decision of a court.

(d) Judicial review of either of the following enacted by a county board of supervisors or city council:

- (1) An ordinance or regulation.
- (2) A resolution that is legislative in nature.

(e) Judicial review of agency proceedings pursuant to a reference to the agency ordered by the court.

Comment. Under subdivision (a)(1) of Section 1121, this title does not apply where a statute provides for judicial review by a trial de novo. Such statutes include: Educ. Code §§ 33354 (hearing on compliance with federal law on interscholastic activities), 67137.5 (judicial review of college or university withholding student records); Food & Agric. Code § 31622 (hearing concerning vicious dog); Gov't Code § 53088.2 (judicial review of local action concerning video provider); Lab. Code §§ 98.2 (judicial review of order of Labor Commissioner on employee complaint), 1543 (judicial review of determination of Labor Commissioner involving athlete agent), 1700.44 (judicial review of order of Labor Commissioner involving talent agency); Rev. & Tax. Code § 1605.5 (change of property ownership or new construction); Welf. & Inst. Code § 5334 (judicial review of capacity hearing).

Subdivision (a)(2) exempts from this title actions for refund of taxes under Section 5140 or 5148 of, or Division 2 of, the Revenue and Taxation Code, but does not generally exempt property taxation under Division 1 of that code. This is consistent with existing law under which judicial review of a property tax assessment is not by trial de novo, but is based on the administrative record. See *Bret Harte Inn, Inc. v. City & County of San Francisco*, 16 Cal. 3d 14, 544 P.2d 1354, 127 Cal. Rptr. 154 (1976); *DeLuz Homes, Inc. v. County of San Diego*, 45 Cal. 2d 546, 290 P.2d 544 (1955); *Prudential Ins. Co. v. City & County of San Francisco*, 191 Cal. App. 3d 1142, 236 Cal. Rptr. 869 (1987); *Kaiser Center, Inc. v. County of Alameda*, 189 Cal. App. 3d 978, 234 Cal. Rptr. 603 (1987); *Trailer Train Co. v. State Bd. of Equalization*, 180 Cal. App. 3d 565, 225 Cal. Rptr. 717 (1986); *Hunt-Wesson Foods, Inc. v. County of Alameda*, 41 Cal. App. 3d 163, 116 Cal. Rptr. 160 (1974); *Westlake Farms, Inc. v. County of Kings*, 39 Cal. App. 3d 179, 114 Cal. Rptr. 137 (1974). See also Cal. Const. art. XIII, § 32 (courts may not prevent or enjoin collection of any tax).

Subdivision (a)(3) provides that this title does not apply to an action brought under the California Tort Claims Act. However, subdivision (a)(3) does not prevent the claims requirements of the Tort Claims Act from applying to an action seeking primarily money damages and also extraordinary relief incidental to the prayer for damages. See Section

1123.730(b) (damages subject to Tort Claims Act if applicable); *Eureka Teacher's Ass'n v. Board of Educ.*, 202 Cal. App. 3d 469, 474-76, 247 Cal. Rptr. 790 (1988); *Loehr v. Ventura County Community College Dist.*, 147 Cal. App. 3d 1071, 1081, 195 Cal. Rptr. 576 (1983). However, this title does apply to compel an agency to pay a claim that has been allowed and is required to be paid. Gov't Code § 942.

Under subdivision (b), this title does not apply, for example, to enforcement of a government bond in an action at law, or to actions involving contract, intellectual property, or copyright. This title does apply to denial by the Department of Health Services of a claim by a health care provider where the department has statutory authority to determine such claims. See, e.g., *Welf. & Inst. Code* §§ 14103.6, 14103.7. Judicial review of denial of such a claim is under this title and not, for example, in small claims court. See Section 1121.120 (this title provides exclusive procedure for judicial review of agency action).

Subdivision (d) provides that this title does not apply to judicial review of an ordinance or regulation of a county board of supervisors or city council, or of a resolution of those bodies that is legislative in nature. For an example of a resolution that is legislative in nature, see *Valentine v. Town of Ross*, 39 Cal. App. 3d 954, 114 Cal. Rptr. 678 (1974) (resolution approving flood control project). For examples of resolutions that are not legislative in nature, see *Simpson v. Hite*, 36 Cal. 2d 125, 222 P.2d 225 (1950) (resolution designating site for court buildings); *Burdick v. City of San Diego*, 29 Cal. App. 2d 565, 84 P.2d 1064 (1938) (resolution designating site for city jail, police headquarters, and courtrooms). Matters exempted from this title by subdivision (d) remain subject to judicial review by traditional mandamus or by an action for injunctive or declaratory relief. See, e.g., *Karlson v. City of Camarillo*, 100 Cal. App. 3d 789, 798, 161 Cal. Rptr. 260 (1980) (mandamus to review amendment of city's general plan); *cf. Guidotti v. County of Yolo*, 214 Cal. App. 3d 1552, 1561-63, 271 Cal. Rptr. 858, 863-64 (1986) (declaratory and injunctive relief and mandamus to review setting by county of levels of general relief). If a proceeding is brought under this title to review ministerial or informal action and a separate proceeding for traditional mandamus is brought to review an ordinance, regulation, or legislative resolution upon which the action is based, the two proceedings may be consolidated by the court under Section 1048. See Section 1123.710.

Subdivision (e) makes clear this title does not apply where an agency acts as referee in a court-ordered reference. See, e.g., *Water Code* §§ 2000-2048. However, notwithstanding subdivision (e), Chapter 2 (commencing with Section 1122.010) on primary jurisdiction may still apply. Section 1122.010; see generally *National Audubon Soc'y v.*

Superior Court, 33 Cal. 3d 419, 451, 658 P.2d 709, 731, 189 Cal. Rptr. 346, 368, *cert. denied*, 464 U.S. 977 (1983); *Environmental Defense Fund v. East Bay Mun. Util. Dist.*, 26 Cal. 3d 183, 193-200, 605 P.2d 1, 5-9, 161 Cal. Rptr. 466, 470-74 (1980). See also Water Code § 2504 (title does not apply to statutory adjudication under specified Water Code provisions).

§ 1121.110. Conflicting or inconsistent statute controls

1121.110. A statute applicable to a particular entity or a particular agency action prevails over a conflicting or inconsistent provision of this title.

Comment. Section 1121.110 is drawn from the first sentence of former Government Code Section 11523 (judicial review in accordance with provisions of Code of Civil Procedure “subject, however, to the statutes relating to the particular agency”). As used in Section 1121.110, “statute” does not include a local ordinance. See Cal. Const. art. IV, § 8(b) (statute enacted only by bill in the Legislature); *id.* art. XI, § 7 (local ordinance).

§ 1121.120. Other forms of judicial review replaced

1121.120. (a) The procedure provided in this title for judicial review of agency action is a proceeding for extraordinary relief in the nature of mandamus and shall be used in place of administrative mandamus, ordinary mandamus, certiorari, prohibition, declaratory relief, injunctive relief, and any other judicial procedure, to the extent those procedures might otherwise be used for judicial review of agency action.

(b) Nothing in this title limits use of the writ of habeas corpus.

(c) Notwithstanding Section 427.10, no cause of action may be joined in a proceeding under this title unless it states independent grounds for relief.

Comment. Subdivision (a) of Section 1121.120 is drawn from 1981 Model State APA Section 5-101. By establishing this title as the exclusive method for judicial review of agency action, Section 1121.120 continues and broadens the effect of former Section 1094.5. See, e.g., *Viso v. State*, 92 Cal. App. 3d 15, 21, 154 Cal. Rptr. 580, 584 (1979).

Subdivision (a) implements the original writ jurisdiction given by Article VI, Section 10, of the California Constitution (original jurisdiction for extraordinary relief in the nature of mandamus). Nothing in this title limits the original writ jurisdiction of the courts. See Section 1123.510(b).

Under subdivision (b), this title does not apply to the writ of habeas corpus. See Cal. Const. art. I, § 11, art. VI, § 10. See also *In re McVickers*, 29 Cal. 2d 264, 176 P.2d 40 (1946); *In re Stewart*, 24 Cal. 2d 344, 149 P.2d 689 (1944); *In re DeMond*, 165 Cal. App. 3d 932, 211 Cal. Rptr. 680 (1985).

Subdivision (c) continues prior law. See, e.g., *State v. Superior Court*, 12 Cal. 3d 237, 249-51, 524 P.2d 1281, 115 Cal. Rptr. 497, 504 (1974) (declaratory relief not appropriate to review administrative decision, but is appropriate to declare a statute facially unconstitutional); *Hensler v. City of Glendale*, 8 Cal. 4th 1, 876 P.2d 1043, 32 Cal. Rptr. 2d 244, 253 (1994) (inverse condemnation action may be joined in administrative mandamus proceeding involving same facts); *Mata v. City of Los Angeles*, 20 Cal. App. 4th 141, 147-48, 24 Cal. Rptr. 2d 314, 318 (1993) (complaint for violation of civil rights may be joined with administrative mandamus). If other causes of action are joined with a proceeding for judicial review, the court may sever the causes for trial. See Section 1048. See also Section 598.

Nothing in this section limits the type of relief or remedial action available in a proceeding under this title. See Section 1123.730 (type of relief).

§ 1121.130. Injunctive relief ancillary

1121.130. Injunctive relief is ancillary to and may be used as a supplemental remedy in connection with a proceeding under this title.

Comment. Section 1121.130 makes clear that the procedures for injunctive relief may be used in a proceeding under this title. See also Section 1123.730 (injunctive relief authorized).

§ 1121.140. Exercise of agency discretion

1121.140. Nothing in this title authorizes the court to interfere with a valid exercise of agency discretion or to direct an agency how to exercise its discretion.

Comment. Section 1121.140 is drawn from 1981 Model State APA Section 1-116(c)(8)(i), and is consistent with the last clause in former Section 1094.5(f).

§ 1121.150. Application of new law

1121.150. (a) This title applies to a proceeding commenced on or after January 1, 1998, for judicial review of agency action.

(b) The applicable law in effect before January 1, 1998, continues to apply to a proceeding for judicial review of agency action pending on January 1, 1998.

Comment. Subdivision (a) of Section 1121.150 applies this title to a proceeding commenced on or after the operative date.

Subdivision (b) is drawn from a portion of 1981 Model State APA Section 1-108. Pending proceedings for administrative mandamus, declaratory relief, and other proceedings for judicial review of agency action are not governed by this title, but should be completed under the applicable provisions other than this title.

Article 2. Definitions

§ 1121.210. Application of definitions

1121.210. Unless the provision or context requires otherwise, the definitions in this article govern the construction of this title.

Comment. Section 1121.210 limits these definitions to judicial review of agency action. Some parallel provisions may be found in the statutes governing adjudicative proceedings by state agencies. See Gov't Code §§ 11405.10-11405.80 (operative July 1, 1997).

§ 1121.220. Adjudicative proceeding

1121.220. "Adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which an agency formulates and issues a decision.

Comment. Section 1121.220 is drawn from the Administrative Procedure Act. See Gov't Code § 11405.20 (operative July 1, 1997) & Comment ("adjudicative proceeding" defined). See also Sections 1121.230 ("agency" defined), 1121.250 ("decision" defined).

§ 1121.230. Agency

1121.230. (a) “Agency” means a board, bureau, commission, department, division, governmental subdivision or unit of a governmental subdivision, office, officer, or other administrative unit, including the agency head, and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf of or under the authority of the agency head.

(b) When this title applies to judicial review of a decision of a nongovernmental entity, “agency” includes that entity.

Comment. Section 1121.230 is drawn from the Administrative Procedure Act. See Gov’t Code § 11405.30 (operative July 1, 1997) & Comment (“agency” defined). Subdivision (a) is broadly drawn to subject all governmental units to this title unless expressly excepted by statute. See Comment to Section 1120.

§ 1121.240. Agency action

1121.240. “Agency action” means any of the following:

(a) The whole or a part of a rule or a decision.

(b) The failure to issue a rule or a decision.

(c) An agency’s performance of any other duty, function, or activity, discretionary or otherwise.

(d) An agency’s failure to perform any duty, function, or activity, discretionary or otherwise, that the law requires to be performed or that would be an abuse of discretion if not performed.

Comment. Section 1121.240 is drawn from 1981 Model State APA Section 1-102(2). The term “agency action” includes a “rule” and a “decision” defined in Sections 1121.290 (rule) and 1121.250 (decision), and an agency’s failure to issue a rule or decision. It goes further, however. Subdivisions (c) and (d) make clear that “agency action” includes everything and anything else that an agency does or does not do, whether its action or inaction is discretionary or otherwise. There are no exclusions from that all-encompassing definition. As a consequence, there is a category of “agency action” that is neither a “decision” nor a “rule” because it neither establishes the legal rights of any particular person nor establishes law or policy of general applicability. See also

Section 1123.110(b) (court may summarily decline to grant review if petition does not present substantial issue).

The principal effect of the broad definition of “agency action” is that everything an agency does or does not do is subject to judicial review if the limitations provided in Chapter 3 (commencing with Section 1123.110) are satisfied. See Section 1123.110 (requirements for judicial review). Success on the merits in such cases, however, is another thing. See also Sections 1121.230 (“agency” defined), 1123.160 (condition of relief).

§ 1121.250. Decision

1121.250. “Decision” means an agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person.

Comment. Section 1121.250 is drawn from the Administrative Procedure Act. See Gov’t Code § 11405.50 (operative July 1, 1997) & Comment (“decision” defined). See also Sections 1121.240 (“agency action” defined), 1121.280 (“person” defined).

§ 1121.260. Local agency

1121.260. “Local agency” means “local agency” as defined in Section 54951 of the Government Code.

Comment. Section 1121.260 is drawn from former Section 1094.6, and is broadened to include school districts. Under Government Code Section 54951, “local agency” means “a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.” See also Section 1121.230 (“agency” defined).

§ 1121.270. Party

1121.270. (a) As it relates to agency proceedings, “party” means the agency that is taking action, the person to which the agency action is directed, and any other person named as a party or allowed to appear or intervene in the agency proceedings.

(b) As it relates to judicial review proceedings, “party” means the person seeking judicial review of agency action

and any other person named as a party or allowed to participate as a party in the judicial review proceedings.

Comment. Subdivision (a) of Section 1121.270 is drawn from the Administrative Procedure Act. See Gov't Code § 11405.60 (operative July 1, 1997) & Comment ("party" defined). This section does not address the question of whether a person is entitled to judicial review. Standing to obtain judicial review is dealt with in Article 2 (commencing with Section 1123.210) of Chapter 3. See also Section 1121.230 ("agency" defined).

§ 1121.280. Person

1121.280. "Person" includes an individual, partnership, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character.

Comment. Section 1121.280 is drawn from the Administrative Procedure Act. See Gov't Code § 11405.70 (operative July 1, 1997) & Comment ("person" defined). It supplements the definition in Code of Civil Procedure Section 17 and is broader in its application to a governmental subdivision or unit. This includes an agency other than the agency against which rights under this title are asserted by the person. Inclusion of such agencies and units of government insures, therefore, that other agencies or other governmental bodies will be accorded all the rights that a person has under this title.

§ 1121.290. Rule

1121.290. "Rule" means the whole or a part of an agency regulation, including a "regulation" as defined in Section 11342 of the Government Code, order, or standard of general applicability that implements, interprets, makes specific, or prescribes law or policy, or the organization, procedure, or practice requirements of an agency, except one that relates only to the internal management of the agency. The term includes the amendment, supplement, repeal, or suspension of an existing rule.

Comment. Section 1121.290 is drawn from 1981 Model State APA Section 1-102(10) and Government Code Section 11342(g). The definition includes all agency orders of general applicability that

implement, interpret, or prescribe law or policy, without regard to the terminology used by the issuing agency to describe them. The exception for an agency standard that relates only to the internal management of the agency is drawn from Government Code Section 11342(g), and is generalized to apply to local agencies. See also Sections 1121 (this title does not apply to local agency ordinance), 1121.230 (“agency” defined), 1121.260 (“local agency” defined).

This title applies to an agency rule whether or not the rule is a “regulation” to which the rulemaking provisions of the Administrative Procedure Act apply.

CHAPTER 2. PRIMARY JURISDICTION

§ 1122.010. Application of chapter

1122.010. Notwithstanding Section 1121, this chapter applies if a judicial proceeding is pending and the court determines that an agency has exclusive or concurrent jurisdiction over the subject matter of the proceeding or an issue in the proceeding.

Comment. Section 1122.010 makes clear that the provisions governing primary jurisdiction come into play only when there is exclusive or concurrent jurisdiction in an agency over a matter that is the subject of a pending judicial proceeding. The introductory clause makes clear this chapter applies, for example, to a judicial proceeding involving a trial de novo. The term “judicial proceeding” is used to mean any proceeding in court, including a civil action or a special proceeding.

This chapter deals with original jurisdiction over a matter, rather than with judicial review of previous agency action on the matter. If the matter has previously been the subject of agency action and is currently the subject of judicial review, the governing provisions relating to the court’s jurisdiction are found in Chapter 3 (commencing with Section 1123.110) (judicial review) rather than in this chapter.

§ 1122.020. Exclusive agency jurisdiction

1122.020. If an agency has exclusive jurisdiction over the subject matter of the proceeding or an issue in the proceeding, the court shall decline to exercise jurisdiction over the subject matter or the issue. The court may dismiss the proceeding or

retain jurisdiction pending agency action on the matter or issue.

Comment. Section 1122.020 requires the court to yield primary jurisdiction to an agency if there is a legislative scheme to vest the determination in the agency. Adverse agency action is subject to judicial review. See Section 1122.040 (judicial review following agency action).

§ 1122.030. Concurrent agency jurisdiction

1122.030. (a) If an agency has concurrent jurisdiction over the subject matter of the proceeding or an issue in the proceeding, the court shall exercise jurisdiction over the subject matter or issue unless the court in its discretion refers the matter or issue for agency action. The court may exercise its discretion to refer the matter or issue for agency action if the court determines the reference is appropriate taking into consideration all relevant factors including, but not limited to, the following:

(1) Whether agency expertise is important for proper resolution of a highly technical matter or issue.

(2) Whether the area is so pervasively regulated by the agency that the regulatory scheme should not be subject to judicial interference.

(3) Whether there is a need for uniformity that would be jeopardized by the possibility of conflicting judicial decisions.

(4) Whether there is a need for immediate resolution of the matter, and any delay that would be caused by referral for agency action.

(5) The costs to the parties of additional administrative proceedings.

(6) Whether agency remedies are adequate and whether any delay for agency action would limit judicial remedies, either practically or due to running of statutes of limitation or otherwise.

(7) Any legislative intent to prefer cumulative remedies or to prefer administrative resolution.

(b) This section does not apply to a criminal proceeding.

(c) Nothing in this section confers concurrent jurisdiction on a court over the subject matter of a pending disciplinary proceeding under the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 1122.030 codifies the court's broad discretion to refer the matter or an issue to an agency for action if there is concurrent jurisdiction. See, e.g., *Farmers Ins. Exch. v. Superior Court*, 2 Cal. 4th 377, 391-92, 826 P.2d 730, 6 Cal. Rptr. 2d 487, 496 (1992). See generally Asimow, *Judicial Review: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 229, 281-93 (1997).

Court retention of jurisdiction does not preclude agency involvement. For example, the court in its discretion may request that the agency file an amicus brief setting forth its views on the matter as an alternative to referring the matter to the agency. If the matter is referred to the agency, the agency action remains subject to judicial review. Section 1122.040 (judicial review following agency action).

§ 1122.040. Judicial review following agency action

1122.040. If an agency has exclusive or concurrent jurisdiction over the subject matter of the proceeding or an issue in the proceeding, agency action on the matter or issue is subject to judicial review to the extent provided in Chapter 3 (commencing with Section 1123.110).

Comment. Section 1122.040 makes clear that judicial review principles apply to agency action even though an agency has exclusive jurisdiction or the court refers a matter of concurrent jurisdiction to the agency for action under this chapter.

CHAPTER 3. JUDICIAL REVIEW

Article 1. General Provisions

§ 1123.110. Requirements for judicial review

1123.110. (a) Subject to subdivision (b), a person who has standing under this chapter and who satisfies the requirements

governing exhaustion of administrative remedies, ripeness, time for filing, and other preconditions is entitled to judicial review of final agency action.

(b) The court may summarily decline to grant judicial review if the petition for review does not present a substantial issue for resolution by the court.

Comment. Subdivision (a) of Section 1123.110 is drawn from 1981 Model State APA Section 5-102(a). It ties together the threshold requirements for obtaining judicial review of final agency action, and guarantees the right to judicial review if these requirements are met. See, e.g., Sections 1123.120 (finality), 1123.130 (judicial review of agency rule), 1123.210 (standing), 1123.310 (exhaustion of administrative remedies), 1123.630-1123.640 (time for filing petition for review of decision in adjudicative proceeding).

The term “agency action” is defined in Section 1121.240. The term includes rules, decisions, and other types of agency action and inaction. This chapter contains provisions for judicial review of all types of agency action.

Subdivision (b) continues the former discretion of the courts to decline to grant a writ of administrative mandamus. *Parker v. Bowron*, 40 Cal. 2d 344, 351, 254 P.2d 6, 9 (1953); *Dare v. Board of Medical Examiners*, 21 Cal. 2d 790, 796, 136 P.2d 304, 308 (1943); *Berry v. Coronado Bd. of Educ.*, 238 Cal. App. 2d 391, 397, 47 Cal. Rptr. 727 (1965); California Administrative Mandamus § 1.3, at 5 (Cal. Cont. Ed. Bar, 2d ed. 1989). See also Section 1121.120 (judicial review as proceeding for extraordinary relief in the nature of mandamus).

§ 1123.120. Finality

1123.120. A person may not obtain judicial review of agency action unless the agency action is final.

Comment. Section 1123.120 continues the finality requirement of former Section 1094.5(a) in language drawn from 1981 Model State APA Section 5-102(b)(2). Agency action is typically not final if the agency intends the action to be preliminary, preparatory, procedural, or intermediate with regard to subsequent action of that agency or another agency. For example, state agency action concerning a proposed rule subject to the rulemaking part of the Administrative Procedure Act is not final until the agency submits the proposed rule to the Office of Administrative Law for review as provided by that act, and the Office of Administrative Law approves the rule pursuant to Government Code

Section 11349.3. See also Section 1123.130 (rulemaking may not be enjoined or prohibited, and rule may not be reviewed until it has been applied).

For an exception to the requirement of finality, see Section 1123.140.

§ 1123.130. Judicial review of agency rule

1123.130. (a) Notwithstanding any other provision of law, a court may not enjoin or otherwise prohibit an agency from adopting a rule.

(b) A person may not obtain judicial review of an agency rule until the rule has been applied by the agency.

Comment. Subdivision (a) of Section 1123.130 continues *State Water Resources Control Bd. v. Office of Admin. Law*, 12 Cal. App. 4th 697, 707-08, 16 Cal. Rptr. 2d 25, 31-32 (1993). Subdivision (a) prohibits, for example, a court from enjoining a state agency from holding a public hearing or otherwise proceeding to adopt a proposed rule on the ground that the notice was legally defective. Similarly, subdivision (a) prohibits a court from enjoining the Office of Administrative Law from reviewing or approving a proposed rule that has been submitted by a regulatory agency pursuant to Government Code Section 11343(a). A rule is subject to judicial review after it is adopted. See Sections 1120, 1123.110. See also Section 1123.140 (rule must be fit for immediate judicial review).

Subdivision (b) codifies the case law ripeness requirement for judicial review of an agency rule. See, e.g., *Pacific Legal Foundation v. California Coastal Comm'n*, 33 Cal. 3d 158, 655 P.2d 306, 188 Cal. Rptr. 104 (1982). See also Section 1121.290 (“rule” defined). For an exception to the requirement of ripeness, see Section 1123.140. An allegation that procedures followed in adopting a state agency rule were legally deficient would not be ripe for judicial review until the agency completes the rulemaking process and formally adopts the rule (typically by submitting it to the Office of Administrative Law pursuant to Government Code Section 11343), the Office of Administrative Law approves the rule and submits it to the Secretary of State pursuant to Government Code Section 11349.3 thus allowing it to become final, and the adopting agency applies the rule.

§ 1123.140. Exception to finality and ripeness requirements

1123.140. Notwithstanding Sections 1123.120 and 1123.130, a person may obtain judicial review of agency action that is not final or, in the case of an agency rule, that

has not been applied by the agency, if all of the following conditions are satisfied:

(a) It appears likely that the person will be able to obtain judicial review of the agency action when it becomes final or, in the case of an agency rule, when it has been applied by the agency.

(b) The issue is fit for immediate judicial review.

(c) Postponement of judicial review would result in an inadequate remedy or irreparable harm disproportionate to the public benefit derived from postponement.

Comment. Section 1123.140 codifies an exception to the finality and ripeness requirements in language drawn from 1981 Model State APA Section 5-103. An issue is fit for immediate judicial review if it is primarily legal rather than factual in nature and can be adequately reviewed in the absence of concrete application by the agency. Under this language the court must assess and balance the fitness of the issues for immediate judicial review, the hardship to the person from deferring review, and the public interest in granting or deferring review. See, e.g., *BKHN, Inc. v. Department of Health Servs.*, 3 Cal. App. 4th 301, 4 Cal. Rptr. 2d 188 (1992); *Abbott Laboratories v. Gardner*, 387 U.S. 136 (1967).

§ 1123.150. Proceeding not moot because penalty completed

1123.150. A proceeding under this chapter is not made moot by satisfaction during the pendency of the proceeding of a penalty imposed by the agency.

Comment. Section 1123.150 continues the substance of the seventh sentence of former Section 1094.5(g) and the fourth sentence of former Section 1094.5(h)(3).

§ 1123.160. Condition of relief

1123.160. (a) The court may grant relief under this chapter only on grounds specified in Article 4 (commencing with Section 1123.410) for reviewing agency action.

(b) The court may grant relief under this chapter from procedural error only if the error was prejudicial.

Comment. Subdivision (a) of Section 1123.160 is drawn from 1981 Model State APA Section 5-116(c) (introductory clause). It supersedes the provision in former Section 1094.5(b) that the inquiry in an administrative mandamus case is whether the agency proceeded without or in excess of jurisdiction, whether there was a fair trial, and whether there was any prejudicial abuse of discretion. The grounds for review of agency action under Article 4 are the following (see Sections 1123.420-1123.460):

- (1) Whether the agency has erroneously interpreted the law.
- (2) Whether agency action is based on an erroneous determination of fact made or implied by the agency.
- (3) Whether agency action is a proper exercise of discretion.
- (4) Whether the agency has engaged in an unlawful procedure or decisionmaking process, or has failed to follow prescribed procedure.
- (5) Whether the persons taking the agency action were improperly constituted as a decisionmaking body or subject to disqualification.

