

ASSEMBLY BILL

No. 2537

Introduced by Assembly Member Silva

February 19, 2010

An act to amend Section 11425.40 of the Government Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2537, as introduced, Silva. State agencies: adjudications: presiding officers.

Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law provides for the disqualification of a presiding officer for bias, prejudice, or interest in the proceeding. Existing law authorizes an agency that conducts an adjudicative proceeding to provide by regulation for peremptory challenge of the presiding officer.

This bill would require that an agency that conducts an adjudicative proceeding provide by regulation for peremptory challenge of the presiding officer in cases where the presiding officer is an administrative law judge.

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

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

- 1 SECTION 1. Section 11425.40 of the Government Code is
- 2 amended to read:
- 3 11425.40. (a) The presiding officer is subject to
- 4 disqualification for bias, prejudice, or interest in the proceeding.

- 1 (b) It is not alone or in itself grounds for disqualification, without
2 further evidence of bias, prejudice, or interest, that the presiding
3 officer:
- 4 (1) Is or is not a member of a racial, ethnic, religious, sexual,
5 or similar group and the proceeding involves the rights of that
6 group.
- 7 (2) Has experience, technical competence, or specialized
8 knowledge of, or has in any capacity expressed a view on, a legal,
9 factual, or policy issue presented in the proceeding.
- 10 (3) Has as a lawyer or public official participated in the drafting
11 of laws or regulations or in the effort to pass or defeat laws or
12 regulations, the meaning, effect, or application of which is in issue
13 in the proceeding.
- 14 (c) The provisions of this section governing disqualification of
15 the presiding officer also govern disqualification of the agency
16 head or other person or body to which the power to hear or decide
17 in the proceeding is delegated.
- 18 (d) An agency that conducts an adjudicative proceeding *shall*
19 *provide by regulation for peremptory challenge of a presiding*
20 *officer who is an administrative law judge. An agency that conducts*
21 *an adjudicative proceeding may provide by regulation for*
22 *peremptory challenge of the a presiding officer who is not an*
23 *administrative law judge.*