

CALIFORNIA COASTAL COMMISSION

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W6c

ADDENDUM

May 12, 2016

To: Coastal Commission and Interested Persons

From: John Ainsworth, Acting Executive Director
Sarah Christie, Legislative Director

Subject: Legislative Report - Bill Analysis SB 1190 (Jackson)

Attached is the bill analysis for SB 1190 (Jackson).

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**BILL ANALYSIS****SB 1190 (Jackson)**

Amended 05/03/16

SUMMARY

SB 1190 would amend PRC Section 30324 to prohibit ex-parte communications for adjudicative and enforcement proceedings. The bill would also add Section 30327.2 to prohibit a commission member from influencing a commission staff report or recommendation prior to a public hearing.

PURPOSE OF THE BILL

The purpose of the bill is to prohibit ex-parte communications for adjudicative and enforcement matters, and to limit communications that could influence recommendations.

EXISTING LAW

Under PRC Sections 30321 and 30322, an ex parte communication is an oral or written communication between a commission member and an interested person which does not occur in a public hearing regarding a permit action, federal consistency review, appeal, local coastal program, port master plan, public works plan, long-range development plan, categorical exclusion, or any other quasi-judicial matter for which an application has been submitted to the commission. The Coastal Act doesn't provide for ex partes for enforcement matters, and the Attorney General has advised the Commission that ex partes are not allowed for those proceedings.

Under PRC Section 30324, Commission members must fully disclose and make public any ex parte communication by providing a full report within seven days of the communication, or, if the communication occurs within seven days of the next commission hearing, on the record of the proceeding at the hearing. Section 30324 also specifies the minimum content required to be included in the disclosure. Once fully disclosed and placed in the public record, the communication ceases to be an ex parte.

Penalties for non-disclosure pursuant to 30324 include recusal from the item, civil fines of up to \$7,500 and attorney's fees.

PROGRAM BACKGROUND

The California Administrative Procedures Act (APA) governs administrative adjudication in approximately state agencies, unless the Legislature adopts statutory exemptions specific to that agency. Unless otherwise specified, the APA prohibits any communication, direct or indirect, to a presiding officer in an adjudicatory hearing, from any party, unless there is notice and an opportunity for all parties to participate in the communication (Government Code § 11430.10). There are exceptions for communications concerning matters of procedure or practice. If a presiding officer receives a communication in violation of this prohibition, the officer must make full written disclosure, notify all parties, provide an opportunity for the opposing party to address the communication, and reopen the hearing at his or her discretion. Receipt of an ex parte communication is grounds for disqualifying the presiding officer (Government Code § 11430.60).

In 1992, the Legislature added PRC Section 30322 and 30324, defining and allowing ex parte communications between commission members and interested parties, providing that such communications were disclosed and placed in the public record. In 1995, the Commission was

specifically exempted from the ex parte requirements of the APA (PRC 30329). In 2014, Section 30324 was amended to expand the specific information required to be included in ex parte disclosure forms.

[In 2008, the California Research Bureau \(CRB\) issued a report titled “Ex Parte Communications: The Law and Practices at Six California Boards and Commissions.”](#) The report compared the ex parte rules between the California Air Resources Board, the California Integrated Waste Management Board, the State Water Resources Control Board, the California Energy Commission, the Public Utilities Commission and the California Coastal Commission. Of the six agencies examined in the report, only the Coastal Commission allows ex parte communications for quasi-judicial actions¹. In addition, the State Water Resources Control Board and Regional Boards, the Tahoe Regional Planning Agency, CalPERS, and the Unemployment Insurance Appeals Board all prohibit ex partes for quasi-judicial actions. The Alcoholic Beverage Control Board, the Commission on State Mandates, the Gambling Control Commission, the Infrastructure and Economic Development Bank and the Correctional Peace Officer Standards and Training Commission prohibit all ex parte communications.