Subdivision (b) is drawn from Government Code Section 65010 (planning and zoning law).

Article 2. Standing

§ 1123.210. No standing unless authorized by statute

1123.210. A person does not have standing to obtain judicial review of agency action unless standing is conferred by this article or is otherwise expressly provided by statute.

Comment. Section 1123.210 states the intent of this article to override existing case law standing principles and to replace them with the statutory standards prescribed in this article. Other statutes conferring standing include Public Resources Code Section 30801 (judicial review of decision of Coastal Commission by “any aggrieved person”).

This title provides a single judicial review procedure for all types of agency action. See Section 1121.120. The provisions on standing therefore accommodate persons who seek judicial review of the entire range of agency actions, including rules, decisions, and other action or inaction. See Section 1121.240 (“agency action” defined).

§ 1123.220. Private interest standing

1123.220. An interested person has standing to obtain judicial review of agency action. For the purpose of this section, a person is not interested by the mere filing of a

complaint with the agency where the complaint is not authorized by statute or ordinance.

Comment. Section 1123.220 governs private interest standing for judicial review of agency action other than adjudication. For special rules governing standing for judicial review of a decision in an adjudicative proceeding, see Section 1123.240. See also Section 1121.240 (“agency action” defined). The provision that an “interested” person has standing is drawn from the law governing writs of mandate, and from the law governing judicial review of state agency regulations. See, e.g., Code Civ. Proc. §§ 1060 (interested person may obtain declaratory relief), 1069 (party beneficially interested may obtain writ of review), 1086 (party beneficially interested may obtain writ of mandate); Gov’t Code § 11350(a) (interested person may obtain judicial declaration on validity of state agency regulation); *cf.* Code Civ. Proc. § 902 (appeal by party aggrieved). This requirement continues case law that a person must suffer some harm from the agency action in order to have standing to obtain judicial review of the action on a basis of private, as opposed to public, interest. See, e.g., *Sperry & Hutchinson Co. v. California State Bd. of Pharmacy*, 241 Cal. App. 2d 229, 50 Cal. Rptr. 489 (1966); *Silva v. City of Cypress*, 204 Cal. App. 2d 374, 22 Cal. Rptr. 453 (1962). A plaintiff’s private interest is sufficient to confer standing if that interest is over and above that of members of the general public. *Carsten v. Psychology Examining Comm.*, 27 Cal. 3d 793, 796, 614 P.2d 276, 166 Cal. Rptr. 844 (1980). Non-pecuniary injuries, such as environmental or aesthetic claims, are sufficient to satisfy the private interest test. *Bozung v. Local Agency Formation Comm’n*, 13 Cal. 3d 263, 529 P.2d 1017, 118 Cal. Rptr. 249 (1975); *Albion River Watershed Protection Ass’n v. Department of Forestry*, 235 Cal. App. 3d 358, 286 Cal. Rptr. 573 (1991); *Kane v. Redevelopment Agency of Hidden Hills*, 179 Cal. App. 3d 899, 224 Cal. Rptr. 922 (1986); *Citizens Ass’n for Sensible Development v. County of Inyo*, 172 Cal. App. 3d 151, 217 Cal. Rptr. 893 (1985). See generally Asimow, *Judicial Review: Standing and Timing*, 27 Cal. L. Revision Comm’n Reports 229, 236-38 (1997).

Section 1123.220 merely requires that a person be “interested” to seek judicial review. Thus if a person has sufficient interest in the subject matter, the person may seek judicial review even though the person did not personally participate in the agency proceeding. See *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 267-68, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972). However, in most cases the exhaustion of remedies rule requires the issue to be reviewed to have been raised before the agency by someone. See Section 1123.350.

Standing of a person to obtain judicial review under this section is not limited to private persons, but extends to public entities as well, whether state or local. See Section 1121.280 (“person” includes governmental subdivision). See also Bus. & Prof. Code § 23090 (Department of Alcoholic Beverage Control may get judicial review of decision of Alcoholic Beverage Control Appeals Board); *Martin v. Alcoholic Beverage Control Appeals Bd.*, 52 Cal. 2d 238, 243, 340 P.2d 1, 4 (1959) (same); Veh. Code § 3058 (DMV may get judicial review of order of New Motor Vehicle Board); *Tieberg v. Superior Court*, 243 Cal. App. 2d 277, 283, 52 Cal. Rptr. 33, 37 (1966) (Director of Department of Employment may get judicial review of decision of Unemployment Insurance Appeals Board, a division of that department); *Los Angeles County Dep’t of Health Servs. v. Kennedy*, 163 Cal. App. 3d 799, 209 Cal. Rptr. 595 (1984) (county department of health services may get judicial review of decision of county civil service commission); *County of Los Angeles v. Tax Appeals Bd. No. 2*, 267 Cal. App. 2d 830, 834, 73 Cal. Rptr. 469, 471 (1968) (county may get judicial review of tax appeals board decision); *County of Contra Costa v. Social Welfare Bd.*, 199 Cal. App. 2d 468, 471, 18 Cal. Rptr. 573, 575 (1962) (county may get judicial review of State Social Welfare Board decision ordering county to reinstate welfare benefits); *Board of Permit Appeals v. Central Permit Bureau*, 186 Cal. App. 2d 633, 9 Cal. Rptr. 83 (1960) (local permit appeals board may get traditional mandamus against inferior agency that did not comply with its decision). *But cf.* *Star-Kist Foods, Inc. v. County of Los Angeles*, 42 Cal. 3d 1, 719 P.2d 987, 227 Cal. Rptr. 391 (1986) (city or county standing to challenge state action as violating federal constitutional rights).

If a person is authorized by statute or ordinance to file a complaint with the agency and the complaint is rejected, the person is “interested” within the meaning of Section 1123.220. *Covert v. State Bd. of Equalization*, 29 Cal. 2d 125, 130, 173 P.2d 545 (1946). See also *Spear v. Board of Medical Examiners*, 146 Cal. App. 2d 207, 303 P.2d 886 (1956) (standing to challenge agency refusal to file charges of person expressly authorized by statute to file complaint).

§ 1123.230. Public interest standing

1123.230. Whether or not a person has standing under Section 1123.220, a person has standing to obtain judicial review of agency action that concerns an important right affecting the public interest if all of the following conditions are satisfied:

(a) The person resides or conducts business in the jurisdiction of the agency or is an organization that has a member that resides or conducts business in the jurisdiction of the agency and the agency action is germane to the purposes of the organization.

(b) The person will adequately protect the public interest.

(c) The person has previously requested the agency to correct the agency action and the agency has not, within a reasonable time, done so. The request shall be in writing unless made orally on the record in the agency proceeding. The agency may by rule require the request to be directed to the proper agency official. As used in this subdivision, a reasonable time shall not be less than 30 days unless the request shows that a shorter period is required to avoid irreparable harm. This subdivision does not apply to judicial review of an agency rule.

Comment. Section 1123.230 governs public interest standing for judicial review of agency action other than adjudication. For special rules governing standing for judicial review of a decision in an adjudicative proceeding, see Section 1123.240. See also Section 1121.240 (“agency action” defined).

Section 1123.230 codifies California case law that a member of the public may obtain judicial review of agency action (or inaction) to implement the public right to enforce a public duty. See, e.g., *Green v. Obledo*, 29 Cal. 3d 126, 144-45, 624 P.2d 256, 172 Cal. Rptr. 206 (1981); *Hollman v. Warren*, 32 Cal. 2d 351, 196 P.2d 562 (1948); *Board of Social Welfare v. County of Los Angeles*, 27 Cal. 2d 98, 162 P.2d 627 (1945); *California Homeless & Housing Coalition v. Anderson*, 31 Cal. App. 4th 450, 37 Cal. Rptr. 2d 639 (1995); *Environmental Law Fund, Inc. v. Town of Corte Madera*, 49 Cal. App. 3d 105, 122 Cal. Rptr. 282 (1975); *American Friends Serv. Comm. v. Proconier*, 33 Cal. App. 3d 252, 109 Cal. Rptr. 22 (1973).

Section 1123.230 supersedes the standing rules of Section 526a (taxpayer actions). Under Section 1123.230 a person, whether or not a taxpayer within the jurisdiction, has standing to obtain judicial review, including restraining and preventing illegal expenditure or injury by a public entity, if the general public interest requirements of this section are satisfied.

Section 1123.230 applies to all types of relief sought, whether pecuniary or nonpecuniary, injunctive or declaratory, or otherwise. The test for standing under this section is whether there is a duty owed to the general public or a large class of persons. A person may have standing under the section to have the law enforced in the public interest, regardless of any private interest or personal adverse effect.

The limitations in subdivisions (a)-(c) are drawn loosely from other provisions of state and federal law. See, e.g., Section 1021.5 (attorney fees in public interest litigation); Section 1123.220 & Comment (private interest standing); first portion of Section 526a (taxpayer within jurisdiction); Corp. Code § 800(b)(2) (allegation in shareholder derivative action of efforts to secure action from board); Fed. R. Civ. Proc. 23(a) (representative must fairly and adequately protect interests of class). The requirement in subdivision (c) of a request to the agency does not supersede the California Environmental Quality Act. See Section 1121.110 (conflicting or inconsistent statute controls); Pub. Res. Code § 21177 (objection may be oral or written). Nor does the requirement in subdivision (c) of notice to the agency excuse exhaustion of administrative remedies under Sections 1123.310-1123.350, consistent with prior public interest standing cases. See, e.g., *Sea & Sage Audubon Soc’y, Inc. v. Planning Comm’n*, 34 Cal. 3d 412, 417-18, 668 P.2d 664, 194 Cal. Rptr. 357 (1983); *California Aviation Council v. County of Amador*, 200 Cal. App. 3d 337, 341-42, 246 Cal. Rptr. 110 (1988).

§ 1123.240. Standing for review of decision in adjudicative proceeding

1123.240. Notwithstanding Sections 1123.220 and 1123.230, a person does not have standing to obtain judicial review of a decision in an adjudicative proceeding unless one of the following conditions is satisfied:

(a) The person was a party to the proceeding.

(b) The person (1) was a participant in the proceeding and is either interested or the person’s participation was authorized by statute or ordinance, or (2) has standing under Section 1123.230. This subdivision does not apply to judicial review of a proceeding under the formal hearing provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Comment. Section 1123.240 provides special rules for standing to obtain judicial review of a decision in an adjudicative proceeding. Standing to obtain judicial review of other agency actions is governed by Sections 1123.220 (private interest standing) and 1123.230 (public interest standing). Special statutes governing standing requirements for judicial review of an agency decision prevail over this section. Section 1123.210 (standing expressly provided by statute); see, e.g., Pub. Res. Code § 30801 (judicial review of decision of Coastal Commission by “any aggrieved person”).

Subdivision (a) governs standing to challenge a decision in an adjudicative proceeding under the Administrative Procedure Act. The provision is thus limited primarily to a state agency adjudication where an evidentiary hearing for determination of facts is statutorily or constitutionally required for formulation and issuance of a decision. See Gov’t Code §§ 11410.10-11410.50 (application of administrative adjudication provisions of Administrative Procedure Act) (operative July 1, 1997).

A party to an adjudicative proceeding under the Administrative Procedure Act includes the person to whom the agency action is directed and any other person named as a party or allowed to intervene in the proceeding. Section 1121.270 (“party” defined). This codifies existing law. See, e.g., *Temescal Water Co. v. Department of Public Works*, 44 Cal. 2d 90, 279 P.2d 1 (1955); *Covert v. State Bd. of Equalization*, 29 Cal. 2d 125, 173 P.2d 545 (1946). Under this test, a complainant or victim who is not made a party does not have standing. A nonparty who might otherwise have private or public interest standing under Section 1123.220 or 1123.230 would not have standing to obtain judicial review of a decision under the Administrative Procedure Act.

Subdivision (b) applies to a decision in an adjudicative proceeding other than a proceeding subject to the Administrative Procedure Act. Under this provision, a person does not have standing to obtain judicial review unless the person (1) was a participant in the proceeding and is either “interested” or participated as authorized by statute or ordinance, or (2) has public interest standing under Section 1123.230. Participation may include appearing and testifying, submitting written comments, or other appropriate activity that indicates a direct involvement in the agency action. Giving standing to a participant who satisfies the requirements for public interest standing is consistent with *Environmental Law Fund, Inc. v. Town of Corte Madera*, 49 Cal. App. 3d 105, 114, 122 Cal. Rptr. 282 (1975). Thus a person may have public interest standing for judicial review of adjudication if the right to be vindicated is an important one affecting the public interest, the person resides or conducts business in the jurisdiction of the agency or meets the

requirements for organizational standing, the person will adequately protect the public interest, and the person has requested the agency to correct the action and the agency has not done so within a reasonable time. Section 1123.230. Moreover, the requirement of exhaustion of administrative remedies must be satisfied, including the rule that the issue on judicial review must have been raised before the agency by someone. Section 1123.350. See also *See & Sage Audubon Soc’y v. Planning Comm’n*, 34 Cal. 3d 412, 417-18, 668 P.2d 664, 194 Cal. Rptr. 357 (1983); *California Aviation Council v. County of Amador*, 200 Cal. App. 3d 337, 246 Cal. Rptr. 110 (1988); *Resource Defense Fund v. Local Agency Formation Comm’n*, 191 Cal. App. 3d 886, 895, 236 Cal. Rptr. 794, 799 (1987).

§ 1123.250. Organizational standing

1123.250. An organization that does not otherwise have standing under this article has standing if a person who has standing is a member of the organization, or a nonmember the organization is required to represent, and the agency action is related to the purposes of the organization, and the person consents.

Comment. Section 1123.250 codifies case law giving an incorporated or unincorporated association, such as a trade union or neighborhood association, standing to obtain judicial review on behalf of its members. See, e.g., *Professional Fire Fighters, Inc. v. City of Los Angeles*, 60 Cal. 2d 276, 384 P.2d 158, 32 Cal. Rptr. 830 (1963); *Residents of Beverly Glen, Inc. v. City of Los Angeles*, 34 Cal. App. 3d 117, 109 Cal. Rptr. 724 (1973). This principle extends to standing of the organization to obtain judicial review where a nonmember is adversely affected, as where a trade union is required to represent the interests of nonmembers.

Article 3. Exhaustion of Administrative Remedies

§ 1123.310. Exhaustion required

1123.310. A person may obtain judicial review of agency action only after exhausting all administrative remedies available within the agency whose action is to be reviewed and within any other agency authorized to exercise administrative review, unless judicial review before that time

is permitted by this article or otherwise expressly provided by statute.

Comment. Section 1123.310 codifies the exhaustion of remedies doctrine of existing law. See, e.g., *Abelleira v. District Court of Appeal*, 17 Cal. 2d 280, 109 P.2d 942 (1941) (exhaustion requirement jurisdictional). Exceptions to the exhaustion requirement are stated in other provisions of this article. See Sections 1123.340 (exceptions to exhaustion of administrative remedies), 1123.350 (exact issue rule).

This chapter does not provide an exception from the exhaustion requirement for judicial review of an administrative law judge's denial of a continuance. *Cf.* former subdivision (c) of Gov't Code § 11524. Nor does it provide an exception for discovery decisions. *Cf.* *Shively v. Stewart*, 65 Cal. 2d 475, 421 P.2d 65, 55 Cal. Rptr. 217 (1966). This chapter does not continue the exemption found in the cases for a local tax assessment alleged to be a nullity. *Cf.* *Stenocord Corp. v. City & County of San Francisco*, 2 Cal. 3d 984, 471 P.2d 966, 88 Cal. Rptr. 166 (1970). Judicial review of such matters should not occur until conclusion of administrative proceedings.

This chapter does not require a person seeking judicial review of a rule to have participated in the rulemaking proceeding on which the rule is based. Section 1123.330. However, this chapter does prohibit judicial review of proposed regulations (see Section 1123.130), regulations that have been preliminarily adopted but are not yet final (Section 1123.120), and adopted regulations that have not yet been applied (Section 1123.130).

§ 1123.320. Administrative review of adjudicative proceeding

1123.320. If the agency action being challenged is a decision in an adjudicative proceeding, all administrative remedies available within an agency are deemed exhausted for the purpose of Section 1123.310 if no higher level of review is available within the agency, whether or not a rehearing or other lower level of review is available within the agency, unless a statute or regulation requires a petition for rehearing or other administrative review.

Comment. Section 1123.320 restates the existing California rule that a petition for a rehearing or other lower level administrative review is not a prerequisite to judicial review of a decision in an adjudicative proceeding. See former Gov't Code § 11523; Gov't Code § 19588 (State

Personnel Board). This overrules any contrary case law implication. *Cf.* *Alexander v. State Personnel Bd.*, 22 Cal. 2d 198, 137 P.2d 433 (1943).

Administrative remedies are deemed exhausted under this section only when no further higher level review is available within the agency issuing the decision. This does not excuse a requirement of further administrative review by another agency, such as an appeals board.

§ 1123.330. Judicial review of rulemaking

1123.330. (a) A person may obtain judicial review of rulemaking notwithstanding the person's failure to do either of the following:

(1) Participate in the rulemaking proceeding on which the rule is based.

(2) Petition the agency promulgating the rule for, or otherwise to seek, amendment, repeal, or reconsideration of the rule after it has become final.

(b) A person may obtain judicial review of an agency's failure to adopt a rule under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, notwithstanding the person's failure to request or obtain a determination from the Office of Administrative Law under Section 11340.5 of the Government Code.

Comment. Subdivision (a)(2) of Section 1123.330 continues the former second sentence of subdivision (a) of Government Code Section 11350, and generalizes it to apply to local agencies as well as state agencies. See Sections 1120 (application of title), 1121.230 ("agency" defined), 1121.290 ("rule" defined). The petition to the agency referred to in subdivision (a) is authorized by Government Code Section 11340.6.

Subdivision (b) is new, and makes clear that exhaustion of remedies does not require filing a complaint with the Office of Administrative Law that an agency rule is an underground regulation. *Cf.* Gov't Code § 11340.5.

§ 1123.340. Exceptions to exhaustion of administrative remedies

1123.340. The requirement of exhaustion of administrative remedies is jurisdictional and the court may not relieve a

person of the requirement unless any of the following conditions is satisfied:

(a) The remedies would be inadequate.

(b) The requirement would be futile.

(c) The requirement would result in irreparable harm disproportionate to the public and private benefit derived from exhaustion.

(d) The person was entitled to notice of a proceeding in which relief could be provided but lacked timely notice of the proceeding. The court's authority under this subdivision is limited to remanding the case to the agency to conduct a supplemental proceeding in which the person has an opportunity to participate.

(e) The person seeks judicial review on the ground that the agency lacks subject matter jurisdiction in the proceeding.

(f) The person seeks judicial review on the ground that a statute, regulation, or procedure is facially unconstitutional.

Comment. Section 1123.340 authorizes the reviewing court to relieve the person seeking judicial review of the exhaustion requirement in limited circumstances. This enables the court to exercise some discretion. See generally Asimow, *Judicial Review: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 229, 260-71 (1997). This section may not be used as a means to avoid compliance with other requirements for judicial review, however, such as the exact issue rule. See Section 1123.350.

The exceptions to the exhaustion of remedies requirement consolidate and codify a number of existing case law exceptions, including:

Inadequate remedies. Under subdivision (a), administrative remedies need not be exhausted if the available administrative review procedure or the relief available through administrative review is insufficient. This codifies case law. See, e.g., *Common Cause v. Board of Supervisors*, 49 Cal. 3d 432, 443, 777 P.2d 610, 261 Cal. Rptr. 574 (1989); *Endler v. Schutzbank*, 68 Cal. 2d 162, 168, 436 P.2d 297, 65 Cal. Rptr. 297 (1968); *Rosenfield v. Malcolm*, 65 Cal. 2d 559, 421 P.2d 697, 55 Cal. Rptr. 505 (1967).

Futility. The exhaustion requirement is excused under subdivision (b) if it is certain, not merely probable, that the agency would deny the requested relief. See *Ogo Assocs. v. City of Torrance*, 37 Cal. App. 3d 830, 112 Cal. Rptr. 761 (1974).

Irreparable harm. Subdivision (c) codifies the existing narrow case law exception to the exhaustion of remedies requirement where exhaustion would result in irreparable harm disproportionate to the benefit derived from requiring exhaustion. The standard is drawn from 1981 Model State APA Section 5-107(3), but expands the factors to be considered to include private as well as public benefit.

Lack of notice. Lack of sufficient or timely notice of the agency proceeding is an excuse under subdivision (d). See *Environmental Law Fund v. Town of Corte Madera*, 49 Cal. App. 3d 105, 113-14, 122 Cal. Rptr. 282, 286 (1975).

Lack of subject matter jurisdiction. Subdivision (e) recognizes an exception to the exhaustion requirement where the challenge is to the agency's subject matter jurisdiction in the proceeding. See, e.g., *County of Contra Costa v. State of California*, 177 Cal. App. 3d 62, 73, 222 Cal. Rptr. 750, 758 (1986).

Constitutional issues. Under subdivision (f) administrative remedies need not be exhausted for a challenge to a statute, regulation, or procedure as unconstitutional on its face. See, e.g., *Horn v. County of Ventura*, 24 Cal. 3d 605, 611, 596 P.2d 1134, 156 Cal. Rptr. 718 (1979); *Chevrolet Motor Div. v. New Motor Vehicle Bd.*, 146 Cal. App. 3d 533, 539, 194 Cal. Rptr. 270 (1983). There is no exception for a challenge to a provision as applied, even though phrased in constitutional terms.

§ 1123.350. Exact issue rule

1123.350. (a) Except as provided in subdivision (b), a person may not obtain judicial review of an issue that was not raised before the agency either by the person seeking judicial review or by another person.

(b) The court may permit judicial review of an issue that was not raised before the agency if any of the following conditions is satisfied:

(1) The agency did not have jurisdiction to grant an adequate remedy based on a determination of the issue.

(2) The person did not know and was under no duty to discover, or was under a duty to discover but could not reasonably have discovered, facts giving rise to the issue.

(3) The agency action subject to judicial review is a rule and the person has not been a party in an adjudicative proceeding that provided an adequate opportunity to raise the issue.

(4) The agency action subject to judicial review is a decision in an adjudicative proceeding and the person was not adequately notified of the adjudicative proceeding. If a statute or rule requires the person to maintain an address with the agency, adequate notice includes notice given to the person at the address maintained with the agency.

(5) The interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the agency action or from agency action occurring after the person exhausted the last feasible opportunity to seek relief from the agency.

Comment. Subdivision (a) of Section 1123.350 codifies the case law exact issue rule. See, e.g., *Resource Defense Fund v. Local Agency Formation Comm'n*, 191 Cal. App. 3d 886, 894, 236 Cal. Rptr. 794, 798 (1987); *Coalition for Student Action v. City of Fullerton*, 153 Cal. App. 3d 1194, 200 Cal. Rptr. 855 (1984); see generally Asimow, *Judicial Review: Standing and Timing*, 27 Cal. L. Revision Comm'n Reports 229, 259-60 (1997). It limits the issues that may be raised and considered in the reviewing court to those that were raised before the agency. The exact issue rule is in a sense a variation of the exhaustion of remedies requirement — the agency must first have had an opportunity to determine the issue that is subject to judicial review.

Under subdivision (b) the court may relieve a person of the exact issue requirement in circumstances that are in effect an elaboration of the doctrine of exhaustion of administrative remedies. See also Section 1123.340 & Comment (exceptions to exhaustion of administrative remedies).

The intent of paragraph (1) of subdivision (b) is to permit the court to consider an issue that was not raised before the agency if the agency did not have jurisdiction to grant an adequate remedy based on a determination of the issue. Examples include: (A) an issue as to the facial constitutionality of the statute that enables the agency to function to the extent state law prohibits the agency from passing on the validity of the statute; (B) an issue as to the amount of compensation due as a result of an agency's breach of contract to the extent state law prohibits the agency from passing on this type of question.

Paragraph (2) permits a party to raise a new issue in the reviewing court if the issue arises from newly discovered facts that the party excusably did not know at the time of the agency proceedings.

Paragraph (3) permits a party to raise a new issue in the reviewing court if the challenged agency action is an agency rule and if the person seeking to raise the new issue in court was not a party in an adjudicative proceeding which provided an opportunity to raise the issue before the agency.

Paragraph (4) permits a new issue to be raised in the reviewing court by a person who was not properly notified of the adjudicative proceeding which produced the challenged decision. This does not give standing to a person not otherwise entitled to notice of the adjudicative proceeding.

Paragraph (5) permits a new issue to be raised in the reviewing court if the interests of justice would be served thereby, and the new issue arises from a change in controlling law or from agency action after the person exhausted the last opportunity for seeking relief from the agency. See *Lindeleaf v. Agricultural Labor Relations Bd.*, 41 Cal. 3d 861, 718 P.2d 106, 226 Cal. Rptr. 119 (1986).

Article 4. Standards of Review

§ 1123.410. Standards of review of agency action

1123.410. Except as otherwise provided by statute, agency action shall be judicially reviewed under the standards provided in this article.

Comment. Section 1123.410 is drawn from 1981 Model State APA Section 5-116(a)(2). The appropriate review standard of this article to be applied by the court depends on the issue being considered. For example, in exercising discretion, an agency may be called upon to interpret a statute, to determine basic facts, and to make the discretionary decision. In reviewing this action, the court would use the standard of Section 1123.420 (independent judgment with appropriate deference) in reviewing the statutory interpretation, the standard of Section 1123.430 (substantial evidence) or 1123.440 (substantial evidence or independent judgment) in reviewing the determination of facts, and the standard of Section 1123.450 (abuse of discretion) in reviewing the exercise of discretion.

The scope of judicial review provided in this article may be qualified by another statute that establishes review based on different standards than those in this article. See, e.g., Rev. & Tax. Code §§ 5170, 6931-6937.

§ 1123.420. Review of agency interpretation of law

1123.420. (a) The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.

(b) This section does not apply to interpretation of law by the Public Employment Relations Board, Agricultural Labor Relations Board, or Workers' Compensation Appeals Board within the regulatory authority of those agencies.

Comment. Section 1123.420 clarifies and codifies existing case law on judicial review of agency interpretation of law.

