

CALIFORNIA LAW REVISION COMMISSION

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June 3, 1994

<i>Date:</i> June 17, 1994	<i>Place:</i> San Jose
June 17 (Friday) 10:00 am – 5:00 pm	State Office Building Auditorium 100 Paseo de San Antonio Downtown San Jose (Between Second and Third, and San Carlos and San Fernando, Streets) (408) 277-1761
<p>Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. If you plan to attend the meeting, please call (415) 494-1335 and you will be notified of any late changes.</p> <p>Individual items on this agenda are available for purchase at the prices indicated or to be determined. Prices include handling, shipping, and sales tax. Orders must be accompanied by a check in the correct amount made out to the "California Law Revision Commission".</p>	

FINAL AGENDA

for meeting of the

CALIFORNIA LAW REVISION COMMISSION

Friday June 17, 1994

1. MINUTES OF MAY 12-13, 1994, MEETING
(sent 6/2/94)

2. ADMINISTRATIVE MATTERS

Communications from Interested Persons

3. 1994 LEGISLATIVE PROGRAM

Status of Bills

Memorandum 94-27 (NS) (to be sent)

Effect of Joint Tenancy Title on Marital Property (Study F/L-521.1)
Memorandum 94-28 (NS) (to be sent)

4. ADMINISTRATIVE ADJUDICATION (Study N-100)

Template Approach

Memorandum 94-26 (NS) (sent 6/2/94) (\$25)

Comments on Tentative Recommendation

Memorandum 94-19 (RJM) (sent 4/20/94) (\$35)

Second Supplement to Memorandum 94-19 (to be sent)

Note: We will continue consideration of Memorandum 94-19 beginning at page 14.

MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
JUNE 17, 1994
SAN JOSE

A meeting of the California Law Revision Commission was held in San Jose on June 17, 1994.

Commission:

Present: Sanford M. Skaggs, Chairperson
Daniel M. Kolkey, Vice Chairperson
Christine W.S. Byrd
Allan L. Fink

Absent: Tom Campbell, Senate Member
Terry B. Friedman, Assembly Member
Bion M. Gregory, Legislative Counsel
Arthur K. Marshall
Edwin K. Marzec
Colin Wied

Staff:

Present: Nathaniel Sterling, Executive Secretary
Stan Ulrich, Assistant Executive Secretary
Robert J. Murphy, Staff Counsel

Absent: Barbara S. Gaal, Staff Counsel

Consultant:

Michael Asimow, Administrative Law

Other Persons:

Karl Engeman, Office of Administrative Hearings, Sacramento
Gary Gallery, Public Employment Relations Board, Sacramento
Bill Heath, California School Employees' Association, San Jose
Charlene Mathias, Office of Administrative Law, Sacramento
Ted O'Toole, California Student Aid Commission, Sacramento
Joel S. Primes, Office of the Attorney General, Sacramento
John Quijada, Department of Motor Vehicles, Sacramento
Madeline Rule, Department of Motor Vehicles, Sacramento
Erik Saltmarsh, California Energy Commission, Sacramento
Daniel Siegel, Office of the Attorney General, Sacramento
Bob Temmerman, State Bar Estate Planning, Trust and Probate Law Section, San Jose
James Wolpman, Occupational Safety and Health Appeals Board, Sacramento

In the absence of a quorum, the Commission took the following actions as a committee.

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MINUTES OF MAY 12-13, 1994, COMMISSION MEETING

The Commission deferred action on the Minutes of the May 12-13, 1994, Commission meeting.

ADMINISTRATIVE MATTERS

Consultant Contracts

The Commission authorized the Executive Secretary to execute a consultant contract payable out of the 1993-94 fiscal year budget with Professor Michael Asimow. The purpose of the contract is to extend the existing arrangement by which Professor Asimow attends Commission meetings and legislative hearings at the request of the Commission. The terms of the contract should be the same as the terms of the existing contract. The amount of the contract should be \$1,000.

1994 LEGISLATIVE PROGRAM

The Commission considered Memorandum 94-27 relating to the status of bills in the Commission's legislative program. The staff updated the chart attached to the memorandum with the following information:

SB 1868 was not heard on June 14. For further discussion, see Study F-521.1 in these Minutes.

SB 1907 was approved by the Assembly Judiciary Committee on June 15. Amendments were made to this bill to address technical problems of California

Medical Association, and it became politically necessary to preserve existing law concerning the health care power of attorney witnessing requirements.

SCR 34 is set for hearing in Assembly Judiciary Committee on June 29.

SCA 3 has not yet been amended or voted on in the Assembly. The staff believes that it is Senator Lockyer's current intention to proceed with the measure.