ANALYSIS

One of the primary purposes of restrictions on ex parte contacts with decision makers is to prevent a party from gaining an unfair advantage in a contested matter. Ex parte communications afford an interested party the opportunity to present information to individual commissioners which is not equally available to other commissioners, staff, the public or the reviewing courts. While these communications provide an opportunity for individual commissioners to more comprehensively understand the perspective, concerns and preferences of an interested party, they also contribute to an “uneven” level of information available to the Commission as a whole for the following reasons:

- Not all interested parties have the same ability to request or conduct ex parte communications with commissioners.
- Not all requesting parties seek ex partes from all commissioners.
- Not all commissioners conduct ex partes.
- Not all Commissioners accept ex partes with all interested parties who make requests.
- There is no requirement that other “interested parties” be afforded the opportunity to rebut the contents of an ex parte in order to provide the Commission with a full and impartial record.

Because they can introduce an element of bias in the decision-making process, and could potentially violate basic due process requirements, various state laws either prohibit such communications, require public disclosure of such communications, or both.

Conducting and reporting ex parte communications can take up a significant amount of commissioners’ preparation time. “Full and comprehensive” disclosure of the communication as required by PRC 30324 requires lengthy descriptions of all conversations to fully comply with the law. Penalties for failure to properly disclose are significant, and it is noteworthy that the penalties do not apply to the interested party that initiated the communication. The burdens and liabilities of disclosure are borne exclusively by commissioners.

Some Commissioners have stated that they would prefer not to conduct ex partes, but feel obligated to do so because the law allows for it and because they don’t want to be miss out on information that is being shared with others. Prohibiting ex partes would level the playing field by ensuring that all parties are working off the same information.

Coastal Commission proceedings can be complicated endeavors that can be years in the making. There is no doubt that commissioners must absorb and understand large amounts of information in order to render

fully informed decisions. But ex parte meetings are not the only or even the best tool for accomplishing that. All of the substantive material shared in an ex parte (briefing booklets, maps, conceptual renderings, etc.) could still be submitted by interested parties prior to the hearing, so long as they were submitted to all commissioners as well as staff. The Commission has access to its professional staff, legal counsel and the Deputy Attorney General assigned to the commission for questions, clarifications and background. Targeted workshops are also effective venues for sharing critical information.

If ex partes were prohibited, applicants could still retain agents to interact with staff, prepare materials, talk to the press and represent them in the hearing. The applicant would still retain the opportunity to share all of the same substantive information, express their opinions, and request specific actions during the presentation as part of the public hearing process. While slightly more time may be required for commissioners' questions, this would have the beneficial effect of informing the entire hearing process for everyone and be more efficient overall. It would also maintain the integrity of the public record and afford the public and the staff the opportunity to rebut, corroborate or expand on specific points.

Section 2 of the bill would preclude the potential for individual members of the commission to use their official position to influence staff reports or recommendations prior to the public hearing. Commissioners would still be able to exercise their independent discretion and analysis to make finding that support a different conclusion in the public hearing, as is the current practice. Nothing would inhibit the ability of commissioners to contact staff with questions or to discuss the specific aspects of the application or procedural issues.

SUPPORT

Audubon California
CCPN
Courage Campaign
Endangered Habitats League
Friends of Harbors, Beaches and Parks
Malibu Coalition for Slow Growth
So Cal 350 Climate Action
Sierra Club California
Western Alliance for Nature

OPPOSITION

California Association of Realtors
California Business Industries Association
California Business Properties Association
California Chamber of Commerce
California Cotton Ginners Association
California Farm Bureau Association
National Federation of Independent Businesses
Western Plant Health Association

ⁱ Subsequent legislation was enacted to allow ex partes for the CPUC in rate setting and quasi-legislative proceedings, provided 3 days notice is provided to all parties who are given equal opportunity to meet with the Commissioner. In adjudicatory proceedings, ex parte communications are still prohibited.

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**W6c**

DATE: May 11, 2016

TO: Coastal Commission and Interested Persons

FROM: John Ainsworth, Acting Executive Director
 Sarah Christie, Legislative Director

SUBJECT: LEGISLATIVE REPORT FOR May, 2016

CONTENTS: This report provides summaries and status of bills affecting the Coastal Commission and California's Coastal Program, and coastal-related legislation identified by staff.