Subdivision (a) applies the independent judgment test for judicial review of agency interpretation of law with appropriate deference to the agency's determination. Subdivision (a) codifies the case law rule that the final responsibility to decide legal questions belongs to the courts, not to administrative agencies. See, e.g., *Association of Psychology Providers v. Rank*, 51 Cal. 3d 1, 793 P.2d 2, 270 Cal. Rptr. 796 (1990). This rule is qualified by the requirement that the courts give deference to the agency's interpretation appropriate to the circumstances of the agency action. Factors in determining the deference appropriate include such matters as (1) whether the agency is interpreting a statute or its own regulation, (2) whether the agency's interpretation was contemporaneous with enactment of the law, (3) whether the agency has been consistent in its interpretation and the interpretation is long-standing, (4) whether there has been a reenactment with knowledge of the existing interpretation, (5) the degree to which the legal text is technical, obscure, or complex and the agency has interpretive qualifications superior to the court's, and (6) the degree to which the interpretation appears to have been carefully considered by responsible agency officials. See Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1195-98 (1995). See also *Jones v. Tracy School Dist.*, 27 Cal. 3d 99, 108, 611 P.2d 441, 165 Cal. Rptr. 100 (1980) (no deference for statutory interpretation in internal memo not subject to notice and hearing process for regulation and written after agency became amicus curiae in case at bench); *Hudgins v. Neiman Marcus Group, Inc.*, 34 Cal. App. 4th 1109, 41 Cal. Rptr. 2d 46 (1995) (deference to contemporaneous interpretation long acquiesced in by interested persons); *Grier v. Kizer*, 219 Cal. App. 3d 422, 434, 268 Cal. Rptr. 244 (1990) (deference to OAL interpretation of statute it enforces); *City of Los Angeles v. Los Olivos Mobile Home Park*, 213 Cal. App. 3d 1427, 262 Cal. Rptr. 446 (1989) (no deference for interpretation of city

ordinance in internal memo not adopted as regulation); *Johnston v. Department of Personnel Admin.*, 191 Cal. App. 3d 1218, 1226, 236 Cal. Rptr. 853 (1987) (no deference for interpretation in inter-departmental communication rather than in formal regulation); *California State Employees Ass'n v. State Personnel Bd.*, 178 Cal. App. 3d 372, 380, 223 Cal. Rptr. 826 (1986) (formal regulation entitled to deference, informal memo prepared for litigation not entitled to deference).

Under subdivision (a), the question of the appropriate degree of judicial deference to the agency interpretation of law is treated as “a continuum with nonreviewability at one end and independent judgment at the other.” See *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 575-76, 888 P.2d 1268, 38 Cal. Rptr. 2d 139, 147-48 (1995). Subdivision (a) is consistent with and continues the substance of cases saying courts must accept statutory interpretation by an agency within its expertise unless “clearly erroneous” as that standard was applied in *Nipper v. California Auto. Assigned Risk Plan*, 19 Cal. 3d 35, 45, 560 P.2d 743, 136 Cal. Rptr. 854 (1977) (courts respect “administrative interpretations of a law and, unless clearly erroneous, have deemed them significant factors in ascertaining statutory meaning and purpose”). The “clearly erroneous” standard was another way of requiring the courts in exercising independent judgment to give appropriate deference to the agency’s interpretation of law. See *Bodinson Mfg. Co. v. California Employment Comm’n*, 17 Cal. 2d 321, 325-26, 109 P.2d 935 (1941).

The deference due the agency’s determination does not override the ultimate authority of the court to substitute its own judgment for that of the agency under the standard of subdivision (a), especially when constitutional questions are involved. See *People v. Louis*, 42 Cal. 3d 969, 987, 728 P.2d 180, 232 Cal. Rptr. 110 (1986); Cal. Const. art. III, § 3.5.

Agency interpretation of law under subdivision (a) may include such questions as whether agency action, or the statute or regulation on which it is based, is unconstitutional, whether the agency acted beyond its jurisdiction, and whether the agency decided all issues requiring resolution.

Section 1123.420 does not deal with the question of agency application of law to fact. Thus this title does not affect existing law on this question. See, e.g., *S. G. Borello & Sons, Inc. v. Dept. of Indus. Relations*, 48 Cal. 3d 341, 349, 769 P.2d 399, 256 Cal. Rptr. 543 (1989); *Halaco Engineering Co. v. South Central Coast Regional Comm’n*, 42 Cal. 3d 52, 74-77, 720 P.2d 15, 227 Cal. Rptr. 667 (1986); Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1213-14 (1995).

Under subdivision (b), Section 1123.420 does not affect case law under which legal interpretations by the Public Employment Relations Board, Agricultural Labor Relations Board, or Workers' Compensation Appeals Board of statutes within their area of expertise have been given special deference. See, e.g., *Banning Teachers Ass'n v. Public Employment Relations Bd.*, 44 Cal. 3d 799, 804, 750 P.2d 313, 244 Cal. Rptr. 671 (1988); *Agricultural Labor Relations Bd. v. Superior Court*, 16 Cal. 3d 392, 400, 411, 546 P.2d 687, 128 Cal. Rptr. 183 (1976); *Judson Steel Corp. v. Workers' Compensation Appeals Bd.*, 22 Cal. 3d 658, 668, 586 P.2d 564, 150 Cal. Rptr. 250 (1978); *Agricultural Labor Relations Bd. v. Superior Court*, 48 Cal. App. 4th 1489, 56 Cal. Rptr. 2d 409 (1996); *United Farm Workers v. Agricultural Labor Relations Bd.*, 41 Cal. App. 4th 303, 48 Cal. Rptr. 2d 696, 703 (1995).

§ 1123.430. Review of agency factfinding

1123.430. (a) Except as provided in Section 1123.440, the standard for judicial review of whether agency action is based on an erroneous determination of fact made or implied by the agency is whether the agency's determination is supported by substantial evidence in the light of the whole record.

(b) If the factual basis for a decision in a state agency adjudication includes a determination of the presiding officer based substantially on the credibility of a witness, the court shall give great weight to the determination to the extent the determination identifies the observed demeanor, manner, or attitude of the witness that supports it.

(c) Notwithstanding any other provision of this section, the standard for judicial review of a determination of fact made by an administrative law judge employed by the Office of Administrative Hearings that is changed by the agency head is the independent judgment of the court whether the agency's determination of that fact is supported by the weight of the evidence.

Comment. Section 1123.430 supersedes former Section 1094.5(b)-(c) (abuse of discretion if decision not supported by findings or findings not supported by evidence).

Subdivision (a) eliminates for state agencies the rule of former Section 1094.5(c), providing for independent judgment review in cases where

“authorized by law.” The former standard was interpreted to provide for independent judgment review where a fundamental vested right is involved. *Bixby v. Pierno*, 4 Cal. 3d 130, 144, 481 P.2d 242, 93 Cal. Rptr. 234 (1971); see generally Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1161-76 (1995).

The substantial evidence test of subdivision (a) is not a toothless standard which calls for the court merely to rubber stamp an agency’s finding if there is any evidence to support it: The court must examine the evidence in the record both supporting and opposing the agency’s findings. *Bixby v. Pierno*, *supra*. If a reasonable person could have made the agency’s findings, the court must sustain them. But if the agency head comes to a different conclusion about credibility than the administrative law judge, the substantiality of the evidence supporting the agency’s decision is called into question.

Subdivision (b) continues the substance of language formerly found in Government Code Section 11425.50(b). The requirement that the presiding officer identify specific evidence of observed demeanor, manner, or attitude of the witness in credibility cases is in that section.

Under subdivision (c), independent judgment review of a changed determination of fact is limited to that fact. All other factual determinations are reviewed using the standard of subdivision (a) — substantial evidence in light of the whole record.

§ 1123.440. Review of factfinding in local agency adjudication

1123.440. The standard for judicial review of whether a decision of a local agency in an adjudicative proceeding is based on an erroneous determination of fact made or implied by the agency is:

(a) In cases in which the court is authorized by law to exercise its independent judgment on the evidence, the independent judgment of the court whether the determination is supported by the weight of the evidence.

(b) In all other cases, whether the determination is supported by substantial evidence in the light of the whole record.

Comment. Section 1123.440 continues former Section 1094.5(c) as it applied to factfinding in local agency adjudication. See *Strumsky v. San Diego County Employees Retirement Ass’n*, 11 Cal. 3d 28, 32, 520 P.2d 29, 112 Cal. Rptr. 805 (1974).

§ 1123.450. Review of agency exercise of discretion

1123.450. The standard for judicial review of whether agency action is a proper exercise of discretion, including an agency's determination under Section 11342.2 of the Government Code that a regulation is reasonably necessary to effectuate the purpose of the statute that authorizes the regulation, is abuse of discretion.

Comment. Section 1123.450 codifies the existing authority of the court to review agency action that constitutes an exercise of agency discretion. A court may decline to exercise review of discretionary action in circumstances where the Legislature so intended or where there are no standards by which a court can conduct review. *Cf.* 5 U.S.C. § 701(a)(2) (federal APA).

Section 1123.450 applies, for example, to a local agency land use decision as to whether a planned project is consistent with the agency's general plan. *E.g.*, *Sequoyah Hills Homeowners Ass'n v. City of Oakland*, 23 Cal. App. 4th 704, 717-20, 29 Cal. Rptr. 2d 182, 189-91 (1993); *Dore v. County of Ventura*, 23 Cal. App. 4th 320, 328-29, 28 Cal. Rptr. 2d 299, 304 (1994). See also *Local & Regional Monitor v. City of Los Angeles*, 16 Cal. App. 4th 630, 648, 20 Cal. Rptr. 2d 228, 239 (1993); *No Oil, Inc. v. City of Los Angeles*, 196 Cal. App. 3d 223, 243, 242 Cal. Rptr. 37 (1987); *Greenebaum v. City of Los Angeles*, 153 Cal. App. 3d 391, 400-02, 200 Cal. Rptr. 237 (1984). Examples in the labor law field include *Independent Roofing Contractors v. Department of Indus. Relations*, 23 Cal. App. 4th 345, 28 Cal. Rptr. 2d 550 (1994), *Pipe Trades Dist. Council No. 51 v. Aubry*, 41 Cal. App. 4th 1457, 49 Cal. Rptr. 2d 208 (1996), and *International Bhd. of Elec. Workers, Local 11 v. Aubry*, 41 Cal. App. 4th 1632, 49 Cal. Rptr. 2d 759 (1996), all concerning agency discretion in making prevailing wage determinations, and *International Bhd. of Elec. Workers, Local 889 v. Department of Indus. Relations*, 42 Cal. App. 4th 861, 50 Cal. Rptr. 2d 1 (1996), concerning agency discretion in selecting an appropriate bargaining unit for transit district employees.

Section 1123.450 continues a portion of former Section 1094.5(b) (prejudicial abuse of discretion). It clarifies the standards for court determination of abuse of discretion but does not significantly change existing law. See former Code Civ. Proc. § 1094.5(c) (administrative mandamus); Gov't Code § 11350(b) (review of regulations). The reference to an agency determination under Government Code Section 11342.2 that a regulation is reasonably necessary continues existing law. See *Moore v. State Bd. of Accountancy*, 2 Cal. 4th 999, 1015, 831 P.2d

798, 9 Cal. Rptr. 2d 358, 367 (1992); *California Ass'n of Psychology Providers v. Rank*, 51 Cal. 3d 1, 11, 793 P.2d 2, 270 Cal. Rptr. 796 (1990).

The standard for reviewing agency discretionary action is whether there is abuse of discretion. The analysis consists of two elements. First, to the extent that the discretionary action is based on factual determinations, the standard of review of those factual determinations is provided in Section 1123.430 or, for local agency adjudication, in Section 1123.440. However, discretionary action such as agency rulemaking is frequently based on findings of legislative rather than adjudicative facts. Legislative facts are general in nature and are necessary for making law or policy (as opposed to adjudicative facts which are specific to the conduct of particular parties). Legislative facts are often scientific, technical, or economic in nature. Often, the determination of such facts requires specialized expertise and the factfindings involve guesswork or prophecy. A reviewing court must be appropriately deferential to agency findings of legislative fact and should not demand that such facts be proved with certainty. Nevertheless, a court can still legitimately review the rationality of legislative factfinding in light of the evidence in the whole record.

Second, discretionary action is based on a choice or judgment. A court reviews this choice by asking whether there is abuse of discretion in light of the record and the reasons stated by the agency. See Section 1123.820(d) (agency must supply reasons when necessary for proper judicial review). This standard is often encompassed by the terms "arbitrary" or "capricious." The court must not substitute its judgment for that of the agency, but the agency action must be rational. See Asimow, *The Scope of Judicial Review of Decisions of California Administrative Agencies*, 42 UCLA L. Rev. 1157, 1228-29 (1995). Abuse of discretion is established if it appears from the record viewed as a whole that the agency action is unreasonable, arbitrary, or capricious. *Cf.* ABA Section on Administrative Law, *Restatement of Scope of Review Doctrine*, 38 Admin. L. Rev. 235 (1986) (grounds for reversal include policy judgment so unacceptable or reasoning so illogical as to make agency action arbitrary, or agency's failure in other respects to use reasoned decisionmaking).

§ 1123.460. Review of agency procedure

1123.460. The standard for judicial review of the following issues is the independent judgment of the court, giving deference to the agency's determination of appropriate procedures:

(a) Whether the agency has engaged in an unlawful procedure or decisionmaking process, or has failed to follow prescribed procedure.

(b) Whether the persons taking the agency action were improperly constituted as a decisionmaking body or subject to disqualification.

Comment. Section 1123.460 codifies existing law concerning the independent judgment of the court and the deference due agency determination of procedures. *Cf.* 5 U.S.C. § 706(2)(D) (federal APA); *Mathews v. Eldridge*, 424 U.S. 319 (1976). Section 1123.460 is drawn from 1981 Model State APA Section 5-116(c)(5)-(6). It continues a portion of former Section 1094.5(b) (inquiry of the court extends to questions whether there has been a fair trial or the agency has not proceeded in the manner required by law). One example of an agency's failure to follow prescribed procedure is the agency's failure to act within the prescribed time upon a matter submitted to the agency.

The degree of deference to be given to the agency's determination under Section 1123.460 is for the court to determine. The deference is not absolute. Ultimately, the court must still use its judgment on the issue.

Section 1123.460 does not apply to state agency rulemaking. Gov't Code § 11350.

§ 1123.470. Burden of persuasion

1123.470. Except as otherwise provided by statute, the burden of demonstrating the invalidity of agency action or entitlement to relief is on the party asserting the invalidity or entitlement to relief.

Comment. Section 1123.470 codifies existing law. See California Administrative Mandamus §§ 4.157, 12.7 (Cal. Cont. Ed. Bar, 2d ed. 1989). It is drawn from 1981 Model State APA Section 5-116(a)(1).

Article 5. Superior Court Jurisdiction and Venue

§ 1123.510. Superior court jurisdiction

1123.510. (a) Except as otherwise provided by statute, jurisdiction for judicial review under this chapter is in the superior court.

(b) Nothing in this section prevents the Supreme Court or courts of appeal from exercising original jurisdiction under Section 10 of Article VI of the California Constitution.

Comment. Section 1123.510 is drawn from 1981 Model State APA Section 5-104, alternative A. Under prior law, except where the issues were of great public importance and had to be resolved promptly or where otherwise provided by statute, the superior court was the proper court for administrative mandamus proceedings. See *Mooney v. Pickett*, 4 Cal. 3d 669, 674-75, 483 P.2d 1231, 94 Cal. Rptr. 279 (1971). Although the Supreme Court and courts of appeal may exercise original mandamus jurisdiction in exceptional circumstances, the superior court is in a better position to determine questions of fact than is an appellate tribunal and is therefore the preferred court. *Roma Macaroni Factory v. Giambastiani*, 219 Cal. 435, 437, 27 P.2d 371 (1933).

The introductory clause of Section 1123.510(a) recognizes that statutes applicable to some proceedings provide that judicial review is in the court of appeal or Supreme Court. See Bus. & Prof. Code § 23090 (Alcoholic Beverage Control Appeals Board and Department of Alcoholic Beverage Control); Gov't Code §§ 3520(c), 3542(c), 3564(c) (Public Employment Relations Board); Lab. Code §§ 1160.8 (Agricultural Labor Relations Board), 5950 (Workers' Compensation Appeals Board).

§ 1123.520. Superior court venue

1123.520. (a) Except as otherwise provided by statute, the proper county for judicial review under this chapter is:

(1) In the case of state agency action, the county where the cause of action, or some part thereof, arose, or Sacramento County.

(2) In the case of action of a nongovernmental entity, the county where the entity is located.

(3) In cases not governed by paragraph (1) or (2), including local agency action, the county or counties of jurisdiction of the agency.

(b) A proceeding under this chapter may be transferred on the grounds and in the manner provided for transfer of a civil action under Title 4 (commencing with Section 392) of Part 2.

Comment. Subdivision (a)(1) of Section 1123.520 continues prior law for judicial review of state agency action, with the addition of Sacramento County. See Code Civ. Proc. § 393(1)(b); California Administrative Mandamus § 8.16, at 269 (Cal. Cont. Ed. Bar, 2d ed. 1989); *Duval v. Contractors State License Bd.*, 125 Cal. App. 2d 532, 271 P.2d 194 (1954). Subdivision (a)(2) continues what appears to have been existing law for judicial review of action of a nongovernmental entity. See California Administrative Mandamus, *supra*, § 8.16, at 270.

Subdivision (a)(3) is new, but is probably not a substantive change, since the cause of action is likely to arise in the county of the local agency's jurisdiction. In addition to applying to local agencies (defined in Section 1121.260), subdivision (a)(3) applies to agencies that are neither state nor local. See, e.g., Gov't Code § 66801 (Tahoe Regional Planning Agency).

Under subdivision (b), a case filed in the wrong county should not be dismissed, but should be transferred to the proper county. See Sections 1123.710(a) (applicability of rules of practice for civil actions), 396b. *Cf. Padilla v. Department of Alcoholic Beverage Control*, 43 Cal. App. 4th 1151, 51 Cal. Rptr. 2d 133 (1996) (transfer from court lacking jurisdiction).

The venue rules of Section 1123.520 are subject to a conflicting or inconsistent statute applicable to a particular entity (Section 1121.110), such as Business and Professions Code Section 2019 (venue for proceedings against the Medical Board of California). For venue of judicial review of a decision of a private hospital board, see Health & Safety Code § 1339.63(b).

Article 6. Petition for Review; Time Limits

§ 1123.610. Petition for review

1123.610. (a) A person seeking judicial review of agency action may initiate judicial review by filing a petition for review with the court.

(b) The petition shall name as respondent the agency whose action is at issue or the agency head by title, and not individual employees of the agency.

(c) The petitioner shall cause a copy of the petition for review to be served on the parties in the same manner as service of a summons in a civil action.

Comment. Subdivision (a) of Section 1123.610 supersedes the first sentence of former Government Code Section 11523.

Subdivision (b) codifies existing practice. See California Administrative Mandamus §§ 6.1-6.3, at 225-27 (Cal. Cont. Ed. Bar, 2d ed. 1989). Although the petition may name the agency head as a respondent by title, subdivision (b) makes clear “agency” does not include individual employees of the agency. See Sections 1121.230 (“agency” defined), 1121.210 (definitions vary as required by the provision).

Subdivision (c) continues existing practice. See California Administrative Mandamus, *supra*, §§ 8.48, 9.17, 9.23, at 298-99, 320, 326. Since the petition for review serves the purpose of the alternative writ of mandamus or notice of motion under prior law, a summons is not required. See California Administrative Mandamus, *supra*, §§ 9.8, 9.21, at 315, 324.

§ 1123.620. Contents of petition for review

1123.620. The petition for review shall state all of the following:

(a) The name of the petitioner.

(b) The address and telephone number of the petitioner or, if the petitioner is represented by an attorney, of the petitioner’s attorney.

(c) The name and mailing address of the agency whose action is at issue.

(d) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action.

(e) Identification of persons who were parties in any adjudicative proceedings that led to the agency action.

(f) Facts to demonstrate that the petitioner is entitled to judicial review.

(g) The reasons why relief should be granted.

(h) A request for relief, specifying the type and extent of relief requested.

Comment. Section 1123.620 is drawn from 1981 Model State APA Section 5-109.

§ 1123.630. Time for filing petition for review in adjudication of agency other than local agency and formal adjudication of local agency

1123.630. (a) The petition for review of a decision of an agency, other than a local agency, in an adjudicative proceeding, and of a decision of a local agency in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, shall be filed not later than 30 days after the decision is effective or after the notice required by subdivision (e) is delivered, served, or mailed, whichever is later.

(b) For the purpose of this section:

(1) A decision in a proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is effective at the time provided in Section 11519 of the Government Code.

(2) In an adjudicative proceeding other than under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, a decision of an agency other than a local agency is effective 30 days after it is delivered or mailed to the person to which the decision is directed, unless any of the following conditions is satisfied:

(A) Reconsideration is ordered within that time pursuant to express statute or rule.

(B) The agency orders that the decision is effective sooner.

(C) A different effective date is provided by statute or regulation.

(c) Subject to subdivision (d), the time for filing the petition for review is extended for a party:

(1) During any period when the party is seeking reconsideration of the decision pursuant to express statute or rule.

(2) Until 30 days after the record is delivered to the party if, within 15 days after the decision is effective, the party makes a written request to the agency to prepare all or any part of the

record, and, within 15 days after being notified of the estimated fee and cost, pays the fee and cost provided in Section 1123.910.

(d) In no case shall a petition for review of a decision described in subdivision (a) be filed later than one hundred eighty days after the decision is effective.

(e) In addition to any notice of agency action required by statute, in an adjudicative proceeding described in subdivision (a), the agency shall in the decision or otherwise give notice to the parties in substantially the following form: “The last day to file a petition with a court for review of the decision is [date] unless another statute provides a longer period or the time is extended as provided by law.”

Comment. Section 1123.630 provides a limitation period for initiating judicial review of specified agency adjudicative decisions. See Section 1121.250 (“decision” defined). See also Section 1123.640 (time for filing petition in other adjudicative proceedings). This preserves the distinction in existing law between limitation of judicial review of quasi-legislative and quasi-judicial agency actions. Other types of agency action may be subject to other limitation periods, or to equitable doctrines such as laches. The provision in subdivision (c)(2) making the extension of time during preparation of the record contingent on payment of the fee is drawn from former Government Code Section 11523. See also Sections 12-12b (computation of time).

Subdivision (a) supersedes the second sentence of former Government Code Section 11523 (30 days). It also unifies review periods formerly found in various special statutes. See, e.g., Gov’t Code § 3542 (Public Employment Relations Board); Lab. Code §§ 1160.8 (Agricultural Labor Relations Board), 5950 (Workers’ Compensation Appeals Board); Veh. Code § 13559 (Department of Motor Vehicles).

Section 1123.630 does not override special limitations periods statutorily preserved for policy reasons, such as for judicial review of an administratively-issued withholding order for taxes (Code Civ. Proc. § 706.075), notice of deficiency of an assessment due from a producer under a commodity marketing program (Food & Agric. Code §§ 59234.5, 60016), State Personnel Board (Gov’t Code § 19630), Department of Personnel Administration (Gov’t Code § 19815.8), Unemployment Insurance Appeals Board (Unemp. Ins. Code §§ 410, 1243), certain driver’s license orders (Veh. Code § 14401(a)), or welfare decisions of the Department of Social Services (Welf. & Inst. Code §

10962). See Section 1121.110 (conflicting or inconsistent statute controls). Section 1123.630 does not apply to proceedings under the California Environmental Quality Act. Pub. Res. Code § 21168(b).

The time within which judicial review must be initiated under subdivision (a) begins to run on the date the decision is effective. A decision under the formal hearing procedure of the Administrative Procedure Act generally is effective 30 days after it becomes final, unless the agency head makes it effective sooner or stays its effective date. See Gov't Code § 11519. For special statutes on the effective date of a decision, see Educ. Code §§ 94323, 94933; Gov't Code § 8670.68; Health & Safety Code §§ 443.37, 25187, 25514.6, 108900, 111855, 111940, 128775; Ins. Code §§ 728, 1858.6, 12414.19; Pub. Res. Code § 2774.2; Veh. Code § 13953. Judicial review may only be had of a final decision. Section 1123.120.

Nothing in this section overrides standard restrictions on application of statutes of limitations, such as estoppel to plead the statute (see, e.g., *Ginns v. Savage*, 61 Cal. 2d 520, 393 P.2d 689, 39 Cal. Rptr. 377 (1964)), correction of technical defects (see, e.g., *United Farm Workers of America v. ALRB*, 37 Cal. 3d 912, 694 P.2d 138, 210 Cal. Rptr. 453 (1985)), computation of time (see Gov't Code §§ 6800-6807), and application of due process principles to a notice of decision (see, e.g., *State Farm Fire & Casualty v. Workers' Compensation Appeals Bd.*, 119 Cal. App. 3d 193, 173 Cal. Rptr. 778 (1981)).

Subdivision (e) is drawn from former Code of Civil Procedure Section 1094.6(f). See also Unemp. Ins. Code § 410; Veh. Code § 14401(b). An agency notice that erroneously shows a date that is too soon does not shorten the period for review, since the substantive rules in Section 1123.630 govern. If the notice erroneously shows a date that is later than the last day to petition for review and the petition is filed before that later date, the agency may be estopped to assert that the time has expired. See *Ginns v. Savage*, 61 Cal. 2d 520, 523-25, 393 P.2d 689, 39 Cal. Rptr. 377 (1964).

The introductory clause of subdivision (e) makes clear that notice of agency action required by other special provisions do not override this section. Special provisions include those for judicial review of an administratively-issued withholding order for taxes (Code Civ. Proc. § 706.075), for an assessment due from a producer under a commodity marketing program (Food & Agric. Code §§ 59234.5, 60016), for denial by a county of disability retirement (Gov't Code § 31725), and under the California Environmental Quality Act (Pub. Res. Code §§ 21108 (state agency), 21152 (local agency)). See Section 1121.110 (conflicting or inconsistent statute controls).

§ 1123.640. Time for filing petition for review in other adjudicative proceedings

1123.640. (a) The petition for review of a decision in an adjudicative proceeding, other than a petition governed by Section 1123.630, shall be filed not later than 90 days after the decision is announced or after the notice required by subdivision (d) is delivered, served, or mailed, whichever is later.

(b) Subject to subdivision (c), the time for filing the petition for review is extended as to a party:

(1) During any period when the party is seeking reconsideration of the decision pursuant to express statute, rule, charter, or ordinance.

(2) Until 30 days after the record is delivered to the party if, within 15 days after the decision is effective, the party makes a written request to the agency to prepare all or any part of the record, and, within 15 days after being notified of the estimated fee and cost, pays the fee and cost provided in Section 1123.910.

(c) In no case shall a petition for review of a decision described in subdivision (a) be filed later than one hundred eighty days after the decision is announced or reconsideration is rejected, whichever is later.