STUDY F-521.1 — EFFECT OF JOINT TENANCY TITLE ON MARITAL PROPERTY

The Commission considered Memorandum 94-28 and its First Supplement, relating to SB 1868 and the Commission's recommendation on the effect of joint tenancy title on marital property.

The staff reported the following developments on this matter since the memoranda were written:

- Commissioner Marshall urges the Commission to continue working on it — this is the first realistic opportunity for the general public to understand and make sense out of these issues.
- Professor Kasner is supportive of the compromise proposal, with some language modifications.
- Two sections of the State Bar — family law and probate — support the bill as introduced. The Executive Committee of the probate section also supports the compromise proposal, with some modifications.

Bob Temmerman spoke on behalf of the State Bar probate section. He noted the history of the project, and the effect of the written transmutation requirement that has turned this into an urgent problem. The State Bar urges continued work on the compromise proposal, on the basis that half a loaf is better than none.

The Commission felt that we should continue to pursue this matter, and directed the staff to schedule it for further consideration by the Commission at an appropriate time, preferably a time when all the interested parties would be able to attend and express their concerns about different possible approaches. Among the thoughts mentioned by Commissioners were that there needs to be greater inducement to brokers and others to provide the form (e.g., protection from punitive damages), and that it would be desirable ultimately to have a system where it is presumed that title means what it says.

STUDY L-521.1 — EFFECT OF JOINT TENANCY TITLE ON MARITAL PROPERTY

See Study F-521.1.

STUDY N-100 — ADMINISTRATIVE ADJUDICATION

The Commission considered Memorandum 94-26, relating to the restructured administrative adjudication statute, and comments on Sections 614.040 through 643.320 of the restructured statute — pages 14 to 30 of Memorandum 94-19, pages 1 to 8 of the Second Supplement, and all of the Third Supplement. The Commission also considered written communications on these matters from the Office of Administrative Law, the Department of Motor Vehicles, and Coastal Commission, copies of which are attached to these Minutes as an Exhibit.

Exemptions From Administrative Procedure Act

Points made in the letter of the Coastal Commission in support of its exemption request were considered in connection with the specific issues to which the points were addressed, discussed below.

Madeline Rule of the Department of Motor Vehicles, speaking on behalf of the State Military Department, stated that the Department opposes the current proposal and requires an exemption in order to conform to federal standards. The Department will be submitting written comments to the Commission.

Draft of Administrative Procedure Act

The Commission approved staff-recommended revisions to the Comments to Sections 642.210, 642.240, 642.350, 643.110, and 643.320, set out in Memorandum 94-19. The Commission made the following decisions on proposed statutory revisions.

§ 610.290. **Notice of commencement of proceeding.** This section will be renumbered to conform to the alphabetical sequence of definitions.

§ 610.940. **Adoption of regulations.** Subdivision (c), which would have exempted regulations under the Administrative Procedure Act from OAL review for necessity, was limited to regulations (whether interim or permanent) filed with the Office of Administrative Law by December 31, 1998. The provision should also exempt those regulations from judicial review for necessity. The Comment to subdivision (c) was conformed accordingly.

The interrelation of Section 610.940 (adoption of interim regulations) and Section 633.050 (adoption of existing regulations as special hearing procedure) should be made clearer and simpler.

§ 614.040. **Procedure after conversion.** The Commission approved the following revision to Section 614.040:

614.040. After a proceeding is converted from one type to another, the presiding officer or other agency official responsible for the new proceeding shall do all of the following:

(a) Give additional notice to parties or other persons necessary to satisfy the requirements of the Administrative Procedure Act relating to the new proceeding.

(b) Dispose of the matters involved without further proceedings if sufficient proceedings have already been held to satisfy the requirements of the Administrative Procedure Act relating to the new proceeding.

(c) Conduct or cause to be conducted any additional proceedings necessary to satisfy the requirements of the Administrative Procedure Act relating to the new proceeding, and allow the parties a reasonable time to prepare for the new proceeding.

§ 632.020. **When informal hearing may be used.** The Commission approved the following revision of Section 632.020:

632.020. An informal hearing procedure may be used in any of the following proceedings, if in the circumstances its use does not violate a statute or the federal or state constitution:

...

(c) A proceeding where, by regulation, the agency has authorized use of an informal hearing, ~~if in the circumstances its use does not violate a statute or the federal or state constitution.~~

(d) A hearing of the California Coastal Commission, San Francisco Bay Conservation and Development Commission, or Water Resources Control Board, that involve land use planning or environmental matters.

(e) A proceeding where an evidentiary hearing for determination of facts is not required by statute but where the agency determines the federal or state constitution may require a hearing.