Note: Information contained in this report is accurate as of May 5, 2016. Bills that were not included in the previous report are preceded by an *asterisk. Recent amendments are summarized in italics. Bill text, votes, committee analyses and current status of any bill may be viewed on the California Senate Homepage at www.senate.ca.gov. This report can also viewed on the Commission's Homepage at www.coastal.ca.gov

2016 Legislative Calendar

Jan 1	Statutes take effect
Jan 4	Legislature reconvenes
Jan 10	Budget Bill must be submitted by Governor
Jan 15	Last day for committees to hear and report 2015 bills introduced in their house
Jan 22	Last day to send bill requests to Office of Legislative Counsel
Jan 31	Last day for each house to hear and report 2015 bills introduced in their house
Feb 19	Last day for bills to be introduced
Mar 17	Spring Recess begins upon adjournment
Mar 28	Legislature reconvenes from Spring Recess
April 1	Cesar Chavez Day Observed
April 22	Last day for policy committees to hear and report fiscal bills
May 6	Last day for policy committees to hear and report non-fiscal bills out of house of origin
May 13	Last day for policy committees to meet prior to June 6
May 27	Last day for fiscal committees to hear and report bills to the Floor
May 30	Memorial Day Observed
May 31-June 3	Floor session only
June 3	Last day for each house to pass bills introduced in that house
June 15	Budget Bill must be passed by midnight
July 1	Last day for Policy committees to report bills. Summer Recess begins upon adjournment
Aug 1	Legislature reconvenes from summer recess
Aug 12	Last day for fiscal committees to meet and report bills to the Floor
Aug 19	Last day to amend bills on the Floor
Aug 31	Last day to pass bills. Interim recess begins upon adjournment
Sep 30	Last day for Governor to sign or veto bill

PRIORITY LEGISLATION

AB 300 (Alejo) Safe Water and Wildlife Protection Act of 2015

This bill would enact the Safe Water and Wildlife Protection Act of 2015, requiring the State Coastal Conservancy to establish and coordinate the Algal Bloom Task Force. The task force would be comprised of a representative of the State Department of Public Health, the Department of Fish and Wildlife, Department of Food and Agriculture and the State Coastal Conservancy, and other relevant agencies. It would require the task force to review the risks and negative impacts of toxic blooms and microcystin pollution, consult with the EPA Secretary, and to submit a summary of its findings and recommendations to the Resources Secretary by January 1, 2017. Amendments of 05/28 add the State Water Pollution Cleanup and Abatement Account as a source of grant funds. *Amendments of 06/25 add “marine waters” to the definition of “waters of the state.”*

Introduced 02/12/15
Last Amended 08/17/15
Status Senate Appropriations Committee, Suspense File. Held under submission.

AB 435 (Chang) Natural Resources Agency: webcast of meetings and workshops

This bill would require all boards, departments and commissions within the Environmental Protection Agency and the Natural Resources Agency to provide live webcasts of all public meetings in a manner that enables listeners to and viewers to ask questions and provide public comment by phone or electronic communication. The bill would require all agencies to archive the webcasts for later viewing by the public. Amendments of 05/28 specify that the bill does not apply to workshops or meetings held at “non-agency sites”, and specify that archived meeting videos must be made available to the public for a period of three years. *Amendments of 05/28 make the bill no longer applicable to the Coastal Commission.*

Introduced 02/19/15
Last Amended 05/28/15
Status Senate Appropriations Committee. Held under submission.

AB 718 (Chu) Local government: powers

This bill would prohibit any local government from imposing civil or criminal penalties for the act of sleeping or resting in a lawfully parked motor vehicle. *Amendments of 7/14 clarify that the bill does not supersede various other laws.*

Introduced 02/25/15
Last Amended 07/14/15
Status Failed passage in Senate. Reconsideration granted. Inactive File.

AB 988 (Stone) Outdoor Environmental Education and Recreation Grants Program

This bill would require the Department of Parks and Recreation to establish an Outdoor Environmental Education and Recreation Grants Program for the purpose of increasing the ability of underserved and at-risk populations to participate in outdoor recreation and educational experiences by awarding grants to public organizations, nonprofit organizations, or both. The bill would require that all moneys received for the purposes of the program be deposited into the California Youth Outdoor Education Account, which would be created by the bill and would be continuously appropriated. Any bond funds made available through the program would be awarded to programs that meet the criteria of the State Urban Parks and Healthy Communities Act. Amendments of 06/01 specify that priority will be given to grant applications that primarily serve students who are eligible for free or reduced-price meals, or pupils of limited English proficiency. *Amendments of 06/30 make technical changes, and require the department to report annually to the Budget and Fiscal Committees.*

Introduced 02/26/15
Last Amended 06/30/15
Status Senate Appropriations Committee. Held under submission.