(d) In addition to any notice of agency action required by statute, in an adjudicative proceeding described in subdivision (a), the agency shall in the decision or otherwise give notice to the parties in substantially the following form: “The last day to file a petition with a court for review of the decision may be as early as 90 days after the decision is announced, or in the case of a decision pursuant to environmental laws, as early as 30 days after the time begins to run.”

Comment. Section 1123.640 continues the 90-day limitations period for local agency adjudication in former Section 1094.6(b). The provision in subdivision (b)(2) making the extension of time during preparation of the record contingent on payment of the fee and cost is drawn from

former Government Code Section 11523. See also Sections 12-12b (computation of time).

Section 1123.640 does not override special limitations periods applicable to particular proceedings, such as for cancellation by a city or county of a contract limiting use of agricultural land under the Williamson Act (Gov't Code § 51286), decision of a local legislative body adopting or amending a general or specific plan, zoning ordinance, regulation attached to a specific plan, or development agreement (Gov't Code § 65009), or a cease and desist order of the San Francisco Bay Conservation and Development Commission and complaint by BCDC for administrative civil liability (Gov't Code §§ 66639, 66641.7). See Section 1121.110 (conflicting or inconsistent statute controls). Section 1123.640 does not apply to proceedings under the California Environmental Quality Act. Pub. Res. Code § 21168(b).

Subdivision (d) is drawn from former Code of Civil Procedure Section 1094.6(f). For an example of a 30-day period under environmental laws, see Gov't Code §§ 66639, 66641.7. See also the Comment to the parallel provision in Section 1123.630.

Article 7. Review Procedure

§ 1123.710. Applicability of rules of practice for civil actions

1123.710. (a) Except as otherwise provided in this title or by rules of court adopted by the Judicial Council not inconsistent with this title, Part 2 (commencing with Section 307) applies to proceedings under this title.

(b) The following provisions of Part 2 (commencing with Section 307) do not apply to a proceeding under this title:

(1) Section 426.30.

(2) Subdivision (a) of Section 1013.

(c) A party may obtain discovery in a proceeding under this title only of the following:

(1) Matters reasonably calculated to lead to the discovery of evidence admissible under Section 1123.850.

(2) Matters in possession of the agency for the purpose of determining the accuracy of the affidavit of the agency official who compiled the administrative record for judicial review.

Comment. Subdivision (a) of Section 1123.710 continues the effect of Section 1109 in proceedings under this title. For example, under Section 632, upon the request of any party appearing at the trial, the court shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues at trial. See *Delany v. Toomey*, 111 Cal. App. 2d 570, 571-72, 245 P.2d 26 (1952).

Under subdivision (b)(1), the compulsory cross-complaint provisions of Section 426.30 do not apply to judicial review under this title.

Subdivision (b)(2) provides that the provisions of Section 1013(a) for extension of time when notice is mailed do not apply to judicial review under this title. This continues prior law for judicial review of local agency action under former Section 1094.6. *Tielsch v. City of Anaheim*, 160 Cal. App. 3d 576, 206 Cal. Rptr. 740 (1984). Prior law was unclear whether Section 1013(a) applied to judicial review of state agency proceedings under former Section 1094.5. See *California Administrative Mandamus* § 7.4, at 242 (Cal. Cont. Ed. Bar, 2d ed. 1989). For statutes providing that Section 1013 does apply, see Lab. Code § 98.2; Veh. Code § 40230. These statutes prevail over Section 1123.710(b)(2). See Section 1121.110 (conflicting or inconsistent statute controls).

Subdivision (c)(1) codifies *City of Fairfield v. Superior Court*, 14 Cal. 3d 768, 774-75, 537 P.2d 375, 122 Cal. Rptr. 543 (1975). The affidavit referred to in subdivision (c)(2) is provided for in Section 1123.820.

§ 1123.720. Stay of agency action

1123.720. (a) The filing of a petition for review under this title does not of itself stay or suspend the operation of any agency action.

(b) Subject to subdivision (g), on application of the petitioner, the reviewing court may grant a stay of the agency action pending the judgment of the court if it finds that all of the following conditions are satisfied:

(1) The petitioner is likely to prevail ultimately on the merits.

(2) Without a stay the petitioner will suffer irreparable injury.

(3) The grant of a stay to the petitioner will not cause substantial harm to others.

(4) The grant of a stay to the petitioner will not substantially threaten the public health, safety, or welfare.

(c) The application for a stay shall be accompanied by proof of service of a copy of the application on the agency. Service shall be made in the same manner as service of a summons in a civil action.

(d) The court may condition a stay on appropriate terms, including the giving of security for the protection of parties or others.

(e) If an appeal is taken from a denial of relief by the superior court, the agency action shall not be further stayed except on order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay is continued by operation of law for a period of 20 days after the filing of the notice.

(f) Except as provided by statute, if an appeal is taken from a granting of relief by the superior court, the agency action is stayed pending the determination of the appeal unless the court to which the appeal is taken orders otherwise. Notwithstanding Section 916, the court to which the appeal is taken may direct that the appeal shall not stay the granting of relief by the superior court.

(g) No stay may be granted to prevent or enjoin the state or an officer of the state from collecting a tax.

Comment. Section 1123.720 is drawn from 1981 Model State APA Section 5-111, and supersedes former Section 1094.5(g)-(h).

Subdivision (b)(1) generalizes the requirement of former Section 1094.5(h)(1) that a stay may not be granted unless the petitioner is likely to prevail on the merits. The former provision applied only to a decision of a licensed hospital or state agency made after a hearing under the formal hearing provisions of the Administrative Procedure Act.

Subdivision (b)(1) requires more than a conclusion that a possible viable defense exists. The court must make a preliminary assessment of the merits of the judicial review proceeding and conclude that the petitioner is likely to obtain relief in that proceeding. *Medical Bd. of California v. Superior Court*, 227 Cal. App. 3d 1458, 1461, 278 Cal. Rptr. 247 (1991); *Board of Medical Quality Assurance v. Superior Court*, 114 Cal. App. 3d 272, 276, 170 Cal. Rptr. 468 (1980).

Subdivision (c) continues a portion of the second sentence and all of the third sentence of former Section 1094.5(g), and a portion of the second sentence and all of the third sentence of former Section 1094.5(h)(1).

Subdivision (d) codifies case law. See *Venice Canals Resident Home Owners Ass'n v. Superior Court*, 72 Cal. App. 3d 675, 140 Cal. Rptr. 361 (1977) (stay conditioned on posting bond).

Subdivision (e) continues the fourth and fifth sentences of former Section 1094.5(g) and the first and second sentences of former Section 1094.5(h)(3).

The first sentence of subdivision (f) continues the sixth sentence of former Section 1094.5(g) and the third sentence of former Section 1094.5(h)(3). The introductory clause of the first sentence recognizes that statutes may provide special stay rules for particular proceedings. See, e.g., Section 1110a (proceedings concerning irrigation water). The second sentence of subdivision (f) is drawn from Section 1110b, and replaces Section 1110b for judicial review proceedings under this title.

Subdivision (g) recognizes that the California Constitution provides that no legal or equitable process shall issue against the state or any officer of the state to prevent or enjoin the collection of any tax. Cal. Const. art. XIII, § 32.

A decision in a formal adjudicative proceeding under the Administrative Procedure Act may also be stayed by the agency. Gov't Code § 11519(b).

§ 1123.730. Type of relief

1123.730. (a) Subject to subdivision (c), the court may grant appropriate relief justified by the general set of facts alleged in the petition for review, whether mandatory, injunctive, or declaratory, preliminary or final, temporary or permanent, equitable or legal. In granting relief, the court may order agency action required by law, order agency exercise of discretion required by law, set aside or modify agency action, enjoin or stay the effectiveness of agency action, remand the matter for further proceedings, render a declaratory judgment, or take any other action that is authorized and appropriate. The court may grant necessary ancillary relief to redress the effects of official action wrongfully taken or withheld.

(b) The court may award damages or compensation, subject to any of the following that are applicable:

(1) Division 3.6 (commencing with Section 810) of the Government Code.

(2) The procedure for a claim against a local agency prescribed in a charter, ordinance, or regulation adopted pursuant to Section 935 of the Government Code.

(3) Other express statute.

(c) In reviewing a decision in a proceeding in a state agency adjudication subject to Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, the court shall enter judgment either commanding the agency to set aside the decision or denying relief. If the judgment commands that the decision be set aside, the court may order reconsideration of the case in light of the court's opinion and judgment and may order the agency to take further action that is specially enjoined upon it by law.

(d) The court may award attorney's fees or witness fees only to the extent expressly authorized by statute.

(e) If the court sets aside or modifies agency action or remands the matter for further proceedings, the court may make any interlocutory order necessary to preserve the interests of the parties and the public pending further proceedings or agency action.

Comment. Section 1123.730 is drawn from 1981 Model State APA Section 5-117, and supersedes former Section 1094.5(f). Section 1123.730 makes clear that the single form of action established by Sections 1121.120 and 1123.610 encompasses any appropriate type of relief, with the exceptions indicated.

Subdivision (b) continues the effect of Code of Civil Procedure Section 1095 permitting the court to award damages in an appropriate case. Under subdivision (b), the court may award damages or compensation subject to the Tort Claims Act, if applicable. The claim presentation requirements of the Tort Claims Act do not apply, for example, to a claim against a local public entity for earned salary or wages. Gov't Code § 905(c). See also *Snipes v. City of Bakersfield*, 145 Cal. App. 3d 861, 193 Cal. Rptr. 760 (1983) (claims requirements of Tort

Claims Act do not apply to actions under Fair Employment and Housing Act); *O'Hagan v. Board of Zoning Adjustment*, 38 Cal. App. 3d 722, 729, 113 Cal. Rptr. 501, 506 (1974) (claim for damages for revocation of use permit subject to Tort Claims Act); *Eureka Teacher's Ass'n v. Board of Educ.*, 202 Cal. App. 3d 469, 475-76, 247 Cal. Rptr. 790 (1988) (action seeking damages incidental to extraordinary relief not subject to claims requirements of Tort Claims Act); *Loehr v. Ventura County Community College Dist.*, 147 Cal. App. 3d 1071, 1081, 195 Cal. Rptr. 576 (1983) (action primarily for money damages seeking extraordinary relief incidental to damages is subject to claims requirements of Tort Claims Act). Nothing in Section 1123.730 authorizes the court to interfere with a valid exercise of agency discretion or to direct an agency how to exercise its discretion. Section 1121.140.

Subdivision (c) continues the first sentence and first portion of the second sentence of former Section 1094.5(f). Subdivision (c) applies to state agency adjudications subject to Government Code Sections 11400-11470.50. These provisions apply to all state agency adjudications unless specifically excepted. Gov't Code § 11410.20 (operative July 1, 1997) and Comment.

For statutes authorizing an award of attorney's fees, see Sections 1028.5, 1123.950. See also Gov't Code §§ 68092.5 (expert witness fees), 68093 (mileage and fees in civil cases in superior court), 68096.1-68097.10 (witness fees of public officers and employees). *Cf.* Gov't Code § 11450.40 (fees for witness appearing in APA proceeding pursuant to subpoena) (operative July 1, 1997).

§ 1123.740. Jury trial

1123.740. All proceedings shall be heard by the court sitting without a jury.

Comment. Section 1123.740 continues a portion of the first sentence of former Section 1094.5(a) and generalizes it to apply to all proceedings under this title.

Article 8. Record for Judicial Review

§ 1123.810. Administrative record exclusive basis for judicial review

1123.810. (a) Except as provided in Section 1123.850 or as otherwise provided by statute, the administrative record is the exclusive basis for judicial review of agency action if both of the following requirements are satisfied:

(1) The agency gave interested persons notice and an opportunity to submit oral or written comment.

(2) The agency maintained a record or file of its proceedings.

(b) If the requirements of subdivision (a) are not satisfied, the court may either receive evidence itself or remand to the agency to do so.

Comment. Section 1123.810 codifies existing practice. See, e.g., *Beverly Hills Fed. Sav. & Loan Ass'n v. Superior Court*, 259 Cal. App. 2d 306, 324, 66 Cal. Rptr. 183, 192 (1968). For authority to augment the administrative record for judicial review, see Section 1123.850 (new evidence on judicial review).

The closed record rule of subdivision (a) is limited to cases where the agency gave notice and an opportunity to submit oral or written comment, and maintained a record or file of its proceedings. These requirements will generally be satisfied in most administrative adjudication and quasi-legislative action. In other cases, subdivision (b) makes clear the court may either receive evidence itself or may remand to the agency to receive the evidence. This will apply to most ministerial and informal action. These rules are generally consistent with *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 888 P.2d 1268, 38 Cal. Rptr. 2d 139 (1995).

If the closed record requirement of Section 1123.810(a) applies, the court still has some discretion to remand to the agency. See Section 1123.850(c).

§ 1123.820. Contents of administrative record

1123.820. (a) Except as provided in subdivision (b), the administrative record for judicial review of agency action consists of all of the following:

(1) Any agency documents expressing the agency action.

(2) Other documents identified by the agency as having been considered by it before its action and used as a basis for its action.

(3) All material submitted to the agency in connection with the agency action.

(4) A transcript of any hearing, if one was maintained, or minutes of the proceeding. In case of electronic reporting of

proceedings, the transcript or a copy of the electronic reporting shall be part of the administrative record in accordance with the rules applicable to the record on appeal in judicial proceedings.

(5) Any other material described by statute as the administrative record for the type of agency action at issue.

(6) An affidavit of the agency official who has compiled the administrative record for judicial review specifying the date on which the record was closed and that the record is complete.

(7) Any other matter expressly prescribed for inclusion in the administrative record by rules of court adopted by the Judicial Council.

(b) The administrative record for judicial review of rulemaking under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code is the file of the rulemaking proceeding prescribed by Section 11347.3 of the Government Code.

(c) By stipulation of all parties to judicial review proceedings, the administrative record for judicial review may be shortened, summarized, or organized, or may be an agreed or settled statement of the parties, in accordance with the rules applicable to the record on appeal in judicial proceedings.

(d) If an explanation of reasons for the agency action is not otherwise included in the administrative record, the court may require the agency to add to the administrative record for judicial review a brief explanation of the reasons for the agency action to the extent necessary for proper judicial review.

Comment. Section 1123.820 is drawn from 1981 Model State APA Section 5-115(a), (d), (f)-(g). For authority to augment the administrative record for judicial review, see Section 1123.850 (new evidence on judicial review). The administrative record for judicial review is related but not necessarily identical to the record of agency proceedings that is

prepared and maintained by the agency. The administrative record for judicial review specified in this section is subject to the provisions of this section on shortening, summarizing, or organizing the record, or stipulation to an agreed or settled statement of the parties. Subdivision (c).

Subdivision (a) supersedes the seventh sentence of former Government Code Section 11523 (judicial review of formal adjudicative proceedings under Administrative Procedure Act). In the case of an adjudicative proceeding, the record will include the final decision and all notices and orders issued by the agency (subdivision (a)(1)), any proposed decision by an administrative law judge (subdivision (a)(2)), the pleadings, the exhibits admitted or rejected, and the written evidence and any other papers in the case (subdivision (a)(3)), and a transcript of all proceedings (subdivision (a)(4)).

Treatment of the record in the case of electronic reporting of proceedings in subdivision (a)(4) is derived from Rule 980.5 of the California Rules of Court (electronic recording as official record of proceedings).

The affidavit requirement in subdivision (a)(6) may be satisfied by a declaration under penalty of perjury. Section 2015.5.

Subdivision (d) supersedes the case law requirement of *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 522 P.2d 12, 113 Cal. Rptr. 836 (1974), that adjudicative decisions reviewed under former Section 1094.5 be explained, and extends it to other agency action such as rulemaking and discretionary action. The court should not require an explanation of the agency action if it is not necessary for proper judicial review, for example if the explanation is obvious. A decision in an adjudicative proceeding under the Administrative Procedure Act must include a statement of the factual and legal basis for the decision. Gov't Code § 11425.50 (operative July 1, 1997).

If there is an issue of completeness of the administrative record, the court may permit limited discovery of the agency file for the purpose of determining the accuracy of the affidavit of completeness. See Section 1123.710(c) (discovery in judicial review proceeding). A party is not entitled to discovery of material in the agency file that is privileged. See, e.g., Gov't Code § 6254 (exemptions from California Public Records Act). Moreover, the administrative record reflects the actual documents that are the basis of the agency action. Except as provided in subdivision (d), the agency cannot be ordered to prepare a document that does not exist, such as a summary of an oral ex parte contact in a case where the contact is permissible and no other documentation requirement exists. If judicial review reveals that the agency action is not supported by the record, the court may grant appropriate relief, including setting aside,

modifying, enjoining, or staying the agency action, or remanding for further proceedings. Section 1123.730.

§ 1123.830. Preparation of record

1123.830. (a) On request of the petitioner for the administrative record for judicial review of agency action:

(1) If the agency action is a decision in an adjudicative proceeding required to be conducted by an administrative law judge employed by the Office of Administrative Hearings, the administrative record shall be prepared by the Office of Administrative Hearings.

(2) If the agency action is other than that described in paragraph (1), the administrative record shall be prepared by the agency.

(b) Except as otherwise provided by statute, the administrative record shall be delivered to the petitioner as follows:

(1) Within 30 days after the request and payment of the fee provided in Section 1123.910 in an adjudicative proceeding involving an evidentiary hearing of 10 days or less.

(2) Within 60 days after the request and payment of the fee provided in Section 1123.910 in a nonadjudicative proceeding, or in an adjudicative proceeding involving an evidentiary hearing of more than 10 days.

(c) For good cause shown, the time limits provided in subdivision (b) may be extended by either or both of the following:

(1) By the court for a reasonable period.

(2) By the agency for a period not exceeding 190 days after the request and payment of the fee and cost provided in Section 1123.910. This paragraph does not apply to review of an adjudicative proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) If the agency fails timely to deliver the record, the court may order the agency to deliver the record, and may impose sanctions and grant other appropriate relief for failure to comply with any such order.

Comment. Section 1123.830 supersedes the fourth sentence of former Government Code Section 11523 and the first sentence of subdivision (c) of former Code of Civil Procedure Section 1094.6. Under former Section 11523, in judicial review of proceedings under the Administrative Procedure Act, the record was to be prepared either by the Office of Administrative Hearings or by the agency. However, in practice the record was prepared by the Office of Administrative Hearings, consistent with subdivision (a)(1). The provision in subdivision (b) making the agency's duty to prepare and deliver the record contingent on payment of the fee is drawn from former Government Code Section 11523.

Although Section 1123.830 requires the Office of Administrative Hearings or the agency to prepare the record, the burden is on the petitioner attacking the administrative decision to show entitlement to judicial relief, so it is petitioner's responsibility to make the administrative record available to the court. *Foster v. Civil Serv. Comm'n*, 142 Cal. App. 3d 444, 453, 190 Cal. Rptr. 893, 899 (1983). However, this does not authorize use of an unofficial record for judicial review.

Although subdivision (a) requires the agency to prepare the record on request of the petitioner for review, in state agency rulemaking under the Administrative Procedure Act, the file is already complete at the time of review. See Gov't Code § 11347.3.

The introductory clause of subdivision (b) recognizes that some statutes prescribe the time to prepare the record in particular proceedings. See, e.g., Gov't Code § 3564 (10-day limit for Public Employment Relations Board).

§ 1123.840. Disposal of administrative record

1123.840. Any administrative record received for filing by the clerk of the court may be disposed of as provided in Sections 1952, 1952.2, and 1952.3.

Comment. Section 1123.840 continues former Section 1094.5(i) without change. Rulemaking records should be carefully safeguarded by the agency. Concerning retention of rulemaking records by the Secretary of State, see Gov't Code §§ 11347.3, 12223.5, 14755.

§ 1123.850. New evidence on judicial review

1123.850. (a) If the court finds that there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced or that was improperly excluded in the agency proceedings, it may enter judgment remanding the case for reconsideration in the light of that evidence. Except as provided in this section, the court shall not admit the evidence on judicial review without remanding the case.

(b) The court may receive evidence described in subdivision (a) without remanding the case in any of the following circumstances:

(1) The evidence relates to the validity of the agency action and is needed to decide (i) improper constitution as a decisionmaking body, or grounds for disqualification, of those taking the agency action, or (ii) unlawfulness of procedure or of decisionmaking process.

(2) The agency action is a decision in an adjudicative proceeding and the evidence relates to an issue for which the standard of review is the independent judgment of the court.

(c) Whether or not the evidence is described in subdivision (a), the court may receive evidence in addition to that contained in the administrative record for judicial review without remanding the case if no hearing was held by the agency, and the court finds that remand to the agency would be unlikely to result in a better record for review and the interests of economy and efficiency would be served by receiving the evidence itself. This subdivision does not apply to judicial review of rulemaking.

(d) If jurisdiction for judicial review is in the Supreme Court or court of appeal and the court is to receive evidence pursuant to this section, the court shall appoint a referee, master, or trial court judge for this purpose, having due regard for the convenience of the parties.

(e) Nothing in this section precludes the court from taking judicial notice of a decision designated by the agency as a precedent decision pursuant to Section 11425.60 of the Government Code.

Comment. Subdivision (a) of Section 1123.850 supersedes former Section 1094.5(e), which permitted the court to admit evidence without remanding the case in cases in which the court was authorized by law to exercise its independent judgment on the evidence. Under this section and Section 1123.810, the court is limited to evidence in the administrative record except under subdivision (b). The provision in subdivision (a) permitting new evidence that could not in the exercise of reasonable diligence have been produced in the administrative proceeding should be narrowly construed. Such evidence is admissible only in rare instances. See *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 578, 888 P.2d 1268, 1278, 38 Cal. Rptr. 2d 139, 149 (1995). For rulemaking, no evidence is admissible that was not in existence at the time of the agency proceeding. Gov't Code § 11350 (state agency rulemaking under the Administrative Procedure Act); *Western States Petroleum Ass'n v. Superior Court*, *supra* (quasi-legislative action generally).

Subdivision (b)(1) is drawn from 1981 Model State APA Section 5-114(a)(1)-(2). Evidence may be received only if it is likely to contribute to the court's determination of the validity of agency action under one or more of the standards set forth in Sections 1123.410-1123.460.

Subdivision (b)(2) applies to judicial review of agency interpretation of law under Section 1123.420, and to factfinding in local agency proceedings to which the independent judgment standard applies under Section 1123.440. Admission of evidence under this provision is discretionary with the court.

As used in subdivision (c), "hearing" includes both informal and formal hearings.

Subdivision (d) is drawn from 1981 Model State APA Section 5-104(c), alternative B. Statutes that provide for judicial review in the court of appeal or Supreme Court are: Bus. & Prof. Code § 23090 (Alcoholic Beverage Control Appeals Board and Department of Alcoholic Beverage Control); Gov't Code §§ 3520(c), 3542(c), 3564(c) (Public Employment Relations Board); Lab. Code §§ 1160.8 (Agricultural Labor Relations Board), 5950 (Workers' Compensation Appeals Board).

Section 1123.850 deals only with admissibility of new evidence on issues involved in the agency proceeding. It does not limit evidence on issues unique to judicial review, such as petitioner's standing or capacity,

or affirmative defenses such as laches for unreasonable delay in seeking judicial review. For standing rules, see Sections 1123.210-1123.250.

Section 1123.850 does not address the question of whether the evidence must have been in existence at the time of the agency proceeding. For state agency rulemaking, this is governed by Government Code Section 11350. For other action, it is governed by case law. See, e.g., *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 578, 888 P.2d 1268, 1278, 38 Cal. Rptr. 2d 139, 149 (1995) (quasi-legislative action); *Elizabeth D. v. Zolin*, 21 Cal. App. 4th 347, 356-57, 25 Cal. Rptr. 2d 852, 856-57 (1993) (administrative adjudication); *Toyota of Visalia, Inc. v. New Motor Vehicle Bd.*, 188 Cal. App. 3d 872, 881-82, 233 Cal. Rptr. 708 (1987) (same); *Windigo Mills v. Unemployment Ins. Appeals Bd.*, 92 Cal. App. 3d 586, 596-97, 155 Cal. Rptr. 63 (1979) (same).

Subdivision (e) makes clear this section does not prevent the court from taking judicial notice of a precedent decision. See Evid. Code § 452.

For a special rule requiring the court to consider all relevant evidence, see Water Code § 1813. This special rule prevails over Section 1123.850. See Section 1121.120 (conflicting or inconsistent statute controls).

Article 9. Costs and Fees

§ 1123.910. Fee for transcript and preparation and certification of record

1123.910. The agency preparing the administrative record for judicial review shall charge the petitioner the fee provided in Section 69950 of the Government Code for the transcript, if any, and the reasonable cost of preparation of other portions of the record and certification of the record.

Comment. Section 1123.910 continues the substance of a portion of the fourth sentence of former Section 11523 of the Government Code, the third sentence of subdivision (a) of former Code of Civil Procedure Section 1094.5, and the second sentence of subdivision (c) of former Code of Civil Procedure Section 1094.6.

§ 1123.920. Recovery of costs of suit

1123.920. Except as otherwise provided by rules of court adopted by the Judicial Council, the prevailing party is

entitled to recover the following costs of suit borne by the party:

- (a) The cost of preparing the transcript, if any.
- (b) The cost of compiling and certifying the record.
- (c) Any filing fee.
- (d) Fees for service of documents on the other parties.

Comment. Section 1123.920 supersedes the sixth sentence of subdivision (a) of former Section 1094.5, and the fifth and tenth sentences of former Section 11523 of the Government Code. Section 1123.920 generalizes these provisions to apply to all proceedings for judicial review of agency action. See also Bus. & Prof. Code § 125.3 (recovery of costs of investigation and enforcement in a disciplinary proceeding by a board in the Department of Consumer Affairs or the Osteopathic Medical Board).

§ 1123.930. No renewal or reinstatement of license on failure to pay costs

1123.930. No license of a petitioner for judicial review of a decision in an adjudicative proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall be renewed or reinstated if the petitioner fails to pay all of the costs required under Section 1123.920.

Comment. Section 1123.930 continues the substance of a portion of the sixth sentence of former Section 11523 of the Government Code.

§ 1123.940. Proceedings in forma pauperis

1123.940. Notwithstanding any other provision of this article, if the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the rules of court implementing that section and if the transcript is necessary to a proper review of an adjudicative proceeding, the cost of preparing the transcript shall be borne by the agency.

Comment. Section 1123.940 continues the substance of the fourth sentence of subdivision (a) of former Section 1094.5 (proceedings in forma pauperis).