The staff should add to subdivision (d) other agencies that consider land use planning or environmental matters, such as the California Tahoe Regional Planning Agency (although deactivated) and the agency that makes land use

planning decisions on oil field unitization. The Commission thought general notice provisions should be revised to require the notice of hearing to show the type of hearing that will be used, e.g., formal or informal.

§ 632.030. **Procedure for informal hearing.** The Commission approved the following revision of Section 632.030:

The presiding officer may limit ~~pleadings, intervention, discovery, prehearing conferences, witnesses, testimony, evidence, and argument, and may limit or entirely preclude pleadings, intervention, discovery, prehearing conferences, and rebuttal, and argument.~~

§ 632.040. **Cross-examination.** The Commission asked the staff to revise Section 632.040 substantially as follows:

632.040. (a) The presiding officer may allow cross-examination in an informal hearing. The presiding officer may preclude use of the informal hearing if it appears to the presiding officer that in the circumstances cross-examination of witnesses will be necessary for proper determination of the matter, and any delay, burden, or complication due to cross-examination will be more than minimal.

(b) If after an informal hearing is commenced it appears that the requirements of subdivision (a) are satisfied, the presiding officer may convert the informal to a formal hearing.

(c) An agency may by regulation specify categories of cases in which cross-examination is deemed not necessary for proper determination of the matter.

The Commission thought the statute should require a response to a notice of commencement of proceeding to include any objection to a proposed informal hearing, and to provide for deciding the question on written submissions before the hearing. The presiding officer's decision not to convert an informal hearing to a formal hearing should be made judicially nonreviewable.

§ 633.050. **Adoption of existing regulations as special hearing procedure.** The statute or Comment should state more clearly that only newly adopted or modified provisions of an agency procedure are subject to review. Review of existing procedures by OAL should be limited to consistency with the template requirements (Section 633.030). The entire provision should be made more "user-friendly".

§ 634.010. **Agency regulation required.** The Commission approved the following revision of Section 634.010(c):

(c) This section does not apply to an emergency decision, including a cease and desist order or temporary suspension order, issued pursuant to other express statutory authority.

§ **634.060. Agency record.** The Commission approved the staff recommendation to delete subdivision (b) (record need not constitute exclusive basis for emergency decision or for administrative or judicial review of emergency decision).

§ **635.010. Declaratory decision permissive.** The Commission decided not to revise Section 635.010. The Commission decided to put language in the Comment to negate any implication that this section permits declaratory relief in court without exhaustion of administrative remedies. The Attorney General's representative asked for an opportunity to review this and perhaps to give the staff more input.

§ **641.130. Compilation of regulations governing adjudicative proceeding.** The Commission deleted from Section 641.130(a) the requirement that agency regulations on adjudicative proceedings be compiled in one title of the California Code of Regulations on administrative procedure.

641.130. (a) Regulations adopted by the Office of Administrative Hearings under this division ~~or by any other agency under this part~~ to govern an adjudicative proceeding shall be compiled in one title of the California Code of Regulations relating to administrative procedure.

Instead, these agency regulations would be compiled in the title containing the agency's other regulations. The staff should revise subdivision (b) accordingly.

§ **642.220. Application for decision.** The Commission approved the staff recommendation to delete Section 642.220 and to add the following language to Section 642.230 (agency action on application):

A person who makes an application for an agency decision without expressly requesting an adjudicative proceeding does not thereby waive the right to an adjudicative proceeding.

§ **642.230. Agency action on application.** The Commission approved the following revision of Section 642.230:

642.230. An agency shall commence an adjudicative proceeding on application of a person for an agency decision ~~for which~~ if a hearing is required by Section 631.010 (application to constitutionally and statutorily required hearings) and the applicant is a person entitled to the hearing, unless

§ 642.310. **Proceeding commenced by agency pleading.** The Commission asked the staff to give more thought to the proposal to codify the rule that an agency may dismiss a proceeding without prejudice at any time before the hearing. The Commission was concerned about how this might affect a proceeding initiated by a person outside the agency, and whether the agency might use this authority to avoid making a decision. We could say the party seeking relief may dismiss the application for that relief. Or perhaps it is best not to try to codify anything on this point.

§ 642.420. **Continuances.** The Commission was divided on whether to revise Section 642.420 to keep immediate superior court review of administrative denial of a request for continuance in formal hearings. The staff should bring this back at the next meeting.

§ 642.430. **Venue.** The Commission decided to leave Section 642.430 silent on whether there is immediate judicial review of a denial of a motion for change of venue. This will preserve case law allowing immediate judicial review. We will consider this again when we take up judicial review.

The Commission decided not to authorize venue in the county where the agency's headquarters office is located.