AB 1500 (Mainschein) California Environmental Quality Act: priority housing projects: exempt

This bill would exempt emergency shelter, transitional housing, and priority housing projects, as defined, from the requirements of CEQA.

Introduced 02/27/15
Last Amended 01/13/16
Status Senate Transportation and Housing Committee

AB 1871 (Waldron) Coastal resources: development: water supply projects

This bill would limit the growth-inducing impacts the Commission may consider in its review for a coastal development project for a water supply project. The Commission's review authority would be limited to how the proposed project augments existing water supplies, how it increases regional water supply reliability to drought and climate change, and how it reduces reliance on the Sacramento-San Joaquin Delta.

Introduced 02/10/16
Last Amended 03/18/16
Status Assembly Natural Resources Committee, hearing cancelled at author's request

AB 2002 (Stone) Political Reform Act: California Coastal Commission

This bill would amend the definition of “administrative action” in Section 82002 of the Political Reform Act to include permit applications and other actions pending before the Coastal Commission. The bill would also amend Section 30325 of the Public Resources Code to require persons who communicate with the commission on actions described under the new definition in 82002, with certain exceptions, to comply with the requirements Political Reform Act (Chapter 6, Title 9 of the Government Code). *Amendments of 03/28 prohibit ex parte communications within 24 hours of the public hearing on the item being discussed, and require disclosure within 24 hours of any ex parte communication that takes place seven or fewer days before the hearing item.*

Introduced 02/16/16
Last Amended 03/28/16
Status Assembly Appropriations Committee, Suspense File

AB 2041 (Harper) State and local beaches: fire rings

This is a spot bill relating to fire rings at local beaches.

Introduced 02/17/16
Status Assembly Rules Committee

AB 2171 (Jones) Coastal resources: development review: appeals

As amended 03/29, this bill would add Section 30625.5 to the Public Resources code to allow an applicant or an aggrieved person file an appeal on any appealable item directly with a superior court in lieu of filing an appeal with the Commission.

Introduced 02/18/16
Last Amended 03/29/16
Status Failed passage, Assembly Natural Resources & Judiciary Committees, reconsideration granted

AB 2185 (Gonzalez): State Coastal Conservancy: low-cost accommodations

This bill would require the Coastal Conservancy to develop a loan/grant program to assist private low-cost accommodations to meet their operation and maintenance needs in exchange for an easement or other legally binding instrument that protects the public benefit of the facility. The bill also requires the Conservancy, in consultation with the Commission and State Parks, to develop a list of potential low-cost accommodation projects.

Introduced 02/18/16
Last Amended 03/18/16
Status Assembly Appropriations Committee, Suspense File

AB 2198 (Brough) Coastal development permits: desalination facilities

This bill would require an application for a coastal development permit for a “desalinization project” to be given priority for review and expedited permitting.

Introduced 02/18/16
Status Assembly Natural Resources Committee, hearing cancelled at author’s request

AB 2299 (Bloom) Land use: housing: second units

This bill would require cities and counties to develop ordinances allowing for second units in single family and multi-family zoning. Current law provides for the permissive development of such ordinances. *Amendments of 4/05 provide that a local jurisdiction may reduce or eliminate additional parking requirements for 2nd unit, that a converted garage or a second unit constructed above a garage is considered an accessory use, and prohibit a local ordinance from requiring a passageway clear to the sky between a 2nd unit and a public street.*

Introduced 02/18/16
Last Amended 04/05/16
Status Assembly Housing & Local Government Committees

AB 2305 (Bloom) Protection of orcas: unlawful activities

As amended 04/05, this bill would prohibit the captive holding, display, breeding, gamete collection or import, sale or transport of orca whales. The bill would allow for the rescue and rehabilitation of stranded orca. Any orcas already in captivity as of January 1, 2017 could continue to be held for educational purposes. *Amendments of 04/14 clarify that an orca may be used for educational presentations.*