§ 1123.950. Attorney fees in action to review administrative proceeding

1123.950. (a) If it is shown that an agency decision under state law was the result of arbitrary or capricious action or conduct by an agency or officer in an official capacity, the petitioner if the petitioner prevails on judicial review may collect reasonable attorney's fees, computed at one hundred dollars (\$100) per hour, but not to exceed seven thousand five hundred dollars (\$7,500), where the petitioner is personally obligated to pay the fees, from the agency, in addition to any other relief granted or other costs awarded.

(b) This section is ancillary only, and does not create a new cause of action.

(c) Refusal by an agency or officer to admit liability pursuant to a contract of insurance is not arbitrary or capricious action or conduct within the meaning of this section.

(d) This section does not apply to judicial review of actions of the State Board of Control or of a private hospital board.

Comment. Section 1123.950 continues former Government Code Section 800. See also Sections 1121.230 ("agency" defined), 1121.250 ("decision" defined).

SELECTED CONFORMING REVISIONS

STATE BAR COURT

Bus. & Prof. Code § 6089 (added). Inapplicability of Code of Civil Procedure

6089. Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure does not apply to judicial review of proceedings of the State Bar Court.

Comment. Section 6089 makes clear the judicial review provisions in the Code of Civil Procedure do not apply to the State Bar Court.

ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD

Bus. & Prof. Code § 23090 (amended). Jurisdiction

23090. Any person affected by a final order of the board, including the department, may, ~~within the time limit specified in this section, apply to~~ *petition* the Supreme Court or to the court of appeal for the appellate district in which the proceeding arose, for a ~~writ of~~ *judicial* review of such ~~the~~ final order. ~~The application for writ of review shall be made within 30 days after filing of the final order of the board.~~

Comment. Section 23090 is amended to change the application for a writ of review to a petition for judicial review, consistent with Code of Civil Procedure Section 1123.610, and to delete the 30-day time limit formerly prescribed in this section. Under Code of Civil Procedure Section 1123.630, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the agency orders that it shall become effective sooner. Gov't Code § 11519.

Bus. & Prof. Code § 23090.1 (repealed). Writ of review

~~23090.1. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the board to certify the whole record of the~~

~~department in the case to the court within the time specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the whole record of the department as certified to by the board.~~

Comment. Section 23090.1 is repealed because it is superseded by the judicial review provisions of the Code of Civil Procedure. See Section 23090.4. The provision in the first sentence for the return of the writ of review is superseded by Code of Civil Procedure Section 1123.710 (applicability of rules of practice for civil actions). The provision in the first sentence for the record of the department is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record). The second sentence is superseded by Code of Civil Procedure Sections 1123.810 (administrative record exclusive basis for judicial review) and 1123.850 (new evidence on judicial review).

Bus. & Prof. Code § 23090.2 (repealed). Scope of review

~~23090.2. The review by the court shall not extend further than to determine, based on the whole record of the department as certified by the board, whether:~~

~~(a) The department has proceeded without or in excess of its jurisdiction.~~

~~(b) The department has proceeded in the manner required by law.~~

~~(c) The decision of the department is supported by the findings.~~

~~(d) The findings in the department's decision are supported by substantial evidence in the light of the whole record.~~

~~(e) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the department.~~

~~Nothing in this article shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.~~

Comment. Subdivisions (a) through (d) of former Section 23090.2 are superseded by Code of Civil Procedure Sections 1123.410-1123.460 and 1123.160. Subdivision (e) is superseded by Code of Civil Procedure Section 1123.850. The last sentence is superseded by Code of Civil

Procedure Sections 1123.420 (interpretation of law), 1123.430 (factfinding), 1123.810 (administrative record exclusive basis for judicial review), and 1123.850 (new evidence on judicial review). Nothing in the Code of Civil Procedure or in this article permits the court to hold a trial de novo.

Bus. & Prof. Code § 23090.3 (amended). Right to appear in judicial review proceeding

~~23090.3. The findings and conclusions of the department on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the department. The parties to a judicial review proceeding are the board, the department, and each party to the action or proceeding before the board shall have the right to appear in the review proceeding. Following the hearing, the court shall enter judgment either affirming or reversing the decision of the department, or the court may remand the case for further proceedings before or reconsideration by the department whose interest is adverse to the person seeking judicial review.~~

Comment. Section 23090.3 is largely superseded by the judicial review provisions of the Code of Civil Procedure. See Section 23090.4. The first sentence is superseded by Code of Civil Procedure Section 1123.430 (review of agency factfinding). The second sentence is superseded by Code of Civil Procedure Section 1123.420 (interpretation of law). The fourth sentence is superseded by Code of Civil Procedure Section 1123.730 (type of relief).

Bus. & Prof. Code § 23090.4 (amended). Judicial review

~~23090.4. The provisions of the Code of Civil Procedure relating to writs of review shall, insofar as applicable, apply to proceedings in the courts as provided by this article. A copy of every pleading filed pursuant to this article shall be served on the board, the department, and on each party who entered an appearance before the board. Judicial review shall~~

be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

Comment. Section 23090.4 is amended to delete the first sentence, and to replace it with a reference to the judicial review provisions of the Code of Civil Procedure. Special provisions of this article prevail over general provisions of the Code of Civil Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls). Copies of pleadings in judicial review proceedings must be served on the parties. See Code Civ. Proc. §§ 1123.610 (petition for review), 1123.710 (applicability of rules of practice for civil actions).

Bus. & Prof. Code § 23090.5 (amended). Courts having jurisdiction

23090.5. No court of this state, except the Supreme Court and the courts of appeal to the extent specified in this article, shall have jurisdiction to review, affirm, reverse, correct, or annul any order, rule, or decision of the department or to suspend, stay, or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the department in the performance of its duties, ~~but a writ of mandate shall lie from the Supreme Court or the courts of appeal in any proper case.~~

Comment. Section 23090.5 is amended to delete the former reference to a writ of mandate. The writ of mandate has been replaced by a petition for review. See Section 23090.4; Code Civ. Proc. § 1123.610 (petition for review). *But cf.* Code Civ. Proc. § 1123.510(b) (original jurisdiction of Supreme Court or courts of appeal under California Constitution not affected).

Bus. & Prof. Code § 23090.6 (repealed). Stay of order

~~23090.6. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, or decision of the department, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, rule, or decision of the department subject to review, upon the terms and conditions which it by order directs.~~

Comment. Former Section 23090.6 is superseded by Code of Civil Procedure Section 1123.720 (stays). See Section 23090.4.

Bus. & Prof. Code § 23090.7 (amended). Effectiveness of order

23090.7. ~~No~~ *Except for the purpose of Section 1123.630 of the Code of Civil Procedure, no decision of the department which has been appealed to the board and no final order of the board shall become effective during the period in which application a petition for review may be made for a writ of review, as provided by Section 23090.*

Comment. Section 23090.7 is amended to add the “except” clause. Section 23090.7 is also amended to recognize that judicial review under the Code of Civil Procedure has been substituted for a writ of review under this article. See Section 23090.4.

TAXPAYER ACTIONS**Code Civ. Proc. § 526a (amended). Taxpayer actions**

~~526a. An action to obtain a judgment, restraining and preventing any~~ *(a) A proceeding for judicial review of agency action to restrain or prevent illegal expenditure of, waste of, or injury to the estate, funds, or other property of a county, town, city or city and county of the state, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a citizen resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. under Title 2 (commencing with Section 1120) of Part 3.*

(b) This section does not affect any right of action in favor of a county, city, town, or city and county, or any public officer; provided that no injunction shall be granted restraining the offering for sale, sale, or issuance of any municipal bonds for public improvements or public utilities.

~~An action~~ *(c) A proceeding brought pursuant to this section to enjoin a public improvement project shall take special precedence over all civil matters on the calendar of the court*

except those matters to which equal precedence on the calendar is granted by law.

Comment. Section 526a is amended to make the former statutory and common law taxpayers' action subject to the judicial review provisions of this code. See Sections 1120-1123.950. Under the judicial review provisions, the petitioner must show entitlement to relief on a ground specified in Sections 1123.410-1123.460. See Section 1123.160. The petition for review must name the agency as respondent or the agency head by title, not individual employees of the agency. Section 1123.610. Standing rules are provided in Sections 1123.210-1123.250. Concerning the common law taxpayers' action, see *Los Angeles v. Superior Court*, 50 Cal. App. 4th 598, 57 Cal. Rptr. 2d 878, 885 (1996).

VALIDATING PROCEEDINGS

Code Civ. Proc. § 871 (added). Inapplicability of Title 2 of Part 3

871. Title 2 (commencing with Section 1120) of Part 3 does not apply to proceedings under this chapter.

Comment. Section 871 makes clear the judicial review provisions in Title 2 of Part 3 do not apply to proceedings under this chapter.

WRIT OF MANDATE

Code Civ. Proc. § 1085 (amended). Writ of mandate

1085. It *(a) Subject to subdivision (b), a writ of mandate may be issued by any court, except a municipal or justice court, to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he the party is entitled, and from which he the party is unlawfully precluded by such the inferior tribunal, corporation, board or person.*

(b) Judicial review of agency action to which Title 2 (commencing with Section 1120) applies shall be under that title, and not under this chapter.

Comment. Section 1085 is amended to add subdivision (b) and to make other technical revisions. The former reference to a justice court is deleted, because justice courts have been abolished. See Cal. Const. art. VI, § 1.

Code Civ. Proc. § 1085.5 (repealed). Action of Director of Food and Agriculture

~~1085.5. Notwithstanding this chapter, in any action or proceeding to attack, review, set aside, void, or annul the activity of the Director of Food and Agriculture under Division 4 (commencing with Section 5001) or Division 5 (commencing with Section 9101) of the Food and Agricultural Code, the procedure for issuance of a writ of mandate shall be in accordance with Chapter 1.5 (commencing with Section 5051) of Part 1 of Division 4 of that code.~~

Comment. Section 1085.5 is repealed as obsolete, since Sections 5051-5064 of the Food and Agricultural Code have been repealed.

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

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

proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, the expense shall be taxable as costs.

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

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

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

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

(e) Where the court finds that there is relevant evidence 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 (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

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

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

(h) (1) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the provisions of the Administrative Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied

~~that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits; 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.~~

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

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

determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

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

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

Comment. The portion of the first sentence of subdivision (a) of former Section 1094.5 relating to finality is superseded by Section 1123.120 (finality). The portion of the first sentence of former subdivision (a) relating to trial by jury is superseded by Section 1123.740. The second sentence of former subdivision (a) is superseded by Section 1123.710(a) (Judicial Council rules of pleading and practice). See also Sections 1123.830(c) (delivery of record) and 1123.840 (disposal of record). The third sentence of former subdivision (a) is superseded by Section 1123.910 (fee for preparing record). The fourth sentence of former subdivision (a) is continued in substance in Section 1123.940 (proceedings in forma pauperis). The fifth sentence of former subdivision (a) is superseded by Section 1123.710(a) (Judicial Council rules of pleading and practice). The sixth sentence of former subdivision (a) is superseded by Section 1123.920 (recovery of costs of suit).

The provision of subdivision (b) relating to review of whether the respondent has proceeded without or in excess of jurisdiction is superseded by Section 1123.420 (review of agency interpretation of law). The provision relating to whether there has been a fair trial is superseded by Section 1123.460 (review of agency procedure). The provision relating to whether there has been a prejudicial abuse of discretion is superseded by Section 1123.450 (review of agency exercise of discretion). The provision relating to proceeding in the manner required by law is superseded by Section 1123.460 (review of agency procedure). The provision relating to an order or decision not supported by findings or findings not supported by evidence is superseded by Section 1123.430 (review of agency factfinding).

Subdivision (c) is superseded by Section 1123.430 (review of agency factfinding).

Subdivision (d) is superseded by Health and Safety Code Sections 1339.62-1339.64.

Subdivision (e) is superseded by Section 1123.850 (new evidence on judicial review).

The first sentence and first portion of the second sentence of subdivision (f) is continued in Section 1123.730(c) (type of relief). The last portion of the second sentence of subdivision (f) is continued in substance in Section 1121.140 (exercise of agency discretion).

The first through sixth sentences of subdivision (g), and the first, second, and third sentences of subdivision (h)(3), are superseded by Section 1123.720 (stay). The seventh sentence of subdivision (g) and the fourth sentence of subdivision (h)(3) are continued in Section 1123.150 (proceeding not moot because penalty completed).

Subdivision (i) is continued without change in Section 1123.840 (disposal of administrative record).

Subdivision (j) is continued in Section 19576.1 of the Government Code.

Code Civ. Proc. § 1094.6 (repealed). Review of local agency decision

~~1094.6. (a) Judicial review of any decision of a local agency, other than school district, as the term local agency is defined in Section 54951 of the Government Code, or of any commission, board, officer or agent thereof, may be had pursuant to Section 1094.5 of this code only if the petition for writ of mandate pursuant to such section is filed within the time limits specified in this section.~~

~~(b) Any such petition shall be filed not later than the 90th day following the date on which the decision becomes final. If there is no provision for reconsideration of the decision, or for a written decision or written findings supporting the decision, in any applicable provision of any statute, charter, or rule, for the purposes of this section, the decision is final on the date it is announced. If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing. If there is a provision for reconsideration, the decision is final for purposes of this section upon the expiration of the period during which such reconsideration~~

can be sought; provided, that if reconsideration is sought pursuant to any such provision the decision is final for the purposes of this section on the date that reconsideration is rejected. If there is a provision for a written decision or written findings, the decision is final for purposes of this section upon the date it is mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ. Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.

(c) The complete record of the proceedings shall be prepared by the local agency or its commission, board, officer, or agent which made the decision and shall be delivered to the petitioner within 190 days after he has filed a written request therefor. The local agency may recover from the petitioner its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the local agency or its commission, board, officer, or agent, all written evidence, and any other papers in the case.

(d) If the petitioner files a request for the record as specified in subdivision (c) within 10 days after the date the decision becomes final as provided in subdivision (b), the time within which a petition pursuant to Section 1094.5 may be filed shall be extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the petitioner or his attorney of record, if he has one.

(e) As used in this section, decision means a decision subject to review pursuant to Section 1094.5, suspending, demoting, or dismissing an officer or employee, revoking, or denying an application for a permit, license, or other

~~entitlement, or denying an application for any retirement benefit or allowance.~~

~~(f) In making a final decision as defined in subdivision (e), the local agency shall provide notice to the party that the time within which judicial review must be sought is governed by this section.~~

~~As used in this subdivision, “party” means an officer or employee who has been suspended, demoted or dismissed; a person whose permit, license, or other entitlement has been revoked or suspended, or whose application for a permit, license, or other entitlement has been denied; or a person whose application for a retirement benefit or allowance has been denied.~~

~~(g) This section shall prevail over any conflicting provision in any otherwise applicable law relating to the subject matter, unless the conflicting provision is a state or federal law which provides a shorter statute of limitations, in which case the shorter statute of limitations shall apply.~~

Comment. Subdivision (a) and the first sentence of subdivision (b) of former Section 1094.6 is superseded by Sections 1121.230 (“agency” defined), 1121.260 (“local agency” defined), 1123.640 (time for filing petition for review), 1123.120 (finality), and 1123.140 (exception to finality requirement). The second, fourth, and fifth sentences of subdivision (b) are superseded by Section 1123.120. The third sentence of subdivision (b) is continued in Government Code Section 54962(b).

The first sentence of subdivision (c) is superseded by Section 1123.830 (preparation of the record). The second sentence of subdivision (c) is superseded by Section 1123.910 (fee for preparing record). The third sentence of subdivision (c) is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record).

Subdivision (d) is superseded by Section 1123.640 (time for filing petition for review).

Subdivision (e) is superseded by Section 1121.250 (“decision” defined). See also Gov’t Code § 54962(a).

Subdivision (f) is continued in Sections 1123.640 (time for filing petition for review) and 1121.270 (“party” defined). Subdivision (g) is not continued.

COMMISSION ON PROFESSIONAL COMPETENCE

Educ. Code § 44945 (amended). Judicial review

44945. The decision of the Commission on Professional Competence may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction ~~in the same manner as a decision made by a hearing officer under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~ The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

Comment. Section 44945 is amended to make judicial review under this section subject to the provisions for judicial review in the Code of Civil Procedure. The former second sentence of Section 44945 is superseded by the standards of review in Code of Civil Procedure Sections 1123.410-1123.460.

BOARD OF GOVERNORS OF CALIFORNIA COMMUNITY COLLEGES

Educ. Code § 87682 (amended). Judicial review

87682. The decision of the arbitrator or administrative law judge, as the case may be, may, on petition of either the governing board or the employee, be reviewed by a court of competent jurisdiction ~~in the same manner as a decision made by an administrative law judge under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The court, on review, shall exercise its independent judgment on the evidence under Title 2 (commencing with Section 1120) of Part 3 of the Code of~~

Civil Procedure. The proceeding shall be set for hearing at the earliest possible date and shall take precedence over all other cases, except older matters of the same character and matters to which special precedence is given by law.

Comment. Section 87682 is amended to make judicial review under this section subject to the provisions for judicial review in the Code of Civil Procedure. The former second sentence of Section 87682 is superseded by the standards of review in Code of Civil Procedure Sections 1123.410-1123.460.

COSTS IN CIVIL ACTIONS RESULTING FROM ADMINISTRATIVE PROCEEDINGS

Gov't Code § 800 (repealed). Costs in action to review administrative proceeding

~~800. In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, except actions resulting from actions of the State Board of Control, where it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant if he or she prevails in the civil action may collect reasonable attorney's fees, computed at one hundred dollars (\$100) per hour, but not to exceed seven thousand five hundred dollars (\$7,500), where he or she is personally obligated to pay the fees, from the public entity, in addition to any other relief granted or other costs awarded.~~

~~This section is ancillary only, and shall not be construed to create a new cause of action.~~

~~Refusal by a public entity or officer thereof to admit liability pursuant to a contract of insurance shall not be considered arbitrary or capricious action or conduct within the meaning of this section.~~

Comment. Former Section 800 is continued in Code of Civil Procedure Section 1123.950.

PUBLIC EMPLOYMENT RELATIONS BOARD

Gov't Code § 3520 (amended). Judicial review of unit determination or unfair practice case

3520. (a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a ~~writ of extraordinary relief from~~ *review of* the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a ~~writ of extraordinary relief from such~~ *review of the* decision or order.

(c) ~~Such~~ *The* petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. ~~The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable.~~ Upon the filing of such *the* petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless ~~such~~ *the* time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board

such *any* temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. ~~The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The provisions of Title 1 (commencing with Section 1067) Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.~~

(d) If the time to petition for ~~extraordinary relief from~~ *judicial review* of a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the *appellate* district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce ~~such the~~ order by ~~writ of mandamus~~ *appropriate process*. The court shall not review the merits of the order.

Comment. Section 3520 is amended to make judicial review of the Public Employment Relations Board subject to the provisions for judicial review in the Code of Civil Procedure, except as provided in this section. The board is exempt from the provision in the Code of Civil Procedure governing standard of review of questions of law, so existing case law will continue to apply to the board. See Code Civ. Proc. § 1123.420(b) & Comment.

The former second sentence of subdivision (c) which required the petition to be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, is superseded by Code of Civil Procedure Section 1123.630. Under that section, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the

agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.630(b)(2).

Gov't Code § 3542 (amended). Review of unit determination

3542. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for ~~a writ of extraordinary relief from~~ *judicial review of* the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for ~~a writ of extraordinary relief from such~~ *judicial review of the* decision or order.

(c) ~~Such~~ *The* petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. ~~The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable.~~ Upon the filing of ~~such~~ *the* petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless ~~such~~ *the* time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board ~~such~~ *any* temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree

enforcing, modifying, or setting aside the order of the board. ~~The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.~~

(d) If the time to petition for ~~extraordinary relief from~~ *judicial review* of a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the *appellate* district where the unit determination or unfair practice case occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce ~~such~~ *the order by writ of mandamus appropriate process*. The court shall not review the merits of the order.

Comment. Section 3542 is amended to make judicial review of the Public Employment Relations Board subject to the provisions for judicial review in the Code of Civil Procedure, except as provided in this section. Special provisions of this section prevail over general provisions of the Code of Civil Procedure governing judicial review. See Code of Civil Procedure Section 1121.110 (conflicting or inconsistent statute controls). The board is exempt from the provision in the Code of Civil Procedure governing standard of review of questions of law, so existing case law

will continue to apply to the board. See Code Civ. Proc. § 1123.420(b) & Comment.

The former second sentence of subdivision (c) which required the petition to be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, is superseded by Code of Civil Procedure Section 1123.630. Under that section, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.630(b)(2).

Gov't Code § 3564 (amended). Judicial review of unit determination or unfair practice case

3564. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from *judicial review* of the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such *judicial review of the* decision or order.

(c) Such *The* petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. ~~The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable.~~ Upon the filing of such *the*

petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless ~~such~~ *the* time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board ~~such~~ *any* temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. ~~The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive.~~ The provisions of Title 1 (~~commencing with Section 1067~~) Title 2 (*commencing with Section 1120*) of Part 3 of the Code of Civil Procedure ~~relating to writs~~ shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for ~~extraordinary relief from judicial review of~~ a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the *appellate* district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce ~~such the order by writ of mandamus~~ *appropriate process*. The court shall not review the merits of the order.

Comment. Section 3564 is amended to make judicial review of the Public Employment Relations Board subject to the provisions for judicial review in the Code of Civil Procedure. The board is exempt from the provision in the Code of Civil Procedure governing standard of review of questions of law, so existing case law will continue to apply to the board. See Code Civ. Proc. § 1123.420(b) & Comment.

The former second sentence of subdivision (c) which required the petition to be filed within 30 days after issuance of the board's final

order, order denying reconsideration, or order joining in the request for judicial review, is superseded by Code of Civil Procedure Section 1123.630. Under that section, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.630(b)(2).

ADMINISTRATIVE PROCEDURE ACT — RULEMAKING

Gov't Code § 11350 (amended). Judicial declaration on validity of regulation

11350. (a) ~~Any interested~~ *Except as provided in subdivisions (d) and (e), a 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* *under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The right to a judicial determination shall not be affected either by the failure to petition or to seek reconsideration of a petition filed pursuant to Section 11347.1 before the agency promulgating the regulations.* The regulation may be declared to be invalid for a substantial failure to comply with this chapter, or, in the case of an emergency regulation or order to repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 11346.1.

(b) In addition to any other ground that may exist, a regulation may be declared invalid if either of the following exists:

(1) The agency's determination that the regulation is reasonably necessary to effectuate the purpose of the statute, court decision, or other provision of law that is being implemented, interpreted, or made specific by the regulation is not supported by substantial evidence.

(2) The agency declaration pursuant to paragraph (8) of subdivision (a) of Section 11346.5 is in conflict with substantial evidence in the record.

~~For purposes of this section, the record shall be deemed to consist of all material maintained in the file of the rulemaking proceeding as defined in Section 11347.3.~~

(c) The approval of a regulation by the office or the Governor's overruling of a decision of the office disapproving a regulation shall not be considered by a court in ~~any action for declaratory relief brought with respect to a proceeding for~~ *judicial review of a regulation.*

(d) Notwithstanding Sections 1123.820 and 1123.850 of the Code of Civil Procedure, on judicial review:

(1) The court may not require the agency to add to the administrative record an explanation of reasons for a regulation.

(2) No evidence is admissible that was not in existence at the time of the agency proceeding under this chapter.

(e) Section 1123.460 of the Code of Civil Procedure does not apply to a proceeding under this section.

Comment. Section 11350 is amended to recognize that judicial review of agency regulations is now accomplished under Title 2 of Part 3 of the Code of Civil Procedure. The former second sentence of subdivision (a) is continued in Code of Civil Procedure Section 1123.330 (judicial review of rulemaking). The former second sentence of subdivision (b)(2) is continued in Code of Civil Procedure Section 1123.820(b) (contents of administrative record).

Subdivision (d) codifies one aspect of *Western States Petroleum Ass'n v. Superior Court*, 9 Cal. 4th 559, 578, 888 P.2d 1268, 1278, 38 Cal. Rptr. 2d 139, 149 (1995), and is consistent with Section 11347.3 which prescribes the contents of the rulemaking file and requires an affidavit of an agency official that the record is complete and the date on which the record was closed.

ADMINISTRATIVE PROCEDURE ACT — ADJUDICATION

Gov't Code § 11420.10 (amended). ADR authorized

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

(1) Mediation by a neutral mediator.

(2) Binding arbitration by a neutral arbitrator. An award in a binding arbitration is subject to judicial review in the manner provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. *Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure does not apply to judicial review of an award in binding arbitration under this section.*

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

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

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

Comment. Section 11420.10 is amended to make clear the judicial review provisions of the Code of Civil Procedure do not apply to binding arbitration under this section.

Gov't Code § 11425.50 (amended). Decision

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

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

(c) The statement of the factual basis for the decision shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding. The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence.

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

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

Comment. Subdivision (b) of Section 11425.50 is amended to apply to the reviewing agency the requirement that great weight be given to

factual determinations of the presiding officer based on credibility, consistent with requiring the court on judicial review to do the same. The former requirement in subdivision (b) that the court give great weight on judicial review to determinations of the presiding officer based on credibility is continued in Code of Civil Procedure Section 1123.430(b).

Subdivision (b) requires the agency to give great weight to factual determinations, but not to application of law to fact.

Gov't Code § 11523 (repealed). 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, the 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. On request of the petitioner for a record of the proceedings, the complete record of the proceedings, or the parts thereof as are designated by the petitioner in the request, shall be prepared by the Office of Administrative Hearings or the agency and shall be delivered to petitioner, within 30 days after the request, which time shall be extended for good cause shown, upon the payment of the fee specified in Section 69950 for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an administrative law judge, the final decision, a~~

~~transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.~~

Comment. The first sentence of former Section 11523 is continued in Code of Civil Procedure Sections 1120 (application of title) and 1121.110 (conflicting or inconsistent statute controls).

The second sentence is superseded by Code of Civil Procedure Section 1123.630 (time for filing petition for review of decision in adjudicative proceeding).

The third sentence is restated in Code of Civil Procedure Section 1123.320 (administrative review of final decision).

The first portion of the fourth sentence is continued in Code of Civil Procedure Section 1123.830 (preparation of record). The last portion of the fourth sentence is continued in substance in Code of Civil Procedure Section 1123.910 (fee for preparing record).

The fifth sentence is superseded by Code of Civil Procedure Section 1123.920 (recovery of costs of suit).

The first portion of the sixth sentence is omitted as unnecessary, since under Section 1123.920(b) the cost of the record is recoverable by the prevailing party, and under general rules of civil procedure costs of suit are included in the judgment. See Code Civ. Proc. § 1034(a); Cal. Ct. R. 870(b)(4). The last portion of the sixth sentence is continued in Code of Civil Procedure Section 1123.930.