The Commission decided to require an objection to venue to be made within 10 days after service of the notice of hearing. Failure to object within that time would waive the objection. The notice of hearing should advise the respondent that an objection to venue must be made within the specified time. The staff should draft language and bring it back. There was some support for permitting a respondent to request a place of hearing in the response. Perhaps this could go in the Comment to Section 642.350, which permits a response to "[r]aise such other matter as may be appropriate."

§ 642.440. **Notice of hearing.** The Commission decided not to shorten the time for service of the notice of hearing, keeping the 15 days prescribed in Section 642.440.

§ 643.110. OAH administrative law judge as presiding officer. The Commission decided to revise Section 643.110 to provide the following default rules:

(1) To restore the existing presumption that a proceeding must be conducted by an ALJ from OAH only if a statute expressly so provides.

(2) To revise statutes that now apply the Administrative Procedure Act so those hearings will be continue to be conducted by an ALJ from OAH.

(3) To provide that hearings by new agencies created in the future will be conducted by an ALJ from OAH unless exempted by statute. New hearings by existing agencies would be presumed not to require an ALJ from OAH.

§ 643.320. When separation of functions required. The Commission decided not to expand the exemption from the separation of functions requirement for “issuance, denial, revocation, or suspension of a driver’s license pursuant to Division 6” of the Vehicle Code to apply to hearings on school bus driver and ambulance certificates and other special certificates. The Department of Motor Vehicles representative said there are about 211 hearings each year involving special certificates, with an estimated annual cost of \$19,783 to require separation of functions in these hearings. The Commission thought this is a justifiable cost to improve fairness.

The DMV representative said commercial endorsements do not exist independent of a driver’s license, and no separate administrative action is taken against an endorsement — if a license is revoked, the endorsement falls with it.

- APPROVED AS SUBMITTED
- APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary

OFFICE OF ADMINISTRATIVE LAW

555 CAPITOL MALL, SUITE 1290
SACRAMENTO, CA 95814
(916) 323-6225

June 15, 1994

Law Revision Commission
RECEIVED

JUN 16 1994

File: _____



California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Memorandum 94-26
(*Administrative Adjudication: Template Approach*)

Dear Commissioners:

The Office of Administrative Law ("OAL") is charged with administering the rulemaking portion of the California Administrative Procedure Act ("APA"). See *Grier v. Kizer* (1990) 219 Cal.App.3d 422, 431 (good summary of OAL duties); *State Water Resources Control Board v. Office of Administrative Law* (1993) 12 Cal.App.4th 697, 702 (same).

Again, OAL appreciates the opportunity to take part in the administrative adjudication portion of the APA revision project. OAL looks forward to the phase of the project addressing agency rulemaking. Our long term objective is to make the rulemaking portion of the APA less burdensome for state agencies, while preserving public participation and the benefits of independent legal review of proposed regulations.

610.940 Adoption of Regulations (Memorandum 94-26, pp. 1-2; text at p. 6)

Summary of concerns re subdivision (c) of section 610.940

OAL objects to language creating a *perpetual* exemption from OAL necessity review for all permanent regulations governing all adjudicative proceedings under the new statute. Such a perpetual exemption undermines the preventive law function of OAL review. One of the premises underlying independent legal review of proposed regulations by OAL is the need to identify and remedy legal flaws before the regulation takes effect. Flawed regulations may result in lawsuits, in which significant costs are incurred in terms of rulemaking agency staff time, Attorney General attorney time, judge and court time, and--if the suit is successful--attorney fees paid by the state to the prevailing private party plaintiff.

These cost concerns may arguably be outweighed in the context of adopting the *initial round* of new regulations by the benefits of getting the new regulations in place quickly, in the current environment of budgetary austerity. This is why OAL put forward the idea of going so far as exempting the first round of permanent regulations from OAL review for necessity. OAL intended that this necessity review exemption apply only in the transition phase, i.e., as the agencies are initially adapting to the new adjudication statute. The article containing the provisions on implementing regulations is titled "*Transitional Provisions*" (emphasis added). This "Transitional Provisions" Article seems like a peculiar home for a statutory provision (i.e., sec. 610.940(c)) which permanently eliminates OAL necessity review of all permanent regulations, whether adopted by the statutory deadline for permanent regulations (December 31, 1998) or during--for instance--the second decade of the next millennium (2010-2020).

As will be discussed in more detail below, the rationale outlined in the staff recommendation seems to reflect a misunderstanding of the function of the necessity requirement in agency rulemaking, in OAL review, and in judicial review. The thinking underlying the recommendation would logically lead the Commission--when it gets to the rulemaking portion of the APA--to totally eliminate OAL necessity review in all situations. Whether or not to eliminate OAL review for necessity would, however, be a major policy question, which should be subject to full analysis and discussion. It is especially important to unambiguously notify private sector representatives that such an issue is on the agenda. (Except for one meeting in 1993, persons attending Commission meetings on the adjudication statute have, with surprisingly few exceptions, been representatives of state agencies.) OAL suggests that discussion of the generic issue of OAL review for necessity be deferred until the Commission begins its work on the rulemaking portion of the APA.