Introduced 02/18/16
Last Amended 04/14/16
Status Assembly Rules Committees

Commission Position Support

AB 2406 (Thurmond) Housing: junior accessory dwelling units

This bill would amend Government Code Section 65852.2 to require that a local ordinance pertaining to the authorization of second units in single-family or multi-family zoning also provide for the creation of junior accessory dwelling units. The bill would also exempt those units from water or sewer hookup fees, additional parking and fire attenuation requirements. *Amendments of 04/18 allow for a local ordinance to include additional fire attenuation measures.*

Introduced 02/19/16
Last Amended 04/18/16
Status Assembly Local Government Committee

AB 2413 (Thurmond) Sea level rise preparation

This bill would require the Natural Resources Agency to complete a study by January 1, 2019, that outlines the impacts of sea level rise on low-income communities and at-risk communities and public projects and infrastructure. The study would also include short-term and long-term recommendations.

Introduced 02/19/16
Status Assembly Natural Resources Committee

AB 2444 (Garcia) California Water Quality, Coastal Protection and Outdoor Access Act

This bill would create the California Parks, Water Quality, Coastal Protection, and Outdoor Access Improvement Act of 2016, which would authorize the issuance of bonds in an unspecified amount to finance water quality, coastal protection and public outdoor access programs. Amendments of 04/13 add parks to the title and subject of the bill, and specify that 60% of the allotted funding for parks must be allotted to cities and districts other than a regional park district, in relation to the ratio of the population served, and 40% to counties and regional park districts and/or regional open space districts. *Amendments of 4/26 would authorize the issuance of bonds in the amount of \$2,985,000,000.*

Introduced 02/19/16
Last Amended 04/26/16
Status Assembly Appropriations Committee

AB 2616 (Burke) California Coastal Commission: membership: environmental justice

This bill would increase the membership of the Commission from 12 to 15. Three additional commissioners would be appointed, one-each by the Governor, Speaker and the Senate Rules Committee, who represent and work with communities most burdened by high levels of pollution and environmental justice issues. The bill would authorize the Commission to consider Environmental Justice concerns in its actions. The bill would also reinstate the Commission's original authority to protect, encourage, and where feasible provide opportunities for low and moderate income housing. *Amendments of 04/12 repeal Section 30500.1, which prohibits the Commission from requiring housing policies in LCPs.*

Introduced 02/19/16
Last Amended 04/12/16
Status Assembly Appropriations Committee, Suspense File

Commission Position Support

AB 2628 (Levine) Political Reform Act: post-governmental employment

This bill would add Section 87496.5 to the Political Reform Act to prohibit an elected or appointed officer of a state or local public agency from maintaining employment, take consultation fees from, or otherwise aid, consult with or assist for compensation any entity seeking a permit or any other regulatory action from the board, commission or other body on which he/she served for a period of 1 year. The bill would require public agencies to post on their internet websites annual statements of economic interest (Form 700) from specified officers.

Introduced 02/19/16
Last Amended 04/19/16
Status Assembly Rules Committee

AB 2648 (Jones) Coastal Commission: delegation of authority

This bill would authorize a coastal county to petition a superior court to obtain a writ of mandate requiring the Commission’s regulatory authority to be delegated to the county. The county would become the exclusive authority for the enforcement of state and federal coastal laws. The bill would also allow an aggrieved person to file an appeal of any appealable action on a coastal development permit directly to a superior court in lieu of filing an appeal with the Commission.

Introduced 02/19/16
Last Amended 03/18/16
Status Failed Passage, Assembly Natural Resources Committee
Commission Position Oppose

AB 2658 (Maienshein) California Coastal Commission: ex parte communications: meetings

This bill would extend current ex parte reporting requirements to members of the Coastal Commission staff. The bill would also require all hearings, workshops, or written proceedings to be promptly posted on the Commission’s website to allow for public comment.