The seventh sentence is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record).

The eighth sentence is superseded by Code of Civil Procedure Section 1123.630 (time for filing petition for review of decision in adjudicative proceeding).

The ninth sentence is continued in substance in Code of Civil Procedure Section 1123.710 (applicability of rules of practice for civil

actions) and Evidence Code Section 1511 (duplicate and original of a writing generally admissible to same extent).

The tenth sentence is continued in substance in Code of Civil Procedure Section 1123.920.

Gov't Code § 11524 (amended). Continuances

11524. (a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the presiding judge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

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

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

Comment. Section 11524 is amended to delete the provision for immediate review of denial of a continuance. Standard principles of finality and exhaustion of administrative remedies apply to this and other preliminary decisions in adjudicative proceeding. See, e.g., Code Civ. Proc. § 1123.310 (exhaustion required).

STATE PERSONNEL BOARD AND DEPARTMENT OF PERSONNEL ADMINISTRATION

Gov't Code § 19576.1 (amended). Employee discipline in State Bargaining Unit 5

19576.1. (a) Effective January 1, 1996, notwithstanding Section 19576, this section shall apply only to state employees in State Bargaining Unit 5.

(b) Whenever an answer is filed by an employee who has been suspended without pay for five days or less or who has received a formal reprimand or up to a five percent reduction in pay for five months or less, the Department of Personnel Administration or its authorized representative shall make an investigation, with or without a hearing, as it deems necessary. However, if he or she receives one of the cited actions in more than three instances in any 12-month period, he or she, upon each additional action within the same 12-month period, shall be afforded a hearing before the State Personnel Board if he or she files an answer to the action.

(c) The Department of Personnel Administration shall not have the above authority with regard to formal reprimands. Formal reprimands shall not be appealable by the receiving employee by any means, except that the State Personnel Board, pursuant to its constitutional authority, shall maintain its right to review all formal reprimands. Formal reprimands shall remain available for use by the appointing authorities for the purpose of progressive discipline.

(d) Disciplinary action taken pursuant to this section is not subject to Sections 19180, 19574.1, 19574.2, 19575, 19575.5, 19579, 19580, 19581, 19581.5, 19582, 19583, and 19587, or

to State Personnel Board Rules 51.1 to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive. *Disciplinary action taken pursuant to this section is not subject to judicial review.*

(e) Notwithstanding any law or rule, if the provisions of this section are in conflict with the provisions of the memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

Comment. Section 19576.1 is amended to add the second sentence to subdivision (d). This continues the substance of former Code of Civil Procedure Section 1094.5(j).

LOCAL AGENCIES

Gov't Code § 54963 (added). Decision of local agency; judicial review

54963. (a) This section applies to a decision of a local agency as defined in Section 1121.250 of the Code of Civil Procedure, other than by a school district, suspending, demoting, or dismissing an officer or employee, revoking or denying an application for a permit, license, or other entitlement, or denying an application for any retirement benefit or allowance.

(b) If the decision is not announced at the close of the hearing, the date, time, and place of the announcement of the decision shall be announced at the hearing.

(c) Judicial review of the decision shall be under Title 2 (commencing with 1120) of Part 3 of the Code of Civil Procedure.

Comment. Subdivision (a) of Section 54963 continues subdivision (e) of former Code of Civil Procedure Section 1094.6. Subdivision (b) continues the third sentence of subdivision (b) of former Code of Civil Procedure Section 1094.6. Subdivision (c) is new.

Section 54963 applies to agency action of specific application that determines a legal right, duty, privilege, immunity, or other legal interest of a particular person. Code Civ. Proc. § 1121.250 (“decision” defined).

Gov’t Code § 65009 (amended). Actions challenging local government decisions

65009. (a)(1) The Legislature finds and declares that there currently is a housing crisis in California and it is essential to reduce delays and restraints upon expeditiously completing housing projects.

(2) The Legislature further finds and declares that a legal action challenging a decision of a city, county, or city and county has a chilling effect on the confidence with which property owners and local governments can proceed with projects. Legal actions filed to attack, review, set aside, void, or annul a decision of a city, county, or city and county pursuant to this division can prevent the completion of needed developments even though the projects have received required governmental approvals.

(3) The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division.

(b)(1) In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds either of the following:

(A) The issue could not have been raised at the public hearing by persons exercising reasonable diligence.

(B) The body conducting the public hearing prevented the issue from being raised at the public hearing.

(2) If a public agency desires the provisions of this subdivision to apply to a matter, it shall include in any public

notice issued pursuant to this title a notice substantially stating all of the following: "If you challenge the (nature of the proposed action) in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the (public entity conducting the hearing) at, or prior to, the public hearing."

(3) The application of this subdivision to causes of action brought pursuant to subdivision (d) applies only to the final action taken in response to the notice to the city or county clerk. If no final action is taken, then the issue raised in the cause of action brought pursuant to subdivision (d) shall be limited to those matters presented at a properly noticed public hearing or to those matters specified in the notice given to the city or county clerk pursuant to subdivision (d), or both.

(c) Except as provided in subdivisions (d) and (i), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body's decision:

(1) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. This paragraph does not apply where an action is brought based upon the complete absence of a general plan or a mandatory element thereof, but does apply to an action attacking a general plan or mandatory element thereof on the basis that it is inadequate.

(2) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance.

(3) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan.

(4) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a

development agreement. An action or proceeding to attack, review, set aside, void, or annul the decisions of a legislative body to adopt, amend, or modify a development agreement shall only extend to the specific portion of the development agreement that is the subject of the adoption, amendment, or modification. This paragraph applies to development agreements, amendments, and modifications adopted on or after January 1, 1996.

(5) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in paragraphs (1), (2), (3), and (4).

(d) An action or proceeding shall be commenced and the legislative body served within one year after the accrual of the cause of action as provided in this subdivision, if the action or proceeding meets both of the following requirements:

(1) It is brought in support of the development of housing which meet the requirements for housing for persons and families with low or moderate incomes set forth in Section 65915.

(2) It is brought with respect to actions taken pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3 of this division, pursuant to Section 65589.5, 65863.6, 65915, or 66474.2 or pursuant to Chapter 4.2 (commencing with Section 65913).

A cause of action brought pursuant to this subdivision shall not be maintained until 60 days have expired following notice to the city or county clerk by the party bringing the cause of action, or his or her representative, specifying the deficiencies of the general plan, specific plan, or zoning ordinance. A cause of action brought pursuant to this subdivision shall accrue 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. A notice or cause of action brought by one party

pursuant to this subdivision shall not bar filing of a notice and initiation of a cause of action by any other party.

(e) Upon the expiration of the time limits provided for in this section, all persons are barred from any further action or proceeding.

(f) Notwithstanding Section 65700, this section shall apply to charter cities.

(g) Except as provided in ~~subdivision~~ *subdivisions* (d) and (j), this section shall not affect any law prescribing or authorizing a shorter period of limitation than that specified herein.

(h) Except as provided in paragraph (4) of subdivision (c), this section shall be applicable to those decisions of the legislative body of a city, county, or city and county made pursuant to this division on or after January 1, 1984.

(i) Where the action or proceeding challenges the adequacy of a housing element, the action or proceeding may be initiated up to 60 days following the date the Department of Housing and Community Development reports its findings concerning the housing element pursuant to subdivision (h) of Section 65585.

(j) *A challenge to action of a public agency under this section shall be brought under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, except as follows:*

(1) This subdivision does not apply to judicial review of an ordinance of a local agency.

(2) Sections 1123.630 and 1123.640 of the Code of Civil Procedure do not apply to proceedings governed by this section.

Comment. Section 65009 is amended to add subdivision (j) to make clear that judicial review under this section shall be under the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950. Paragraph (1) of subdivision (j) is consistent with Code of Civil Procedure Section 1121(d). Under paragraph (2) of

subdivision (j), the time limits and notice provisions of Code of Civil Procedure Sections 1123.630 and 1123.640 do not apply to proceedings governed by this section.

ZONING ADMINISTRATION

Gov't Code § 65907 (amended). Time for attacking administrative determination

65907. (a) ~~Except as otherwise provided by ordinance, any action or proceeding to attack, review, set aside, void, or annul~~ *A proceeding for judicial review of any decision of matters listed in Sections 65901 and 65903, or concerning of any of the proceedings, acts, or determinations taken, done, or made prior to such the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, shall not be maintained by any person unless the action or proceeding is commenced within 90 days and the legislative body is served within 120 days after the date of the decision. Thereafter, shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. After the time provided in Section 1123.640 of the Code of Civil Procedure has expired, all persons are barred from any such action or a proceeding for judicial review or any defense of invalidity or unreasonableness of that decision or of these proceedings, acts, or determinations. All actions *A proceeding for judicial review* brought pursuant to this section shall be given preference over all other civil matters before the court, except probate, eminent domain, and forcible entry and unlawful detainer proceedings.*

(b) Notwithstanding Section 65803, this section shall apply to charter cities.

(c) ~~The amendments to subdivision (a) shall apply to decisions made pursuant to this division on or after January 1, 1984.~~

Comment. Subdivision (a) of Section 65907 is amended to make proceedings to which it applies subject to the judicial review provisions in the Code of Civil Procedure. Subdivision (c) is deleted as no longer necessary.

PRIVATE HOSPITAL BOARDS

Health & Safety Code §§ 1339.62-1339.64 (added). Judicial review

Article 12. Judicial Review of Decision of Private Hospital Board

§ 1339.62. Definitions

1339.62. As used in this article:

(a) “Adjudicative proceeding” is defined in Section 1121.220 of the Code of Civil Procedure.

(b) “Decision” is defined in Section 1121.250 of the Code of Civil Procedure.

Comment. Section 1339.62 applies definitions applicable to the judicial review provisions in the Code of Civil Procedure.

§ 1339.63. Judicial review; venue

1339.63. (a) Judicial review of a decision of a private hospital board in an adjudicative proceeding shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.

(b) The proper county for judicial review of a decision of a private hospital board in an adjudicative proceeding is determined under Title 4 (commencing with Section 392) of Part 2 of the Code of Civil Procedure.

Comment. Subdivision (a) of Section 1339.63 continues the effect of former Code of Civil Procedure Section 1094.5(d). See also *Anton v. San Antonio Community Hosp.*, 19 Cal. 3d 802, 815-20, 567 P.2d 1162, 140 Cal. Rptr. 442 (1979) (administrative mandamus available to review action by private hospital board).

Subdivision (b) continues the substance of existing law. See Code Civ. Proc. § 1109; California Administrative Mandamus § 8.16, at 269 (Cal.

Cont. Ed. Bar, 2d ed. 1989). See also Sections 1339.62 (“adjudicative proceeding” and “decision” defined); 1339.64 (standard of review of factfinding).

Judicial review of a decision of a public hospital is also under Code of Civil Procedure Sections 1120-1123.950. See Code Civ. Proc. §§ 1120 (title applies to judicial review of agency action), 1121.130 (“agency” broadly defined to include all governmental entities).

§ 1339.64. Standard of review of factfinding

1339.64. The standard for judicial review of whether a decision of a private hospital board in an adjudicative proceeding is based on an erroneous determination of fact made or implied by the board is whether the board’s determination is supported by substantial evidence in the light of the whole record.

Comment. Section 1339.64 continues former Code of Civil Procedure Section 1094.5(d), except that the independent judgment standard of review of alleged discriminatory action under Section 1316 is not continued.

AGRICULTURAL LABOR RELATIONS BOARD

Lab. Code § 1160.8 (amended). Review of final order of board; procedure

1160.8. Any person aggrieved by the final order of the board granting or denying in whole or in part the relief sought may obtain a review of *such the* order in the court of appeal having jurisdiction over the county wherein the unfair labor practice in question was alleged to have been engaged in, or wherein *such the* person resides or transacts business, by ~~filing in such court a written petition requesting that the order of the board be modified or set aside. Such petition shall be filed with the court within 30 days from the date of the issuance of the board’s order under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~ Upon the filing of *such the* petition *for review*, the court shall cause notice to be served upon the board and thereupon shall have

jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board within 10 days after the clerk's notice unless ~~such~~ *the* time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board ~~such~~ *any* temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. ~~The findings of the board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.~~

An order directing an election shall not be stayed pending review, but ~~such~~ *the* order may be reviewed as provided in Section 1158.

If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein ~~such~~ *the* person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce ~~such~~ *the* order by writ of injunction or other proper process. The court shall not review the merits of the order.

Comment. Section 1160.8 is amended to make proceedings to which it applies subject to the judicial review provisions in the Code of Civil Procedure.

The former second sentence of Section 1160.8 which required the petition to be filed within 30 days from the date of issuance of the board's order is superseded by Code of Civil Procedure Section 1123.630. Under that section, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the

agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.630(b)(2).

WORKERS' COMPENSATION APPEALS BOARD

Lab. Code § 5950 (amended). Judicial review

~~5950. Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to *petition* the Supreme Court or to the court of appeal for the appellate district in which he *the person* resides, for a writ of *judicial* review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration.~~

Comment. Section 5950 is amended to delete the second sentence specifying the time limit for judicial review. Under Code of Civil Procedure Section 1123.630, the petition for review must be filed not later than 30 days after the decision is effective. A decision is effective 30 days after it is delivered or mailed to the respondent, unless the agency orders that it shall become effective sooner. Code Civ. Proc. § 1123.630(b)(2).

Lab. Code § 5951 (repealed). Writ of review

~~5951. The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board as certified to by it.~~

Comment. Section 5951 is repealed because it is superseded by the judicial review provisions of the Code of Civil Procedure. See Section 5954. The provision in the first sentence for the return of the writ of review is superseded by Code of Civil Procedure Section 1123.710 (applicability of rules of practice for civil actions). The provision in the first sentence for the record of the department is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record). The second sentence is superseded by Code of Civil Procedure Sections 1123.810 (administrative record exclusive basis for judicial review) and 1123.850 (new evidence on judicial review).

Lab. Code § 5952 (repealed). Scope of review

~~5952. The review by the court shall not be extended further than to determine, based upon the entire record which shall be certified by the appeals board, whether:~~

~~(a) The appeals board acted without or in excess of its powers.~~

~~(b) The order, decision, or award was procured by fraud.~~

~~(c) The order, decision, or award was unreasonable.~~

~~(d) The order, decision, or award was not supported by substantial evidence.~~

~~(e) If findings of fact are made, such findings of fact support the order, decision, or award under review.~~

~~Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.~~

Comment. Subdivisions (a) through (e) of former Section 5952 are superseded by Code of Civil Procedure Sections 1123.410-1123.460. See also Code Civ. Proc. § 1123.160 (condition of relief).

The last sentence is superseded by Code of Civil Procedure Sections 1123.430 (review of factfinding), 1123.810 (administrative record exclusive basis for review), and 1123.850 (new evidence). Nothing in the Code of Civil Procedure or in this article permits the court to hold a trial de novo.

Lab. Code § 5953 (amended). Right to appear in judicial review proceeding

~~5953. The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board. The parties to a judicial review proceeding are the appeals board and each party to the action or proceeding before the appeals board shall have the right to appear in the review proceeding. Upon the hearing, the court shall enter judgment either affirming or annulling the order, decision, or award, or the court may remand the case for further proceedings before the appeals board whose interest is adverse to the petitioner for judicial review.~~

Comment. Section 5953 is largely superseded by the judicial review provisions of the Code of Civil Procedure. See Section 5954. The first sentence is superseded by Code of Civil Procedure Section 1123.430 (review of factfinding). The second sentence is superseded by Code of Civil Procedure Section 1123.420 (review of interpretation of law). The fourth sentence is superseded by Code of Civil Procedure Section 1123.730 (type of relief).

Lab. Code § 5954 (amended). Judicial review

~~5954. The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings in the courts under the provisions of this article. A copy of every pleading filed pursuant to the terms of this article shall be served on the appeals board and upon every party who entered an appearance in the action before the appeals board and whose interest therein is adverse to the party filing such pleading. Judicial review shall be under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

Comment. Section 5954 is amended to replace the former provisions with a reference to the judicial review provisions of the Code of Civil Procedure. Special provisions of this article prevail over general provisions of the Code of Civil Procedure governing judicial review. See

Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls). Copies of pleadings in judicial review proceedings must be served on the parties. See Code Civ. Proc. §§ 1123.610 (petition for review), 1123.710 (applicability of rules of practice for civil actions).

Lab. Code § 5955 (amended). Courts having jurisdiction; mandate

5955. No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul any order, rule, decision, or award of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties ~~but a writ of mandate shall lie from the Supreme Court or a court of appeal in all proper cases.~~

Comment. Section 5955 is amended to delete the former reference to a writ of mandate. The writ of mandate has been replaced by a petition for review. See Section 5954; Code Civ. Proc. § 1123.610 (petition for review). See also Code Civ. Proc. § 1123.510(b) (original writ jurisdiction of Supreme Court and courts of appeal not affected).

Lab. Code § 5956 (repealed). Stay of order

~~5956. The filing of a petition for, or the pendency of, a writ of review shall not of itself stay or suspend the operation of any order, rule, decision, or award of the appeals board, but the court before which the petition is filed may stay or suspend, in whole or in part, the operation of the order, decision, or award of the appeals board subject to review, upon the terms and conditions which it by order directs, except as provided in Article 3 of this chapter.~~

Comment. Former Section 5956 is superseded by Code of Civil Procedure Section 1123.720 (stays). The stay provisions of the Code of Civil Procedure are subject to Article 3 (commencing with Section 6000) (undertaking on stay order). See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute prevails).

Lab. Code § 6000 (amended). Undertaking on stay order

6000. The operation of any order, decision, or award of the appeals board under the provisions of this division or any judgment entered thereon, shall not at any time be stayed by the court to which petition is made for a ~~writ of~~ *judicial* review, unless an undertaking is executed on the part of the petitioner.

Comment. Section 6000 is amended reflect replacement of the writ of review by the judicial review procedure in Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. The stay provisions of Code of Civil Procedure Section 1123.720 are subject to this article. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute prevails).

CALIFORNIA ENVIRONMENTAL QUALITY ACT**Pub. Res. Code § 21168 (amended). Conduct of proceeding**

21168. ~~Any~~ (a) *Except as provided in subdivision (b), an action or proceeding to attack, review, set aside, void or annul a determination, finding, or decision of a public agency, made as a 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 a public agency, on the grounds of noncompliance with the provisions of this division shall be in accordance with the provisions of Section 1094.5 under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.*

In any such ~~action~~ *proceeding*, the court shall not exercise its independent judgment on the evidence, but shall only determine *only* whether the act or decision is supported by substantial evidence in the light of the whole record.

(b) *Sections 1123.630 and 1123.640 of the Code of Civil Procedure do not apply to judicial review of proceedings under this division.*

Comment. Section 21168 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

The former reference to “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 a public agency” is deleted so that Section 21168 will apply both to proceedings formerly reviewed by administrative mandamus and to those formerly reviewed by traditional mandamus.

Pub. Res. Code § 21168.5 (repealed). Inquiry limited to prejudicial abuse of discretion

~~21168.5. In any action or proceeding, other than an action or proceeding under Section 21168, to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with this division, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.~~

Comment. Section 21168.5, which applied to traditional mandamus, is superseded by Section 21168. Under Section 21168, both administrative and traditional mandamus under prior law are replaced by the new judicial review statute. See Code Civ. Proc. §§ 1120-1123.950. The provision of former Section 21168.5 limiting the inquiry to prejudicial abuse of discretion is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review). Discretionary action is now reviewed using the standard of Code of Civil Procedure Section 1123.450 (abuse of discretion).

STATE ENERGY RESOURCES CONSERVATION AND
DEVELOPMENT COMMISSION

Pub. Res. Code § 25531.5 (added). Inapplicability of Code of Civil Procedure

25531.5. Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure does not apply to judicial review of a decision of the commission on an application of an electric utility for certification of a site and related facility under this code.

Comment. Section 25531.5 makes clear the judicial review provisions of the Code of Civil Procedure do not apply to power plant siting decisions of the Energy Commission under this code.

PUBLIC UTILITIES COMMISSION

Pub. Util. Code § 1768 (added). Inapplicability of Code of Civil Procedure

1768. Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure does not apply to judicial review of proceedings of the commission under this code.

Comment. Section 1768 makes clear the judicial review provisions of the Code of Civil Procedure do not apply to proceedings of the Public Utilities Commission under this code.

PROPERTY TAXATION

Rev. & Tax. Code § 2954 (amended). Assessee's challenge by writ

2954. (a) An assessee may challenge a seizure of property made pursuant to Section 2953 by petitioning for a writ of prohibition or writ of mandate in the superior court review under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure alleging:

- (1) That there are no grounds for the seizure;
- (2) That the declaration of the tax collector is untrue or inaccurate; and
- (3) That there are and will be sufficient funds to pay the taxes prior to the date such taxes become delinquent.

(b) As a condition of maintaining the special review proceedings for a writ, the assessee shall file with the tax collector a bond sufficient to pay the taxes and all fees and charges actually incurred by the tax collector as a result of the seizure, and shall furnish proof of the bond with the court. Upon the filing of the bond, the tax collector shall release the property to the assessee.

Comment. Section 2954 is amended to make judicial review under the section subject to general provisions in the Code of Civil Procedure for review of agency action.

Rev. & Tax. Code § 2955 (technical amendment). Recovery of costs by assessee

2955. If the assessee prevails in the *special review* proceeding ~~for a writ~~ under Section 2954, the assessee is entitled to recover from the county all costs, including attorney's fees, incurred by virtue of the seizure and subsequent actions, and the tax collector shall bear the costs of seizure and any fees and expenses of keeping the seized property. If, however, subsequent to the date the taxes in question become delinquent, the taxes are not paid in full and it becomes necessary for the tax collector to seize property of the assessee in payment of the taxes or to commence an action against the assessee for recovery of the taxes, in addition to all taxes and delinquent penalties, the assessee shall reimburse the county for all costs incurred at the time of the original seizure and all other costs charged to the tax collector or the county as a result of the original seizure and any subsequent actions.

Comment. Section 2955 is amended to recognize that judicial review under Section 2954 is subject to general provisions in the Code of Civil Procedure for review of agency action.

Rev. & Tax. Code § 2956 (technical amendment). Precedence for court hearing

2956. In all *special review* proceedings ~~for a writ~~ brought under this article, all courts in which such proceedings are pending shall, upon the request of any party thereto, give such proceedings precedence over all other civil actions and proceedings, except actions and proceedings to which special precedence is otherwise given by law, in the matter of the setting of them for hearing or trial and in their hearing or trial,

to the end that all such proceedings shall be quickly heard and determined.

Comment. Section 2956 is amended to recognize that judicial review under this article is subject to general provisions in the Code of Civil Procedure for review of agency action.

STATE BOARD OF EQUALIZATION

Rev. & Tax. Code § 7279.6 (amended). Judicial review

7279.6. An arbitrary and capricious action of the board in implementing the provisions of this chapter shall be reviewable ~~by writ~~ *under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.*

Comment. Section 7279.6 is amended to make judicial review under the section subject to general provisions in the Code of Civil Procedure for review of agency action.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

Unemp. Ins. Code § 1243 (amended). Judicial review

1243. A decision of the appeals board on an appeal from a denial of a protest under Section 1034 or on an appeal from a denial or granting of an application for transfer of reserve account under Article 5 (commencing with Section 1051) shall be subject to judicial review ~~if an appropriate proceeding is filed by the employer within 90 days of the service of notice of the decision~~ *under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.* The director may, in writing, extend for a period of not exceeding two years the time *provided in Section 1123.630 of the Code of Civil Procedure* within which such proceeding may be instituted if written request for such extension is filed with the director within the ~~90-day period~~ *time prescribed by that section.*

Comment. Section 1243 is amended to make clear that judicial review under the section shall be under Code of Civil Procedure Sections 1120-1123.950. The former 90-day time limit for a proceeding under this section is superseded by the time limit provided in Code of Civil Procedure Section 1123.630 (30 days from effective date of decision or giving of notice, whichever is later).

DEPARTMENT OF MOTOR VEHICLES

Veh. Code § 13559 (amended). Petition for review

13559. (a) Notwithstanding Section 14400 or 14401, ~~within 30 days of the issuance of the~~ *a person who has been issued a* notice of determination of the department sustaining an order of suspension or revocation of the person's privilege to operate a motor vehicle, after the hearing pursuant to Section 13558, ~~the person may file a petition for review of the order in the court of competent jurisdiction in the person's county of residence. The filing of a petition for judicial review shall not stay the order of suspension or revocation. The review shall be on the record of the hearing and the court shall not consider other evidence. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is not supported by the evidence in the record,~~ *Except as provided in this section, the proceedings shall be conducted under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure. In addition to the relief authorized under Title 2,* the court may order the department to rescind the order of suspension or revocation and return, or reissue a new license to, the person.

(b) A finding by the court after a review pursuant to this section shall have no collateral estoppel effect on a subsequent criminal prosecution and does not preclude relitigation of those same facts in the criminal proceeding.

Comment. Section 13559 is amended to make judicial review proceedings under the section subject to the judicial review provisions of the Code of Civil Procedure. The special venue rule of Section 13559 is preserved.

Veh. Code § 14401 (amended). Statute of limitations on review

14401. (a) Any action brought in a court of competent jurisdiction to review any order of the department refusing, canceling, placing on probation, suspending, or revoking the privilege of a person to operate a motor vehicle shall be commenced within 90 days from the date the order is noticed.

(b) Upon final completion of all administrative appeals, the person whose driving privilege was refused, canceled, placed on probation, suspended, or revoked shall be given written notice by the department of his or her right to a review by a court pursuant to ~~subdivision (a) under Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure.~~

Comment. Subdivision (b) of Section 14401 is amended to recognize that judicial review is under Code of Civil Procedure Sections 1120-1123.950. See Code Civ. Proc. § 1121.120 (other forms of judicial review replaced).

DEPARTMENT OF SOCIAL SERVICES

Welf. & Inst. Code § 10962 (amended). Judicial review

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition ~~with the superior court, for judicial review under the provisions of Section 1094.5 Title 2 (commencing with Section 1120) of Part 3 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such. The~~ review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in ~~such the~~ proceedings. Immediately upon

being served the director shall serve a copy of the petition on the other party entitled to judicial review and ~~such~~ *that* party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition *for review* pursuant to this section. ~~Any such petition to the superior court~~ *The proceeding for judicial review* shall be entitled to a preference in setting a date for hearing ~~on the petition~~. No bond shall be required in the case of any petition for review, nor in any appeal ~~therefrom~~ *from the decision of the superior court*. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if ~~he obtains a decision in his favor~~ *the applicant or recipient obtains a favorable decision*.