Background of the "necessity" standard

The current Administrative Procedure Act requires that agency procedural rules undergo public notice and comment, OAL review, and publication in the California Code of Regulations. Government Code section 11342, subdivision (b), provides in part that "regulation" means "*every rule . . . or the amendment, supplement or revision of any such rule . . . adopted by any state agency to . . .*

govern its procedure" (Emphasis added.) Government Code section 11347.5, subdivision (a) provides that "[n]o state agency shall issue, utilize, enforce, or attempt to enforce any . . . rule, which is a regulation as defined in subdivision (b) of Section 11342, unless the . . . rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter."

Agency procedural regulations are invalid "unless consistent and not in conflict with the statute and *reasonably necessary* to effectuate the purpose of the statute." (Government Code section 11342.2; emphasis added.) In 1979, the Legislature declared:

"Substantial time and public funds have been spent in adopting regulations, the *necessity* for which has not been established."
(Government Code sec. 11340(c); emphasis added.)

Regulations for which necessity has not been established may be struck down in court:

"In addition to any other ground that may exist, a regulation may be declared invalid if . . . 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*." (Government Code section 11350(b); emphasis added.)

One of OAL's key functions is to ensure that the rulemaking record contains substantial evidence of necessity. (Government Code section 11349.1.) Government Code section 11349 defines necessity as follows:

"'Necessity' means the *record* of the rulemaking proceeding *demonstrates by substantial evidence* the need for a regulation. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion." (Emphasis added.)

Neither OAL nor the court "should substitute its judgment for that of the rulemaking agency as expressed in the substantive content of the adopted regulations." (Government Code section 11340.1.) Regulations adopted by OAL "shall ensure that it does not substitute its judgment for that of the

rulemaking agency as expressed in the substantive content of adopted regulations." (Government Code section 11349.1(c).) Following this statutory directive, OAL has adopted a regulation which provides that

"[i]n reviewing the rulemaking record for compliance with [the necessity standard], OAL *shall not dispute the decision of a rulemaking agency to adopt a particular regulatory provision* when the information provided . . . is also adequate to support one or more alternative conclusions."

(Title 1, California Code of Regulations, section 10(a); emphasis added.)

For instance, a hypothetical proposed regulation's rulemaking record might contain substantial evidence to support either (1) the conclusion that all fire engines must be painted red or (2) the conclusion that all fire engines must be painted fluorescent lime green. Thus, applicable statutes and regulations currently vest in the rulemaking agency the power to make policy decisions. However, it is the responsibility of OAL in applying the necessity standard to ensure that the record of the rulemaking proceeding contains substantial evidence that the *selected* policy is "reasonably necessary." In other words, though barred from substituting its judgment for that of the rulemaking agency concerning the "substantive content of adopted regulations" (i.e., fire engines must be painted red), it is OAL's duty to ensure that the policy reflected in the substantive content of the regulation is supported by an adequate record. Regulations supported by adequate records are less likely to be challenged in court. Even if challenged in court, regulations supported by adequate records are more likely to be upheld.

In a recent, typical OAL decision, a Department of Insurance fee regulation was disapproved on the grounds that substantial evidence was lacking in the record. There was *nothing* in the record demonstrating necessity. In a phone conversation, the departmental regulations coordinator explained that though documents had been prepared, that they had simply forgotten to include this necessity material in the binder submitted to OAL. The department promptly submitted the overlooked supporting documentation to OAL. The regulation was promptly approved. Had this Prop. 103 fee regulation been exempt from OAL necessity review, it is virtually certain that it would have been challenged in court for lack of necessity by interested parties in the insurance industry. The "record of the rulemaking proceeding" (Government Code sec. 11349(a)) would have failed to demonstrate necessity. Government Code section 11349(a), read

together with Government Code section 11350, indicates that the record of the rulemaking proceeding is a closed record. See also Government Code section 11347.3(a)(12) & (c). In the one court decision we are aware of on the closed record issue, the Sacramento Superior Court struck down a Consumer Affairs licensing agency regulation for lack of necessity, indicating that the agency was to re-adopt the regulation if it wished the provision to again become effective. In short, forgetting to put the necessity document in the rulemaking record could prove fatal in court and cost the state a bundle.

Problem with Comment to 610.940, final comment sentence

We are concerned about the rationale given in the comment to section 610.940 for the elimination of OAL necessity review. The comment states: "The statute vests in an agency the power to determine *whether regulations are needed* for an administrative adjudication by that agency." (Emphasis added.)

