

## First Supplement to Memorandum 2000-19

### 2000 Legislative Program: SB 1370 (Ortiz)

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The Commission's proposal on settlement negotiations (SB 1370 (Ortiz)) is pending in the Senate. It has been referred to the Senate Judiciary Committee, but has not yet been set for a hearing. We have received a number of inquiries about the bill, including a question about the amendment of Government Code Section 11415.60 raised by Reginald Chun of the Department of Industrial Relations. On reexamining that amendment, a correction appears necessary.

The bill would conform Government Code Section 11415.60 to the proposed new chapter on the admissibility, discoverability, and confidentiality of negotiations to settle a pending civil action or administrative adjudication:

**Gov't Code § 11415.60 (amended) Settlement of administrative adjudication**

SEC. \_\_\_\_\_. Section 11415.60 of the Government Code is amended to read:

11415.60. (a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. ~~Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.~~

....

(d) Sections 1152 and 1154 of, and Chapter 3 (commencing with Section 1130) of Division 9 of, the Evidence Code apply to settlement negotiations pursuant to this section.

**Comment.** Section 11415.60 is amended to reflect the enactment of, and conform to, new provisions on the admissibility, discoverability, and confidentiality of negotiations to settle a

pending civil action or administrative adjudication. See Evid. Code §§ 1130-1145.

To properly conform the provision, however, the last sentence of subdivision (a) (“Nothing in this subdivision makes inadmissible any public document created by a public agency”) should be moved to the end of proposed new subdivision (d). In its current position, the sentence is meaningless, because subdivision (a) as we propose to amend it would not address admissibility. As corrected, the amendment would read:

11415.60. (a) An agency may formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding. Subject to subdivision (c), the settlement may be on any terms the parties determine are appropriate. ~~Notwithstanding any other provision of law, no evidence of an offer of compromise or settlement made in settlement negotiations is admissible in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose, and no evidence of conduct or statements made in settlement negotiations is admissible to prove liability for any loss or damage except to the extent provided in Section 1152 of the Evidence Code. Nothing in this subdivision makes inadmissible any public document created by a public agency.~~

....

(d) Sections 1152 and 1154 of, and Chapter 3 (commencing with Section 1130) of Division 9 of, the Evidence Code apply to settlement negotiations pursuant to this section. Nothing in this subdivision makes inadmissible any public document created by a public agency.

Mr. Chun concurs in this proposed correction. If it is acceptable to the Commission, the staff will take appropriate steps to ensure that the bill is amended accordingly.

Respectfully submitted,

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Staff Counsel