Comment. Section 10962 is amended to make judicial review of a welfare decision of the Department of Social Services subject to the judicial review provisions in the Code of Civil Procedure. Judicial review is in the superior court. Code Civ. Proc. § 1123.510. The scope of review is prescribed in Code of Civil Procedure Sections 1123.410-1123.460. See also Code Civ. Proc. § 1123.160 (condition of relief).

Special provisions of this section prevail over general provisions of the Code of Civil Procedure governing judicial review. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls).

UNCODIFIED

Uncodified (added). Severability

SEC. _____. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Uncodified (added). Application of new law

SEC. _____. (a) This title applies to a proceeding commenced on or after January 1, 1998, for judicial review of agency action.

(b) The applicable law in effect before January 1, 1998, continues to apply to a proceeding for judicial review of agency action pending on January 1, 1998.

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COMMENTS TO TECHNICAL CONFORMING REVISIONS

Note. Senate Bill 261 makes revisions in existing codes to conform them to the new provisions in the Code of Civil Procedure for judicial review of agency action. To save printing costs, the text of Senate Bill 261 is not set out in this Appendix. Instead, Comments to sections in the bill are set out below. Leadlines for uncodified acts use the same numbering system as West's Annotated California Codes.

Department of Consumer Affairs

Bus. & Prof. Code § 125.7 (amended). Restraining orders

Comment. Section 125.7 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Bus. & Prof. Code § 125.8 (amended). Temporary order restraining licensee

Comment. Section 125.8 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Denial, Suspension, and Revocation of Licenses Generally

Bus. & Prof. Code § 494 (amended). Interim suspension or restriction order

Comment. Section 494 is amended to revise references to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Healing Arts Generally

Bus. & Prof. Code § 809.8 (amended). Judicial review, discovery, and testimony

Comment. Section 809.8 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Medical Board of California

Bus. & Prof. Code § 2087 (amended). Action to compel approval or admission

Comment. Section 2087 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language prohibiting the court from exercising independent judgment on the evidence is deleted as unnecessary, since under Code of Civil Procedure Section 1123.430 the standard of review of factfinding is substantial evidence in light of the whole record.

Bus. & Prof. Code § 2337 (amended). Calendar preference

Comment. Section 2337 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Board of Pharmacy

Bus. & Prof. Code § 4300 (amended). Suspension or revocation of license; judicial review

Comment. Section 4300 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Board of Examiners in Veterinary Medicine

Bus. & Prof. Code § 4875.6 (amended). Procedure to contest citation or penalty

Comment. Section 4875.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Contractors' State License Board

Bus. & Prof. Code § 7071.11 (amended). Action on bond

Comment. Section 7071.11 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Bureau of Security and Investigative Services

Bus. & Prof. Code § 7502.4 (amended). Restraining order

Comment. Section 7502.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Structural Pest Control Board

Bus. & Prof. Code § 8662 (amended). Appeal of fine or suspension; judicial review

Comment. Section 8662 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Bus. & Prof. Code § 8698.3 (amended). (Operative until January 1, 1997) Civil penalties; judicial review

Comment. Section 8698.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former 30-day time limit of Section 8698.3 is superseded by Code of Civil Procedure Section 1123.640.

Real Estate Commissioner

Bus. & Prof. Code § 10471.5 (technical amendment). Notice of commissioner's decision

Comment. Section 10471.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former requirement of notice of the time to file a petition for review is superseded by Code of Civil Procedure Section 1123.630.

Department of Food and Agriculture (part 1)

Bus. & Prof. Code § 12015.3 (amended). (Operation contingent) Civil penalty

Comment. Section 12015.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (c)(9) prescribing the time limit for a petition is superseded by Code of Civil Procedure Section 1123.640.

Attorney General (part 1)

Bus. & Prof. Code § 17550.18 (amended). (Operative until January 1, 1999) Severability; burden of proof; proceeding challenging decision of Attorney General

Comment. Section 17550.18 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to substantial evidence review is continued in substance in Code of Civil Procedure Section 1123.430 (standard of review of factfinding). See also Code Civ. Proc. § 1123.450 (review of

agency exercise of discretion). The former provision on the record for review is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record) and 1123.850 (new evidence on judicial review).

California Horse Racing Board

Bus. & Prof. Code § 19463 (amended). Finality of action

Comment. Section 19463 is amended to make clear that judicial review of board action is under the judicial review provisions of the Code of Civil Procedure. The former last sentence of Section 19463 (30-day limitation period) is superseded by Code of Civil Procedure Section 1123.630 (limitation period for adjudicative proceeding). For administrative action other than in an adjudicative proceeding, the general limitations periods for ordinary civil actions will apply, as determined by the nature of the right asserted. See, e.g., *Allen v. Humboldt County Board of Supervisors*, 220 Cal. App. 2d 877, 884-85, 34 Cal. Rptr. 232, 236 (1963); see also *Berkeley Unified School Dist. v. State*, 33 Cal. App. 4th 350, 362-63, 365, 39 Cal. Rptr. 2d 326, 333, 335 (1995).

Attorney General (part 2)

Bus. & Prof. Code § 19813 (amended). Conduct of proceedings

Comment. Section 19813 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Civ. Code § 1812.203 (amended). Filing and updating disclosure statements

Comment. Section 1812.203 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to superior court is superseded by Code of Civil Procedure Section 1123.510 (superior court jurisdiction). The former reference to “other judicial relief” is deleted, since the judicial review provisions of the Code of Civil Procedure provide the exclusive means of judicial review. See Code Civ. Proc. § 1121.120.

State Board of Equalization & Franchise Tax Board

Code Civ. Proc. § 706.075 (amended). Withholding order for taxes

Comment. Section 706.075 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Regulatory Agencies

Code Civ. Proc. § 1028.5 (technical amendment). Action between small business and regulatory agency

Comment. Section 1028.5 is amended to revise the reference to former Section 800 of the Government Code, which has been recodified in the Code of Civil Procedure.

General Law

Code Civ. Proc. § 1089.5 (amended). Answer to petition for writ of mandate

Comment. Section 1089.5 is amended to delete the reference to Section 11523 of the Government Code, which has been repealed. For formal adjudication under the Administrative Procedure Act, the record is requested pursuant to Section 1123.830, but Section 1089.5 does not apply to judicial review proceedings under Sections 1120-1123.950. See Section 1123.710 (Part 2 applies, but not Part 3).

Public Entities (part 1)

Code Civ. Proc. § 1245.255 (amended). Judicial review; resolution of necessity

Comment. Section 1245.255 is amended to change the former reference to a writ of mandate to a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

School District Governing Boards

Educ. Code § 35145 (amended). Public meetings

Comment. Section 35145 is amended to delete the reference to mandamus or injunction. See Gov't Code § 54960.1 (petition for review).

Community College District Governing Boards

Educ. Code § 72121 (amended). Public meetings

Comment. Section 72121 is amended to delete the reference to mandamus or injunction. See Gov't Code § 54960.1 (petition for review).

Educ. Code § 81960 (amended). Proceeding to compel performance of duties

Comment. Section 81960 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Educ. Code § 87611 (amended). Judicial review

Comment. Section 87611 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Trustees of California State University**Educ. Code § 90072 (amended). Judicial review**

Comment. Section 90072 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Regents of the University of California**Educ. Code § 92491 (amended). Bondholder's power to secure performance**

Comment. Section 92491 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

California Educational Facilities Authority**Educ. Code § 94148 (amended). Restrictions**

Comment. Section 94148 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Council for Private Postsecondary and Vocational Education**Educ. Code § 94323 (amended). Procedure for notice and hearing**

Comment. Subdivision (k)(1) of Section 94323 is amended to replace the former reference to a writ of mandate with a reference to the

provisions for judicial review of Code of Civil Procedure Sections 1120-1123.950.

Former subdivision (k)(2) is deleted. The first sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record). The second sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Section 1123.470 (burden of demonstrating invalidity of agency action on party asserting it). The third sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Section 1123.810 (record exclusive basis for judicial review). The fourth sentence of former subdivision (k)(2) is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

Former subdivision (k)(3) is redesignated as subdivision (k)(2) and amended to delete the requirement that the party seeking a stay must establish a substantial likelihood that it will prevail on the merits. This is superseded by Code of Civil Procedure Section 1123.720(b) (petitioner likely to prevail on the merits, without a stay petitioner will suffer irreparable injury, and stay will not substantially harm others or threaten public health, safety, or welfare).

County Elections Officials

Elec. Code § 9190 (amended). Public examination; amendment or deletion of materials

Comment. Section 9190 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Elec. Code § 9295 (amended). Public examination

Comment. Section 9295 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Elec. Code § 13313 (amended). Public examination

Comment. Section 13313 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Savings and Loan Commissioner

Fin. Code § 8055 (amended). Judicial review

Comment. Section 8055 is amended to refer to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the former second sentence. The former second sentence is superseded by Code of Civil Procedure Section 1123.630. Under Section 1123.630, the time for filing a petition for review is 30 days after the decision is effective.

Fish and Game Commission

Fish & Game Code § 2076 (amended). Judicial review

Comment. Section 2076 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Food and Agriculture (part 2)

Food & Agric. Code § 5311 (amended). Civil penalty

Comment. Section 5311 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (c) to the time within which review must be commenced is superseded by Code of Civil Procedure Section 1123.630.

State Agencies Responsible for Roadside Vegetation Control

Food & Agric. Code § 5509 (amended). Judicial review

Comment. Section 5509 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former second sentence of Section 5509 authorizing injunctive relief is continued in substance in Code of Civil Procedure Section 1123.730 (relief permitted).

Department of Food and Agriculture (part 3)

Food & Agric. Code § 11512.5 (amended). Suspension; appeal

Comment. Section 11512.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

The former provision in subdivision (a)(5) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Food & Agric. Code § 12648 (amended). Declaration of crop as nuisance; judicial review

Comment. Section 12648 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 12999.4 (amended). Civil penalty

Comment. Section 12999.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision requiring review to be sought within 30 days after the date of the decision is superseded by Code of Civil Procedure Section 1123.630.

Food & Agric. Code § 12999.5 (amended). Civil penalty

Comment. Section 12999.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (c)(9) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Food & Agric. Code § 14009 (amended). Review of action involving permit; judicial review

Comment. Section 14009 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 15071.5 (amended). Civil penalty

Comment. Section 15071.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 18931 (amended). Administrative and judicial review

Comment. Section 18931 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 19447 (amended). Civil penalty

Comment. Section 19447 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 21051.3 (amended). Civil penalty

Comment. Section 21051.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

The former provision in subdivision (c) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Food & Agric. Code § 21051.4 (amended). Civil penalty

Comment. Section 21051.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 24007 (amended). Civil penalty; judicial review

Comment. Section 24007 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (f) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Food & Agric. Code § 35928 (amended). Prohibited use of raw milk; judicial review

Comment. Subdivision (d) of Section 35928 is amended to replace the former reference to Section 1085 of the Code of Civil Procedure with a reference to Code of Civil Procedure Sections 1120-1123.950, and to delete the former reference to the superior court. Under Section 1123.510 of the Code of Civil Procedure, the superior court is the proper court for judicial review.

Food & Agric. Code § 43003 (amended). Civil penalty; judicial review

Comment. Section 43003 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 46007 (amended). Civil penalty; judicial review

Comment. Section 46007 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (e) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630. The former provision in subdivision (e) for review to be sought by “any person” is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). This may not be a significant substantive change, because “any person” may have been qualified by the provision in Code of Civil Procedure Section 1086 permitting mandamus to be sought by a party “beneficially interested.”

Food & Agric. Code § 47025 (amended). (Operative until January 1, 2000) Violations and enforcement; judicial review

Comment. Section 47025 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The provision formerly in subdivision (d)(9) prescribing the time within which judicial review must be sought is superseded by Code of Civil Procedure Section 1123.630.

Food & Agric. Code § 59234.5 (amended). Deficiency determination

Comment. Subdivision (d) of Section 59234.5 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 60016 (amended). Deficiency judgment

Comment. Subdivision (d) of Section 60016 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 61899 (amended). Judicial review

Comment. Section 61899 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Food & Agric. Code § 62665 (amended). Judicial review

Comment. Section 62665 is amended to refer to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former 30-day time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Public Entities (part 2)**Gov't Code § 942 (amended). Judicial review**

Comment. Section 942 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to compel performance of a ministerial duty of a public entity. See Code Civ. Proc. §§ 1121.120, 1123.610. However, an action against the public entity under the California Tort Claims Act is not subject to the judicial review provisions of the Code of Civil Procedure. See *id.* § 1121(a)(3) and Comment.

Local Public Entities

Gov't Code § 970.2 (amended). Duty of public entity to pay judgment; judicial review

Comment. Section 970.2 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to compel performance of a ministerial duty of a public entity. See Code Civ. Proc. §§ 1121.120, 1123.610. However, an action against the public entity under the California Tort Claims Act is not subject to the judicial review provisions of the Code of Civil Procedure. See *id.* § 1121(a)(3) and Comment.

Gov't Code § 7911 (amended). Return of excess revenues; judicial review

Comment. Section 7911 is amended to replace the former reference to a writ of mandate with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.850.

Administrator for Oil Spill Response, Department of Fish & Game

Gov't Code § 8670.68 (amended). Complaint; hearing; judicial review

Comment. Section 8670.68 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (d) for review jurisdiction in the court of appeal is superseded by Code of Civil Procedure Section 1123.510 (superior court jurisdiction). The former fourth sentence of subdivision (d) (substantial evidence review) is superseded by Code of Civil Procedure Sections 1123.420 (independent judgment review of application of law to fact) and 1123.430 (substantial evidence review of factfinding). The former fifth sentence of subdivision (d) (petition for mandate does not stay corrective action or penalties) is superseded by Code of Civil Procedure Section 1123.720 (stay in discretion of reviewing court).

Gov't Code § 8670.69.6 (amended). Judicial review of cease and desist order

Comment. Section 8670.69.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to the superior court is continued in substance in

Code of Civil Procedure Section 1123.510 (jurisdiction in superior court).

State Agencies

Gov't Code § 11130 (amended). Commencement of action

Comment. Section 11130 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Gov't Code § 11130.3 (amended). Voiding action in violation of open meeting law

Comment. Section 11130.3 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former provision in subdivision (a) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Administrative Procedure Act (rulemaking)

Gov't Code § 11350.3 (amended). Judicial review of disapproved or repealed regulation

Comment. Section 11350.3 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Administrative Procedure Act (administrative adjudication)

Gov't Code § 11460.80 (amended). (Operative July 1, 1997) Judicial review

Comment. Section 11460.80 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Gov't Code § 11517 (amended). Decision in contested case

Comment. Section 11517 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Gov't Code § 11529 (amended). Interim orders

Comment. Section 11529 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Fair Employment and Housing Commission**Gov't Code § 12987.1 (amended). Judicial review**

Comment. Section 12987.1 is amended to revise the references to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The language added to the last portion of subdivision (a) continues the substance of the former language it replaces. The language formerly found in subdivision (b) concerning permissible relief is continued in substance in Code of Civil Procedure Sections 1123.720 (stay of agency action) and 1123.730 (court may set aside or modify agency action and make interlocutory orders).

State Board of Control**Gov't Code § 13969.1 (amended). Decision; review**

Comment. Section 13969.1 is amended to replace the former references to a writ of mandate with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.850.

California Health Facilities Financing Authority**Gov't Code § 15444 (amended). Rights and remedies of bond holders**

Comment. Section 15444 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to compel performance of a ministerial duty by a public entity. See Code Civ. Proc. §§ 1121.120, 1123.610.

Commission on State Mandates**Gov't Code § 17559 (amended). Judicial review**

Comment. Section 17559 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Board of Administration, Public
Employees Retirement System

Gov't Code § 20126 (technical amendment). Refusal to admit liability

Comment. Section 20126 is amended to revise the reference to former Section 800.

County Boards of Supervisors (part 1)

Gov't Code § 26370 (amended). Rights and remedies of bond holders

Comment. Section 26370 is amended to replace the former reference to mandamus or other appropriate proceeding with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Gov't Code § 26470 (amended). Rights and remedies of bond holders

Comment. Section 26470 is amended to replace the former reference to mandamus or other appropriate proceeding with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

County Boards of Retirement

Gov't Code § 31725 (amended). Determination of permanent incapacity

Comment. Section 31725 is amended to replace the former reference to the writ of mandamus with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.850.

Local Agencies (part 1)

Gov't Code § 50770 (amended). Rights and remedies of bond holders

Comment. Section 50770 is amended to replace the former reference to mandamus or other appropriate proceeding with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Governing Boards of Cities and Counties

Gov't Code § 51154 (amended). Judicial review

Comment. Section 51154 is amended to add subdivision (b). The judicial review provisions of the Code of Civil Procedure have replaced mandamus as the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

County Boards of Supervisors (part 2) or City Council

Gov't Code § 51286 (amended). Judicial review

Comment. Section 51286 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Gov't Code § 51294 (amended). Enforcement

Comment. Section 51294 is amended to add subdivision (b). The judicial review provisions of the Code of Civil Procedure have replaced mandamus as the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Gov't Code § 51294.2 (amended). Validation proceedings

Comment. Section 51294.2 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Gov't Code § 53069.4 (technical amendment). Violation of local ordinance; appeal

Comment. Section 53069.4 is amended to revise the reference to the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950.

Gov't Code § 53595.35 (amended). Remedies of trustees and holders of debt instruments

Comment. Section 53595.35 is amended to replace the former reference to enforcement by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Local Agencies (part 2)

Gov't Code § 54642 (amended). Enforcement of rights of bondholders

Comment. Section 54642 is amended to replace the former reference to enforcement by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Gov't Code § 54702.8 (amended). Action by holder of bonds

Comment. Section 54702.8 is amended to replace the former reference to enforcement by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Gov't Code § 54740.6 (amended). Judicial review

Comment. Section 54740.6 is amended to replace the former references to mandamus with references to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former provision for superior court jurisdiction is continued in substance in Code of Civil Procedure Section 1123.510. The former time limit for a mandamus petition under this section is superseded by the time limit in Code of Civil Procedure Section 1123.640. The former provision for the court to exercise independent judgment on the evidence is superseded by Code of Civil Procedure Section 1123.440 (standard of review of determinations of fact).

Gov't Code § 54960 (amended). Proceeding to prevent violation; recording closed sessions; discovery of tapes

Comment. Section 54960 is amended to replace the former reference to mandamus, injunction or declaratory relief with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. See also Code Civ. Proc. § 1123.730 (court may grant injunctive or declaratory relief).

Gov't Code § 54960.1 (amended). Proceeding to determine validity of action

Comment. Section 54960.1 is amended to replace the former reference to mandamus or injunction with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Department of Housing and Community Development (part 1), Council of Governments, or Local Government

Gov't Code § 65584 (amended). Local government share of regional housing needs

Comment. Section 65584 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Gov't Code § 65590 (amended). Replacement dwelling units in coastal zone; exemptions

Comment. Section 65590 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Cities and Counties

Gov't Code § 65751 (amended). Action challenging general plan

Comment. Section 65751 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Local Agencies (part 3)

Gov't Code § 66499.37 (amended). Judicial review

Comment. Section 66499.37 is amended to refer to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The former limitations provision in Section 66499.37, requiring the action or proceeding to be brought and summons served within 90 days after the date of the decision, is superseded by Code of Civil Procedure Section 1123.640 (90 days after decision announced or required notice given). A summons is not required in judicial review proceedings. See Code Civ. Proc. § 1123.610(c) & Comment.

San Francisco Bay Conservation and Development Commission (part 1)

Gov't Code § 66639 (amended). Judicial review

Comment. Section 66639 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Subdivision (b) is deleted. The contents of the record for judicial review are prescribed in Code of Civil Procedure Section 1123.820. The standard of review of the sufficiency of the evidence is prescribed in Code of Civil Procedure Section 1123.430 (standard of review of determinations of fact).

Gov't Code § 66641.7 (amended). Judicial review; action to collect penalties

Comment. Section 66641.7 is amended to revise the references to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Tahoe Regional Planning Agency

Gov't Code § 66802 (added). Judicial review

Comment. Under Section 66802, judicial review involving the Tahoe Regional Planning Compact is under the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950. This is consistent with Code of Civil Procedure Sections 1121.120 (other forms of judicial review replaced) and 1123.610 (petition for review). Actions alleging noncompliance with this compact or with an ordinance or regulation of the agency is authorized by Section 66801, Article VI.

Formerly, actions alleging noncompliance with the Tahoe Regional Planning Compact were for ordinary mandamus, declaratory or injunctive relief, or inverse condemnation. See *People ex rel. Younger v. County of El Dorado*, 5 Cal. 3d 480, 487 P.2d 1193, 96 Cal. Rptr. 553 (1971) (mandamus); *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 105 Cal. App. 3d 394, 396, 164 Cal. Rptr. 357 (1980) (mandamus, injunctive relief); *Viso v. State of California*, 92 Cal. App. 3d 15, 154 Cal. Rptr. 580 (1979) (declaratory and injunctive relief, inverse condemnation); *Sierra Tereno v. Tahoe Regional Planning Agency*, 79 Cal. App. 3d 439, 144 Cal. Rptr. 776 (1978) (inverse condemnation). The judicial review provisions in the Code of Civil Procedure replace mandamus and declaratory and injunctive relief in these cases. See Code Civ. Proc. § 1121.120. However, these provisions

cannot replace actions for inverse condemnation. Inverse condemnation is of constitutional origin, and cannot be curtailed by statute. California Government Tort Liability Practice § 2.97, at 181-82 (Cal. Cont. Ed. Bar, 3d ed. 1992). Concerning joinder of a cause of action for inverse condemnation with a judicial review proceeding, see Code Civ. Proc. § 1121.120(b) and Comment.

San Francisco Bay Area Transportation Terminal Authority

Gov't Code § 67620 (amended). Rights and remedies of bondholders

Comment. Subdivision (a) of Section 67620 is amended to refer to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Board of Directors of Industrial Development Authority of City or County

Gov't Code § 91537 (amended). Resolution authorizing issuance of bonds

Comment. Section 91537 is amended to replace the former reference to various proceedings and remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The court on review may grant appropriate relief, whether mandatory, injunctive, or declaratory, preliminary or final, temporary or permanent, or equitable or legal. Code Civ. Proc. § 1123.730. See also Code Civ. Proc. § 1121.130 (injunctive relief ancillary).

California Passenger Rail Financing Commission

Gov't Code § 92308 (amended). Rights and remedies of bondholder

Comment. Section 92308 is amended to replace the former reference to enforcement proceedings by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Department and Commission of Boating and Waterways

Harb. & Nav. Code § 737 (amended). Conduct of proceedings; judicial review

Comment. Section 737 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Board of Pilot Commissioners

Harb. & Nav. Code § 1183 (amended). Trial and judicial review

Comment. Section 1183 is amended to make clear that judicial review of a decision of the board is under the judicial review provisions of the Code of Civil Procedure. The former provision for the court to exercise its independent judgment on the evidence is superseded by Sections 1123.420-1123.460 of the Code of Civil Procedure.

San Diego Unified Port District

Harb. & Nav. Code Appendix 1 § 66 (amended). Enforcement of debt instruments

Comment. Section 66 is amended to replace the former reference to enforcement proceedings by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Humboldt Bay Harbor, Recreation, and Conservation District

Harb & Nav. Code Appendix 2 § 66 (amended). Enforcement of debt instruments

Comment. Section 66 is amended to replace the former reference to enforcement proceedings by mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

State Department of Health Services (part 1)

Health & Safety Code § 1428 (amended). Contesting citation; penalties; notice of dismissal

Comment. Section 1428 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Health & Safety Code § 1550.5 (amended). Temporary suspension of license

Comment. Section 1550.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision for review in superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Health & Safety Code § 1793.15 (amended). Recording notice of lien

Comment. Section 1793.15 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision for filing within 30 days of service of the decision is superseded by Code of Civil Procedure Section 1123.630.

Board of Trustees, Mosquito Abatement District

Health & Safety Code § 2280.1 (amended). Judicial review

Comment. Section 2280.1 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Health & Safety Code § 2861.5 (amended). Judicial review

Comment. Section 2861.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Housing and Community Development (part 2)

Health & Safety Code § 17980.8 (amended). (First of two) Abatement of nuisance

Comment. Section 17980.8 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former penultimate sentence of Section 17980.8 is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

Health & Safety Code § 18024.4 (amended). Citation final; judicial review

Comment. Section 18024.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Department of Health Services (part 2)**Health & Safety Code § 25149 (amended). Endangerment to health and environment**

Comment. Section 25149 is amended to revise the reference to the judicial review provisions. See Code Civ. Proc. §§ 1120-1123.950.

Health & Safety Code § 25187 (amended). Order specifying schedule for compliance

Comment. Section 25187 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former second sentence of subdivision (g) is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The language formerly in subdivision (g) that a petition for a writ of mandate does not stay corrective action or penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

Health & Safety Code § 25202.7 (amended). Judicial review

Comment. Section 25202.7 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language requiring the court to uphold the decision of the department if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

Health & Safety Code § 25231 (amended). Judicial review

Comment. Section 25231 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Health & Safety Code § 25233 (amended). Application for variance

Comment. Section 25233 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language of subdivision (g) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

Health & Safety Code § 25234 (amended). Application to remove land use restriction

Comment. Section 25234 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provision for substantial evidence review. Standards of review are prescribed in Code of Civil Procedure Sections 1123.420-1123.460.

Health & Safety Code § 25356.1 (amended). (Operative until July 1, 1998) Remedial action plans; judicial review

Comment. Subdivision (g) of Section 25356.1 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provision for substantial evidence review which is continued in substance in Code of Civil Procedure Section 1123.430. The language formerly in subdivision (g) that the filing of a petition for a writ of mandate does not stay removal or remedial action is continued in substance in Code of Civil Procedure Section 1123.720(a).

Health & Safety Code § 25356.8 (amended). (Operative until July 1, 1998) Judicial review

Comment. Subdivision (b) of Section 25356.8 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provision prescribing the standard of review which is continued in substance in Code of Civil Procedure Section 1123.430.

Health & Safety Code § 25398.10 (amended). Arbitration panel

Comment. Section 25398.10 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

**Administering Agency of City, County, or Fire District
on Handling Hazardous Materials****Health & Safety Code § 25514.6 (amended). Complaint by administering agency**

Comment. Section 25514.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (d) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former

language in subdivision (d) requiring the court to uphold the decision of the agency if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (d) that the filing of a petition for a writ of mandate does not stay accrual of penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

Redevelopment Agencies (part 1)

Health & Safety Code § 33660 (amended). Rights and remedies of obligee

Comment. Section 33660 is amended to replace the former reference to various enforcement proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Health & Safety Code § 33781 (amended). Enforcement of rights of holders and trustees

Comment. Section 33781 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Housing Authorities (part 1)

Health & Safety Code § 34362 (amended). Amending or abrogating contract

Comment. Section 34362 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Business, Transportation and Housing Agency

Health & Safety Code § 35823 (amended). Finality of decision; hearing; judicial review

Comment. Section 35823 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former penultimate sentence of Section 35823 is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standard of review) and 1123.850 (new evidence on judicial review).