The comment overlooks the fact that adjudicatory agencies will, under the Commission's proposed new statute, still be required to provide substantial evidence of necessity in the final statement of reasons. Similarly, courts will be required to invalidate adopted regulations unless the rulemaking agency's determination that the regulation is "reasonably necessary" is supported by substantial evidence in the record of the rulemaking proceeding. (Government Code sec. 11350(b).) Thus, the current APA vests *in the court* the power to determine whether adopted procedural regulations are "reasonably necessary" to effectuate the purpose of the underlying law. To say that the power to determine whether regulations are need is vested "in any agency" is confusing. The agency must demonstrate necessity in writing; this demonstration is subject to judicial review.

The last sentence of the comment to section 610-940 seems to reflect a fundamental disagreement with the thinking underlying the statutory necessity standard. The logic of the comment would seem to indicate that the necessity standard can--and should--be permanently dispensed with, not only in the adjudication-regulation context, but in all rulemaking contexts, including substantive as well as procedural regulations. If the Commission elects to permanently eliminate OAL necessity review of procedural regulations of agencies covered by the new adjudication statute, the next logical step would

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be to eliminate OAL necessity review from the rulemaking statute. This would be a monumental step backward, negating one of the key gains made in the regulatory reform efforts of the last 15 years.

Sincerely,

Herbert F. Bolz

Herbert F. Bolz

Memorandum

Date : June 16, 1994
To: : Madeline Rule
From : Kathy Keers
Subject : Hearing Costs for Commercial Drivers

At your request, we have refigured the following annual costs for 4,259 hearings for commercial drivers.

We found an error in items 2 and 3: Staff support costs of \$16 per hearing were previously added in twice. Actual hearing costs (item #1) are \$203,797. The average hearing cost, adjusted for type hearing, hearing officer classification, and volumes is \$47.85.

1.	Current DMV Hearing Costs	\$203,797
2.	Cost of DMV Hearings with a DMV Hearing Officer and a Non-Attorney Advocate	\$1,511,945 1,256,405
3.	Cost of DMV Hearings with a DMV Hearing Officer and a DMV Attorney Advocate	\$1,873,960
4.	Cost of DMV Hearings with an Administrative Law Judge and a Non-Attorney Advocate	\$5,328,009 5,072,469
5.	Cost of DMV Hearings with an Administrative Law Judge and a DMV Attorney Advocate	\$5,690,024

Please contact Terry Keenan at 7-6265 or Gary Meterer at 7-5676 if you have any questions regarding this information.

Kathy Keers

KATHY KEERS, Manager
Driver Safety Policy Unit

Attachments

Alternative Hearing Costs

June 16, 1994

ASSUMPTIONS

1. The department took approximately 325,000 actions against the driving privilege in calendar year 1993, in which the driver was eligible to request a hearing. This resulted in 157,716 administrative hearings.
2. Of the 157,716 hearings in 1993, there were 4,259 hearings involving commercial drivers. The hearing volumes breakdown, and cost, was as follows:

Category of Hearing	Hearing Officer Classif.	Number of Hearings	Cost Per Hearing	Total Cost
Special Certificate	PDSO	211	\$93.76	19,783
Admin Per Se	DIA-C	525	59.28	31,122
Neg Op	DIA-B	1,630	37.30	60,793
Physical & Mental	DIA-C	1,893	48.65	92,099
Total Cost		4,259		\$203,797

Based on the above breakdown, assume 5% PDSO, 38% DSO, Range B, and 57% DSO, Range C. The average cost of each hearing, adjusted for time, volume and hearing officer classification, is \$47.85. This includes \$14 10 staff support (53 minutes @ \$16/hr), and \$33.75 hearing officer cost (76 minutes @ \$27./hr).

3. The department is required to conduct financial responsibility hearings in the county of residence (Section 16075 (e) CVC). Admin per se hearings are required to be conducted in the county of arrest (Section 13358 CVC). All other hearing locations are governed by the Administrative Procedures Act. In all cases, the location can be changed upon mutual agreement of all parties.
4. The annual cost for a departmental hearing officer ranges from a low of \$25,356 (Driver Safety Officer, Range A, entry level) to a high of \$43,920 (PDSO, journey level).
5. The hourly cost for an administrative law judge (ALJ) would be \$115. Administrative law judges are located in Sacramento, San Francisco, and Los Angeles. Each hearing would require an average of 1 hour. Additionally, assume 2 hours preparation time, 1 hour report writing, and 2 hours travel, for a total of 6 hours (\$690.) per hearing.
6. The hourly cost to the department for a court reporter would be \$55. Each hearing would require an average of 1 hour. In an unknown percentage of cases, the court reporter would incur a varying amount of travel time. For purposes of costing, assume 1 hour travel time for each hearing involving a court reporter. Additionally, assume 2 hours to transcribe the recording, for a total of 4 hours (\$220.) per hearing.