Introduced 02/19/16
Status Assembly Natural Resources Committee, hearing cancelled at author’s request

SB 233 (Hertzberg) Marine resources and preservation

This bill would amend the California Marine Resources Legacy Act in the Fish and Game Code, related to artificial reef conversion of offshore oil and gas facilities. The bill designates the Department of Fish and Wildlife as the lead agency for environmental review under CEQA for an application to partially remove an offshore structure. The bill requires the Department to determine the cost savings of partial removal compared with full removal, as well as make the determination of whether partial removal provides a net environmental benefit. The bill includes consideration of greenhouse gas emissions as part of the analysis of net environmental benefit. The bill makes changes to the application process, and changes to the timing of the distribution of funds. This bill designates the State Lands Commission as the lead agency under CEQA, requires the applicant to provide sufficient funds for all agencies to perform the responsibilities proscribed by the bill, and gives the Ocean Protection Council the responsibility of determining the appropriate weight to be given to adverse impacts to the marine environment versus greenhouse gas emissions. The bill would allow the first applicant to partially remove an offshore platform to pay startup and other costs associated with processing the application as determined by the department. *Amendments of 07/16 change references from “best available science” to “credible” science, and allow the first applicant to pay the department’s start-up cost.*

Introduced 02/13/15
Last Amended 07/16/15
Status Assembly Appropriations Committee, hearing cancelled at request of author.

SB 317 (De Leon) The Safe Neighborhood Parks, Rivers, and Coastal Protection Bond Act

This bill would enact the Safe Neighborhood Parks, Rivers, and Coastal Protection Bond Act of 2016, which, if adopted by the voters at the November 8, 2016, statewide general election, would authorize the issuance of bonds in an unspecified amount pursuant to the State General Obligation Bond Law to finance a safe neighborhood parks, rivers, and coastal protection program. The bill would authorize a total bond issuance amount of \$2,450,000,000. Of that amount, \$350,000,000 would be specified for coast and ocean protection, and \$370,000,000 for rivers, lakes and streams. This bill has an urgency clause. *Amendments of 05/05 up to 10% of funds allocated for each chapter may be used for project planning and monitoring, and specify that no more than 5% of funds allocated to a grant program may be used for administrative costs.*

Introduced 02/23/15
Last Amended 05/05/15
Status Appropriations Committee, Suspense File

SB 657 (Monning) Diablo Canyon Units 1 and 2: independent peer review panel

As Amended 04/21, this bill would require the Public Utilities Commission to convene an independent review panel to review seismic studies and surveys of the Diablo Canyon Units 1 and 2, including the surrounding area and spent fuel storage areas. This bill has an urgency clause, and if chaptered, would take effect immediately. *Amendments of 6/23 make a technical, non-substantive change.*

Introduced 02/27/15
Last Amended 06/23/15
Commission Position Support
Status In Assembly. Held at desk.

SB 788 (McGuire) California Coastal Protection Act of 2015

This bill would repeal Section 6422 of the Coastal Sanctuary Act, which currently authorizes the State Lands Commission (SLC) to enter into a lease for the extraction of oil or gas from state-owned tide and submerged lands in a California Coastal Sanctuary if SLC determines that the oil or gas deposits are being drained by producing wells on adjacent federal lands, and the lease is in the best interest of the state. The effect of this would be to prohibit any on or offshore drilling into oil reserves known as Tranquillon Ridge offshore Santa Barbara County. This bill is a reintroduction of SB 1096 (Jackson) from the previous legislative session.

Introduced 05/04/15
Last Amended 06/02/15
Status Assembly Appropriations Committee, Suspense File. Held under submission.

SB 900 (Jackson) Coastal Oil Well Cleanup Act

This bill would require the State Lands Commission to conduct a statewide survey to remediate “legacy” oil wells in state waters for which there is no responsible party, survey and monitor natural oil seeps in state waters, and conduct a survey of all legacy oil wells along the California coastline.

Introduced 01/21/16
Last Amended 03/09/16
Status Senate Appropriations Committee, Suspense File
Commission Position Support

SB 1190 (Jackson) California Coastal Commission: ex parte communications

As amended, this bill would prohibit interested parties from conducting ex parte communications with commissioners. The bill would also prohibit a commissioner from attempting to influence a staff analysis or recommendation prior to the publication of the staff report or recommendation.
Amendments of 3/9 limit the ban on ex partes to adjudicative and enforcement matters only.

Introduced 01/21/16
Last Amended 05/03/16
Status Senate Appropriations Committee

***SB 1476 (Committee on Governance and Finance) Income taxation: voluntary contributions**

As amended 4/14, this bill would cap the minimum annual contribution amount for the continuation of any voluntary tax contribution on the state tax return form at \$250,000. Income taxation would also provide that the contributed funds be continuously appropriated to the administering agency.

Introduced 03/07/16
Last Amended 04/14/16
Status Assembly Desk