Cities and Counties (part 2), and
Redevelopment Agencies (part 2)

Health & Safety Code § 37646 (amended). Actions to protect or enforce rights

Comment. Section 37646 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Cities and Counties (part 3), Redevelopment
Agencies (part 3), and Housing Authorities (part 2)

Health & Safety Code § 37936 (amended). Actions to protect or enforce rights

Comment. Section 37936 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Air Pollution Control Hearing Boards

Health & Safety Code § 40864 (amended). Judicial review

Comment. Section 40864 is amended to replace the former reference to judicial review by writ of mandate with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The time limit formerly in subdivision (a) is superseded by Code of Civil Procedure Section 1123.630. Former subdivision (b) is superseded by Code of Civil Procedure Sections 1123.830 (preparation of administrative record) and 1123.910 (fee for preparation of record). Former subdivision (c) is superseded by Code of Civil Procedure Section 1123.820 (contents of administrative record). The former first sentence of subdivision (d) (extension of time after request for record) is superseded by Code of Civil Procedure Section 1123.650(b)(2).

State Air Resources Board

Health & Safety Code § 42316 (amended). Mitigation of impact of water activities

Comment. Section 42316 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (b) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630.

Health & Safety Code § 44011.6 (amended). Test for smoke emissions; penalties; administrative hearing

Comment. Section 44011.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (m) prescribing the time limit for judicial review is superseded by Code of Civil Procedure Section 1123.630.

California Pollution Control Financing Authority**Health & Safety Code § 44554 (amended). Rights and remedies of bondholder**

Comment. Section 44554 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Cities and Counties (part 4)**Health & Safety Code § 52033 (amended). Resolution authorizing issuance of bonds; security; enforcement rights**

Comment. Section 52033 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

State Department of Health Services (part 3)**Health & Safety Code § 108900 (amended). Civil and criminal penalties**

Comment. Section 108900 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (f) requiring the petition to be filed in superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (f) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (f) that the filing of a petition for a writ of mandate does not stay corrective action or penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

Health & Safety Code § 110915 (amended). Civil penalties; hearing; review; civil action

Comment. Subdivision (e) of Section 110915 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (e) permitting judicial review to be sought by “any person” is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). This may not be a significant substantive change, because the former reference to “any person” may have been qualified by the provision in Code of Civil Procedure Section 1086 permitting mandamus to be sought by a party “beneficially interested.” The former provision in subdivision (e) on the time limit to seek judicial review is superseded by Code of Civil Procedure Section 1123.630.

Health & Safety Code § 111855 (amended). Civil penalties

Comment. Section 111855 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (g) requiring the petition to be filed in superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (g) prescribing the time limit for review is superseded by Code of Civil Procedure Section 1123.630. The former language in subdivision (g) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (g) that the filing of a petition for a writ of mandate does not stay corrective action or penalties is continued in substance in Code of Civil Procedure Section 1123.720(a).

Health & Safety Code § 111940 (amended). Civil penalties

Comment. Section 111940 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (g) prescribing the time for review is superseded by Code of Civil Procedure Section 1123.630. The former reference in subdivision (g) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former language in subdivision (g) requiring the court to uphold the decision of the director if supported by substantial evidence is superseded by Code of Civil Procedure Sections 1123.420-1123.460. The former language in subdivision (g) that the filing of a petition for a writ of mandate does not stay required corrective action is continued in substance in Code of Civil Procedure Section 1123.720(a).

Health & Safety Code § 112615 (amended). Judicial review

Comment. Section 112615 is amended to insert a reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the time limit for filing a petition for review. The time to file a petition for review is provided in Code of Civil Procedure Section 1123.630.

Resources Agency**Health & Safety Code § 113220 (amended). Extension of time; administrative appeal**

Comment. Section 113220 is amended to make clear judicial review is under the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950.

State Department of Health Services (part 4)**Health & Safety Code § 115155 (amended). Judicial review**

Comment. Section 115155 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Health & Safety Code § 116625 (amended). Revocation or suspension of permit; judicial review

Comment. Subdivision (b) of Section 116625 is amended to replace the former reference to a writ of mandate with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to the superior court is also deleted. This is nonsubstantive, since judicial review under the Code of Civil Procedure is in the superior court. Code Civ. Proc. § 1123.510.

Health & Safety Code § 116700 (amended). Judicial review

Comment. Section 116700 is amended to revise the reference to the provisions for judicial review, and to apply all of the judicial review provisions of the Code of Civil Procedure, and not merely the two subdivisions formerly mentioned. See Code Civ. Proc. §§ 1120-1123.950. The former time limit in subdivision (a) is superseded by Code of Civil Procedure Section 1123.630. Section 116700 is also amended to delete provisions formerly in subdivision (b), which are superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standard of review) and 1123.850 (new evidence on judicial review). The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Health & Safety Code § 121270 (amended). AIDS Vaccine Victims Compensation Fund

Comment. Section 121270 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former time limits provided in subdivision (i) are superseded by Code of Civil Procedure Section 1123.630.

Health & Safety Code § 123340 (amended). Certificate of amounts unpaid; judicial review

Comment. Section 123340 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Advisory Health Council**Health & Safety Code § 127275 (amended). Judicial review**

Comment. Section 127275 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former last sentence of Section 127275 (substantial evidence review) is superseded by Code of Civil Procedure Section 1123.430. The provision for judicial review by any party “other than the department” is a special exception to the standing rules of Sections 1123.220-1123.240.

Office of Statewide Health Planning and Development**Health & Safety Code § 128775 (amended). (Operative on July 1, 1997) Administrative and judicial review**

Comment. Section 128775 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former penultimate sentence of Section 128775 (substantial evidence review) is superseded by Code of Civil Procedure Section 1123.430. Former subdivision (e) (delayed operative date) is deleted as no longer necessary.

Insurance Commissioner**Ins. Code § 728 (amended). Removal or suspension of officer or employee of insurer**

Comment. Section 728 is amended to revise the reference to the provisions for judicial review, see Code Civ. Proc. §§ 1120-1123.950, and to delete the provisions in subdivisions (f) and (i) for independent judgment review. Standards of review are prescribed in Code of Civil Procedure Sections 1123.420-1123.460.

Ins. Code § 791.18 (amended). Judicial review

Comment. Section 791.18 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) prescribing the time for review is superseded by Code of Civil Procedure Section 1123.630. The former last sentence of subdivision (a) is superseded by Code of Civil Procedure Section 1123.730 (type of relief).

Ins. Code § 1065.4 (amended). Judicial review

Comment. Section 1065.4 is amended to make clear judicial review is under Code of Civil Procedure Sections 1120-1123.950. The former 60-day time limit in Section 1065.4 is superseded by Code of Civil Procedure Section 1123.630.

Ins. Code § 1104.9 (amended). Maintenance of securities and money in other jurisdictions

Comment. Section 1104.9 is amended to replace the former reference to a writ of mandate and declaratory relief with a reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Ins. Code § 1748.5 (amended). Suspension or removal from office or employment

Comment. Subdivision (f) of Section 1748.5 is amended to replace the former reference to a writ of mandate under Code of Civil Procedure Section 1085 with a reference to the provisions for judicial review of Code of Civil Procedure Sections 1120-1123.950. The former provisions in subdivisions (f) and (i) for independent judgment review are superseded by Code of Civil Procedure Section 1123.430 (substantial evidence review of fact-finding).

Ins. Code § 1780.63 (amended). Judicial review

Comment. Section 1780.63 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former last sentence of subdivision (a) is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review). The former 30-day limit in subdivision (b) is continued in substance in Code of Civil Procedure Section 1123.630. The former language in subdivision (b) permitting the court to order a stay for good cause is continued in substance in Code of Civil Procedure Section 1123.720.

Ins. Code § 1858.6 (amended). Judicial review

Comment. Section 1858.6 is amended to make clear judicial review is under Code of Civil Procedure Sections 1120-1123.950. The former

provision for independent judgment review is superseded by Code of Civil Procedure Section 1123.430 (substantial evidence review of fact-finding).

Ins. Code § 11754.5 (amended). Judicial review

Comment. Section 11754.5 is amended to revise the reference to the judicial review provisions of the Code of Civil Procedure. See Code Civ. Proc. §§ 1120-1123.950.

Ins. Code § 12414.19 (amended). Judicial review

Comment. Section 12414.19 is amended to make clear judicial review is under Code of Civil Procedure Sections 1120-1123.950. The former provision for independent judgment review is superseded by Code of Civil Procedure Section 1123.430 (substantial evidence review of fact-finding).

Volunteer Fire Departments

Lab. Code § 1964 (amended). Removal of volunteer firefighter; hearing; judicial review

Comment. Section 1964 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former language in subdivision (c) on the standard of review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

Military Department

Mil. & Vet. Code § 489 (amended). Judicial review

Comment. Section 489 is amended to replace the former reference to mandamus or other appropriate proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Mil. & Vet. Code § 1005.1. Authorization to compel performance of duty of state official

Comment. Section 1005.1 is amended to replace the former reference to mandamus or other appropriate proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Local Mental Health Director

Penal Code § 4011.8 (amended). Voluntary inpatient or outpatient mental health services

Comment. Section 4011.8 is amended to add the last sentence to make clear that a denial of an application for voluntary mental health services by an executive branch agency is reviewable only under the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Department of Justice

Penal Code § 11126 (amended). Correction of record

Comment. Section 11126 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Conservation (part 1)

Pub. Res. Code § 2774.2 (amended). Review of administrative penalties

Comment. Section 2774.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (e) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former provision in subdivision (e) for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

Pub. Res. Code § 2774.4 (amended). Lead agency powers; hearing; review

Comment. Section 2774.4 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference in subdivision (f) to the superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former provision in subdivision (f) for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

State Oil and Gas Supervisor

Pub. Res. Code § 3236.5 (amended). Civil penalties; judicial review

Comment. Section 3236.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Pub. Res. Code § 3333 (amended). Judicial review

Comment. Section 3333 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former requirement specifying the time for judicial review is superseded by Code of Civil Procedure Section 1123.630. The special provision in subdivision (a) for venue in the superior court of any county in which all or part of the area affected is located prevails over the general venue provision in Code of Civil Procedure Section 1123.520. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls).

The former provision in subdivision (b) for a notice of intention to petition for judicial review is deleted as superfluous, since the petition itself must generally be filed within 60 days after the order. See Code Civ. Proc. § 1123.630 and Comment.

Department of Conservation (part 2)

Pub. Res. Code § 14591.5 (amended). Judgment to collect civil penalties or restitution

Comment. Section 14591.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Energy Resources Conservation and Development Commission

Pub. Res. Code § 25534.2 (amended). Judicial review; action to recover penalties

Comment. Section 25534.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in Section 25534.2 prescribing the time for review is superseded by Code of Civil Procedure Section 1123.630.

Pub. Res. Code § 25901 (amended). Judicial review

Comment. Section 25901 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) prescribing the time for review is

superseded by Code of Civil Procedure Section 1123.630. The standards of review formerly in subdivision (b) are superseded by Code of Civil Procedure Sections 1123.420-1123.460.

California Alternative Energy and Advanced Transportation Financing Authority

Pub. Res. Code § 26034 (amended). Rights and remedies of bondholder

Comment. Section 26034 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

San Francisco Bay Conservation and Development Commission (part 2)

Pub. Res. Code § 29602 (amended). Judicial review

Comment. Section 29602 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision permitting an “aggrieved” person to seek judicial review is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing).

Pub. Res. Code § 29603 (amended). Judicial review

Comment. Section 29603 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision permitting an “aggrieved” person to seek judicial review is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing). The provision permitting an applicant for a marsh development permit or the commission to seek judicial review is a special provision that controls over the general standing rules of Code of Civil Procedure Sections 1123.210-1123.240. See Code Civ. Proc. § 1121.110 (conflicting or inconsistent statute controls).

Delta Protection Commission

Pub. Res. Code § 29772 (amended). Judicial review

Comment. Section 29772 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

The former provision permitting an “aggrieved” person to seek judicial review is superseded by Code of Civil Procedure Sections 1123.210-1123.240 (standing).

California Coastal Commission

Pub. Res. Code § 30801 (amended). Judicial review

Comment. Section 30801 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Pub. Res. Code § 30802 (amended). Judicial review of action of local government

Comment. Section 30802 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

California Urban Waterfront Area Restoration Financing Authority

Pub. Res. Code § 32205 (amended). Action to enforce rights

Comment. Section 32205 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

California Integrated Waste Management Board

Pub. Res. Code § 41721.5 (amended). Amendments

Comment. Section 41721.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Pub. Res. Code § 42854 (amended). Judicial review

Comment. Section 42854 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former 30-day time period in subdivision (a) is superseded by Code of Civil Procedure Section 1123.630. The former requirement that the petition be filed in superior court is continued in substance in Code of Civil Procedure Section 1123.510. The former provision in subdivision (b) for substantial evidence review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

Former subdivision (c) (petition for writ of mandate does not stay corrective action or penalties) is continued in substance in Code of Civil

Procedure Section 1123.720(a). Former subdivision (d) is superseded by Code of Civil Procedure Section 1123.730 (type of relief).

Pub. Res. Code § 50000 (amended). Review and approval of new sites

Comment. Section 50000 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Municipal Utility Districts

Pub. Util. Code § 13106 (amended). Rights and remedies of bond holders

Comment. Section 13106 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Pub. Util. Code § 13575.7 (amended). Judicial review; nonexclusiveness of remedy

Comment. Section 13575.7 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) specifying the time limit for review is superseded by Code of Civil Procedure Section 1123.630. The former first sentence of subdivision (b) concerning the contents of the record is superseded by Code of Civil Procedure Sections 1123.820 (contents of administrative record) and 1123.850 (new evidence on judicial review). The former last sentence of subdivision (b) (independent judgment) is superseded by Code of Civil Procedure Sections 1123.420-1123.460.

California Transportation Commission (part 1)

Pub. Util. Code § 21675.2 (amended). Judicial review; public notice

Comment. Section 21675.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Aeronautics,
Business and Transportation Agency

Pub. Util. Code § 24252 (amended). Judicial review

Comment. Section 24252 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to Government Code Section 11440 is obsolete because it was repealed by 1979 Cal. Stat. ch. 567.

Southern California Rapid Transit District

Pub. Util. Code § 30981 (amended). Rights and remedies of bond holders

Comment. Section 30981 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Santa Clara County Transit District

Pub. Util. Code § 100492 (amended). Rights and remedies of bond holders

Comment. Section 100492 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Sacramento Regional Transit District

Pub. Util. Code § 102602 (amended). Rights and remedies of bond holders

Comment. Section 102602 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

San Mateo County Transit District

Pub. Util. Code § 103602 (amended). Rights and remedies of bond holders

Comment. Section 103602 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

San Diego Metropolitan Transit Development Board

Pub. Util. Code § 120702 (amended). Rights and remedies of bond holders

Comment. Section 120702 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

West Bay Rapid Transit Authority

Pub. Util. Code Appendix 2 § 10.1 (amended). Rights and remedies of bond holders

Comment. Section 10.1 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

County Boards of Supervisors (part 3)

Rev. & Tax. Code § 1611.6 (technical amendment). Attorney's fees

Comment. Section 1611.6 is amended to revise the references to former Section 800 of the Government Code.

Franchise Tax Board

Rev. & Tax. Code § 19381 (technical amendment). No injunction to prevent tax

Comment. Section 19831 is amended to make clear the judicial review provisions of the Code of Civil Procedure may not be used to prevent the assessment or collection of a tax under this part.

Cities and Counties (part 5)

Sts. & Hy. Code § 5302.5 (amended). Assessment as obligation of owner of property; time for payment; collection of tax levy; judicial review

Comment. Section 5302.5 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Sts. & Hy. Code § 6467 (amended). Certificates representing unpaid assessments

Comment. Section 6467 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Sts. & Hy. Code § 6468 (amended). Form of bond

Comment. Section 6468 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

California Transportation Commission (part 2)

Sts. & Hy. Code § 30238 (amended). Performance of duties may be compelled

Comment. Section 30238 is amended to replace the former references to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

El Dorado County Toll Tunnel Authority

Sts. & Hy. Code § 31171 (amended). Rights and remedies of bondholder

Comment. Section 31171 is amended to replace the former references to mandamus and other proceedings with a reference to the judicial

review provisions of Code of Civil Procedure Sections 1120-1123.950. The last sentence of Section 31171 is made expressly subject to Code of Civil Procedure Section 1121.120, which provides that the judicial review provisions of the Code of Civil Procedure replace other forms of action for judicial review of agency action.

Parking Authorities of Cities or Counties

Sts. & Hy. Code § 33400 (amended). Powers of obligee

Comment. Subdivision (a) of Section 33440 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Subdivision (b) is amended to make clear that proceedings in equity are authorized only against nongovernmental parties, consistent with Code of Civil Procedure Section 1121.120 (other forms of judicial review replaced for review of governmental action).

Cities or Parking Districts

Sts. & Hy. Code § 35417 (amended). Ordinance as covenant for protection of bondholder

Comment. Section 35417 is amended to replace the former reference to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Sts. & Hy. Code § 35468 (amended). Tax levy to pay assessment on public property

Comment. Section 35468 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

California Unemployment Insurance Appeals Board

Unemp. Ins. Code § 409.2 (amended). Judicial review of precedent decision

Comment. Section 409.2 is amended to replace the former reference to an action for declaratory relief with a reference to judicial review

under Code of Civil Procedure Sections 1120-1123.950. The former reference to the superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Unemp. Ins. Code § 1338 (technical amendment). Decision allowing benefits

Comment. Section 1338 is amended to replace the former reference to mandamus with a reference to judicial review. A petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Unemp. Ins. Code § 3264 (amended). Denial of liability; judicial review

Comment. Section 3264 is amended to replace the former reference to a writ of mandate with a reference to judicial review under Code of Civil Procedure Sections 1120-1123.950.

New Motor Vehicle Board

Veh. Code § 3058 (amended). Judicial review

Comment. Section 3058 is amended to make clear judicial review is under the judicial review provisions of the Code of Civil Procedure, see Code Civ. Proc. §§ 1120-1123.950, and to delete the last sentence. The time to file a petition for review is provided in Code of Civil Procedure Section 1123.630.

Veh. Code § 3068 (amended). Judicial review

Comment. Section 3068 is amended to make clear judicial review is under the judicial review provisions in the Code of Civil Procedure, see Code Civ. Proc. §§ 1120-1123.950, and to delete the last sentence. The time to file a petition for review is provided in Code of Civil Procedure Section 1123.630.

Public Agencies (part 4)

Veh. Code § 22851.3 (amended). Disposition of low-value vehicles

Comment. Section 22851.3 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Water Resources Control Board (part 1)

Water Code § 1126 (amended). Judicial review

Comment. Section 1126 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) for an “aggrieved party” to seek review is continued in substance in Code of Civil Procedure Section 1123.220 (“interested person”). The former provision in subdivision (a) specifying the time limit for review is superseded by Code of Civil Procedure Section 1123.630. The former second sentence of subdivision (a) (right to review not affected by failure to seek reconsideration) is continued in substance in Code of Civil Procedure Section 1123.320 (exhaustion of administrative remedies). The former third sentence of subdivision (a) (time to file petition extended during reconsideration) is superseded by Code of Civil Procedure Section 1123.630(c).

The former second sentence of subdivision (b) (independent judgment review) is superseded by Code of Civil Procedure Sections 1123.410-1123.460 (standards of review).

Water Code § 2504 (added). Inapplicability of Code of Civil Procedure provisions

Comment. Section 2504 makes clear the judicial review provisions of the Code of Civil Procedure do not apply to statutory adjudication under this chapter.

Department of Water Resources

Water Code § 6357.4 (amended). Notice and hearing; judicial review

Comment. Section 6357.4 is amended to delete the last sentence. The writ of mandate to review agency action has been replaced by a proceeding for judicial review under Code of Civil Procedure Sections 1120-1123.950. The former last sentence of Section 6357.4 is superseded by Code of Civil Procedure Section 1123.630 (time for filing petition for review in adjudicative proceeding).

Water Code § 6461 (amended). Certificate of approval; judicial review

Comment. Section 6461 is amended to delete the last sentence. The writ of mandate to review agency action has been replaced by a proceeding for judicial review under Code of Civil Procedure Sections 1120-1123.950. The former last sentence of Section 6461 is superseded

by Code of Civil Procedure Section 1123.630 (time for filing petition for review in adjudicative proceeding).

Reclamation Boards

Water Code § 9266 (amended). Compelling performance of duties

Comment. Section 9266 is amended to replace the former reference to mandamus and other remedies with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

State Departments Generally

Water Code § 11708 (amended). Proceedings to compel performance of duties

Comment. Section 11708 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

State Water Resources Control Board (part 2) and Regional Water Quality Control Boards

Water Code § 13330 (amended). Judicial review

Comment. Section 13330 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) specifying the time within which review must be sought is superseded by Code of Civil Procedure Section 1123.630. The former provision in subdivisions (a) and (b) for superior court jurisdiction is continued in substance in Code of Civil Procedure Section 1123.510. The provision formerly in subdivision (d) for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review). The former references in subdivisions (a), (b), (c), and (e) to an “aggrieved” party are continued in substance in Code of Civil Procedure Section 1123.220 (“interested” person).

California Water Districts

Water Code § 36391 (amended). Compelling protection of revenues pledged for security

Comment. Section 36391 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The last sentence of Section 36391 is made expressly subject to Code of Civil Procedure Section 1121.120, which provides that the judicial review provisions of the Code of Civil Procedure replace other forms of action for judicial review of agency action.

California Water Storage Districts

Water Code § 44961 (amended). Judicial review; protection of security

Comment. Section 44961 is amended to replace the former reference to mandamus and other proceedings with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610. The last sentence of Section 44961 is made expressly subject to Code of Civil Procedure Section 1121.120, which provides that the judicial review provisions of the Code of Civil Procedure replace other forms of action for judicial review of agency action.

Kings River Conservation District

Water Code Appendix § 59-33 (amended). Bonds for construction of works

Comment. Section 33 is amended to replace the former reference to mandamus and other actions with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Yolo County Flood Control and Water Conservation District

Water Code Appendix § 65-4.8 (amended). Notice of ground water charge

Comment. Section 4.8 is amended to revise the reference to the judicial review provisions of the Code of Civil Procedure. The former

provision specifying the time within which review must be sought is superseded by Code of Civil Procedure Section 1123.640 (time limit for judicial review of adjudicative proceeding). The former provision in the last sentence of Section 4.8 for independent judgment review is superseded by Code of Civil Procedure Sections 1123.420-1123.460 (standards of review).

Sierra Valley Groundwater Management District; Long Valley Groundwater Basin

Water Code Appendix § 119-406 (amended). Judicial review

Comment. Section 406 is amended to replace the former reference to a writ of mandate with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Mono County Tri-Valley Groundwater Management District

Water Code Appendix § 128-504 (amended). Review of ordinance or resolution

Comment. Section 504 is amended to replace the former reference to a writ of mandate with a reference to judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Honey Lake Valley Groundwater Management District

Water Code Appendix § 129-421 (amended). Review of ordinance or resolution

Comment. Section 421 is amended to replace the former reference to a writ of mandate with a reference to judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

San Diego Area Wastewater Management District

Water Code Appendix § 133-510 (amended). (Operative date contingent) Bonds, notes, and other evidence of indebtedness; dissolution of district or withdrawal of territory

Comment. Section 510 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

San Gabriel Basin Water Quality Authority

Water Code Appendix § 134-604 (amended). (Operative until July 1, 2002) Evidences of indebtedness

Comment. Section 604 is amended to replace the former reference to mandamus with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

Willow Creek Valley Groundwater Management District

Water Code Appendix § 135-421 (amended). Judicial review

Comment. Section 421 is amended to replace the former reference to a writ of mandate with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Regional Centers for the Developmentally Disabled

Welf. & Inst. Code § 4668 (amended). Actions void; judicial review

Comment. Section 4668 is amended to replace the former reference to an action by mandamus, injunction, or declaratory relief with a reference to the judicial review provisions of Code of Civil Procedure Sections 1120-1123.950.

Counties

Welf. & Inst. Code § 5655 (amended). Cooperation with county; sanctions

Comment. Section 5655 is amended to replace the former reference to mandamus and other actions with a reference to the judicial review provisions of the Code of Civil Procedure. Under those provisions, a petition for review is the proper way to obtain judicial review of agency action. See Code Civ. Proc. §§ 1121.120, 1123.610.

State Department of Social Services (part 1)

Welf. & Inst. Code § 10605 (amended). Noncompliance in county administration; review

Comment. Section 10605 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Welf. & Inst. Code § 10605.2 (amended). County noncompliance

Comment. Section 10605.2 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Department of Health Services (part 5)

Welf. & Inst. Code § 10744 (amended). County noncompliance; sanctions; review

Comment. Section 10744 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former last clause of the last sentence of Section 10744 concerning injunctive relief is continued in substance in Code of Civil Procedure Section 1123.730 (court may grant injunctive relief on judicial review).

State Department of Social Services (part 2)

Welf. & Inst. Code § 11468.5 (amended). Judicial review

Comment. Section 11468.5 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Welf. & Inst. Code § 11468.6 (amended). Review of group home audit findings

Comment. Section 11468.6 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

State Department of Health Services (part 5)

Welf. & Inst. Code § 14087.27 (amended). Judicial or administrative review

Comment. Section 14087.27 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Welf. & Inst. Code § 14105.405 (amended). (Operative until January 1, 1999) Fair hearing

Comment. Section 14105.405 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former reference to superior court is continued in substance in Code of Civil Procedure Section 1123.510.

Welf. & Inst. Code § 14171 (amended). Administrative appeal; interest

Comment. Section 14171 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950.

Department of Rehabilitation

Welf. & Inst. Code § 19709 (amended). Judicial review

Comment. Section 19709 is amended to revise the reference to the provisions for judicial review. See Code Civ. Proc. §§ 1120-1123.950. The former provision in subdivision (a) limiting review to questions of law is not continued. Both questions of law and questions of fact are reviewable under the Code of Civil Procedure. See Code Civ. Proc. §§ 1123.420-1123.460.
