

AMENDED IN SENATE AUGUST 2, 2010
AMENDED IN ASSEMBLY APRIL 14, 2010
AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

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 amended, 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 certain agencies that conduct an adjudicative proceeding provide by regulation for peremptory challenge of the presiding officer in cases where the presiding officer is an administrative law judge, and authorize those agencies to provide by regulation for peremptory challenge of a presiding officer who is not 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.

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

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

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

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

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

22 (d) An agency that conducts an adjudicative proceeding shall
23 provide by regulation for peremptory challenge of a presiding
24 officer who is an administrative law judge. An agency that conducts
25 an adjudicative proceeding may also provide by regulation for
26 peremptory challenge of a presiding officer who is not an
27 administrative law judge.

28 ~~(e) Subdivision (d) shall not apply to an agency that has five or~~
29 ~~fewer administrative law judges and has an existing system of~~
30 ~~internal review for requests for disqualification of an administrative~~
31 ~~law judge in which the disqualification determination is made by~~
32 ~~the agency.~~

33 (e) *Subdivision (d) shall not apply to any agency that meets*
34 *either of the following criteria:*

35 (1) *The agency has had more than 1,000 scheduled proceedings*
36 *in each of the last three fiscal years.*

37 (2) *The agency has a system of reconsideration and review of*
38 *denials for requests for disqualification of an administrative law*

- 1 *judge for cause in which the administrative law judge being*
- 2 *challenged does not participate in the disqualification decision.*

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