7. The hourly cost to provide a DMV attorney would be \$60 per hour. DMV attorneys are located in Sacramento and Los Angeles. Each hearing would require an average of 1 hour. Additionally, assume 2 hours preparation time, and 2 hours travel, for a total of 5 hours (\$300) per hearing.
8. Assume a non-attorney DMV advocate would be a principle driver safety officer (PDSO). The hourly cost for a non-attorney DMV advocate would be ~~\$47.31~~¹⁵⁵ (includes leave and benefits rates). Each hearing would require an average of 1 hour. Additionally, assume 2 hours preparation time, and 2 hours travel, for a total of 5 hours (~~\$235.~~) per hearing.
9. Hearing time requirements will increase at least double current requirements with advocates.
10. DMV employee salary costs utilized in determining hearing costs, in addition to the salary range in effect 2-1-1994, reflect a benefit rate of .3681%, and a leave rate of 19%. Not included in the DMV employee cost is a management/supervision rate of 11% to 16%.

ALTERNATIVES

The following are four alternatives for annual hearing costs for 4,259 commercial drivers.

1. Current DMV Hearing Cost

Hearing Officer (PDSO, DIA-C, and DIA-B): \$33.75
 0.1 hours travel; 0.17 hours preparation;
 0.5 hour hearing; and 0.5 hour report
 writing = 1.25 hours @ \$27.

Staff Support: 0.881 hour @ \$16. \$14.10

Total Average Hearing Cost:	\$47.85
Total; 4,259 hearings:	\$203,797

2. Cost of DMV Hearing with a DMV Hearing Officer and a Non-Attorney Advocate

Hearing Officer (PDSO): 2 hours travel; 1
 hour hearing, and 1 hour report writing =
 4 hours @ \$31. \$124.

Non Attorney Advocate (PDSO): 2 hours
 preparation, 2 hours travel, and 1 hour
 hearing = 5 hours @ ~~\$43.31~~²⁹⁵ \$216.155

Staff Support: 1 hour @ \$16. \$16.

Total Average Hearing Cost:	\$355. 295
Total; 4,259 hearings:	\$1,511,945. 1,256,405

3. Cost of a DMV Hearing with a DMV Hearing Officer and a DMV Attorney Advocate

Hearing Officer (PDSO): 2 hours travel; 1 hour hearing, and 1 hour report writing = 4 hours @ \$31.	\$124.
DMV Attorney Advocate: 2 hours preparation, 2 hours travel, and 1 hour hearing = 5 hours @ \$60. per hour.	\$300.
Staff Support: 1 hour @ \$16.	\$16.
Total Average Hearing Cost:	<u>\$440</u>
Total: 4,259 hearings:	<u><u>\$1,873,960</u></u>

4. Cost of a DMV Hearing with an Administrative Law Judge and a Non-Attorney Advocate

Administrative Law Judge: 2 hours preparation, 2 hours travel; 1 hour hearing, and 1 hour report writing = 6 hours @ \$115 per hour	\$690.
Non Attorney Advocate: 2 hours preparation, 2 hours travel, and 1 hour hearing = 5 hours @ \$43 ³¹ per hour	\$215. 155
Court recorder: 1 hour travel, 1 hour hearing, and 2 hours transcription =6 hours @ \$55 per hour	\$330.
Staff Support: 1 hour @ \$16	\$16.
Total Average Hearing Cost:	<u>\$1,251.</u>
Total: 4,259 hearings:	<u><u>\$5,328,009.</u></u> 5,072,469

5. Cost of a DMV Hearing with an Administrative Law Judge and a DMV Attorney Advocate

Administrative Law Judge: 2 hours preparation, 2 hours travel; 1 hour hearing, and 1 hour report writing = 6 hours @ \$115 per hour	\$690.
DMV Attorney Advocate: 2 hours preparation, 2 hours travel, and 1 hour hearing = 5 hours @ \$60.	\$300.
Court recorder: 1 hour travel, 1 hour hearing, and 2 hours transcription =6 hours @ \$55 per hour	\$330
Staff Support: 1 hour @ \$16.	\$16.
Total Average Hearing Cost:	<u>\$1,336</u>
Total: 4,259 hearings:	<u><u>\$5,690,024</u></u>

DRIVER SAFETY COST ANALYSIS		
Project:		
Description of Activity:	DIA-B	
Program Element/Component:	Personnel	
Volume:	1	
Classification:	DIA-B Entry	MVFR-B Entry
	A	B
1. Standard Hour Value	1	1
2. Volume	1	0
3. Actual Hours (line 1 x 2)	1	0
4. Support Activities/Leave Rate	1.19	1.19
5. Paid Hours (line 3 x 4)	1.19000	.00000
6. Position Personnel Year Conversion	2088	2088
7. Total Position-Personnel Years: (line 5 /line 6)	.00057	.00000
8. Total Permanent:		
9. Total Temporary:		
10. Annual Salary Eff: 2-1-94	\$27.720	\$22.032
11. Total Salaries and Wages	\$15.80	\$0.00
12. Salary Savings (line 10 x 5%)	\$0.79	\$0.00
13. Net Salaries and Wages	\$15.01	\$0.00
14. Staff Benefits Rate	1.3681	1.3681
15. Total Personal Services: (line 14 x 13)	\$20.53	\$0.00
16. TOTAL HEARING COST: (column A + B)	\$20.53	
17 Add Admin/Supervision Rate: 16% (line 15 x 1.16)	\$23.82	
ASSUMPTIONS:		
1. Support activities/leave rate and staff benefits rate per Costing Manual.		
Prepared by: Gary Meterer		Date: 6-15-94

DRIVER SAFETY COST ANALYSIS		
Project:		
Description of Activity:	Personnel	
Program Element/Component:	Cost	
Volume:	1	
Classification:	PDSO-Entry	MVFR-B Entry
	A	B
1. Standard Hour Value	0	0
2. Volume	1	0
3. Actual Hours (line 1 x 2)	1	0
4. Support Activities/Leave Rate	1.19	1.19
5. Paid Hours (line 3 x 4)	1.19000	.00000
6. Position Personnel Year Conversion	2088	2088
7. Total Position-Personnel Years: (line 5 /line 6)	.00057	.00000
8. Total Permanent:		
9. Total Temporary:		
10. Annual Salary Eff: 2-1-94	\$36,432	\$22,032
11. Total Salaries and Wages	\$20.76	\$0.00
12. Salary Savings (line 10 x 5%)	\$1.04	\$0.00
13. Net Salaries and Wages	\$19.73	\$0.00
14. Staff Benefits Rate	1.3681	1.3681
15. Total Personal Services: (line 12 x 13)	\$26.99	\$0.00
16. TOTAL HEARING COST: (column A + B)	\$26.99	
17 Add Admin/Supervision Rate: 16% (line 15 x 1.16)	\$31.30	
ASSUMPTIONS:		
1. Support activities/leave rate and staff benefits rate per Costing Manual.		
Prepared by: Gary Meter		Date: 6-7-94

DRIVER SAFETY COST ANALYSIS		
Project:		
Description of Activity:	Hearing Cost	
Program Element/Component:	Spec. Cert	
Volume:	1	
Classification:	PDSO-Entry	MVFR-B Entry
	A	B
1. Standard Hour Value	1.6936	2.1524
2. Volume	1	1
3. Actual Hours (line 1 x 2)	1.6936	2.1524
4. Support Activities/Leave Rate	1.19	1.19
5. Paid Hours (line 3 x 4)	2.01538	2.56136
6. Position Personnel Year Conversion	2088	2088
7. Total Position-Personnel Years: (line 5 /line 6)	.00097	.00123
8. Total Permanent:		
9. Total Temporary:		
10. Annual Salary Eff: 2-1-94	\$36,432	\$22,032
11. Total Salaries and Wages	\$35.16	\$27.03
12. Salary Savings (line 10 x 5%)	\$1.76	\$1.35
13. Net Salaries and Wages	\$33.41	\$25.68
14. Staff Benefits Rate	1.3681	1.3681
15. Total Personal Services: (line 12 x 13)	\$45.70	\$35.13
16. TOTAL HEARING COST: (column A + B)	\$80.83	
17. Add Admin/Supervision Rate: 16% (line 15 x 1.16)	\$93.76	
ASSUMPTIONS		
1. Support activities/leave rate and staff benefits rate per Costing Manual.		
2. Includes all DSRU and District Office activities.		
3. Time based on 1984 survey.		
Prepared by: Gary Meterer		Date: 6-7-94

DRIVER SAFETY COST ANALYSIS		
Project:		
Description of Activity:	Admin per se	
Program Element/Component:	Hearing Cost	
Volume:	1	
Classification:	DIA-C Entry	MVFR-A Entry
	A	B
1. Standard Hour Value	1.25	1.33
2. Volume	1	1
3. Actual Hours (line 1 x 2)	1.25	1.33
4. Support Activities/Leave Rate	1.19	1.19
5. Paid Hours (line 3 x 4)	1.48750	1.58270
6. Position Personnel Year Conversion	2088	2088
7. Total Position-Personnel Years: (line 5 /line 6)	.00071	.00076
8. Total Permanent:		
9. Total Temporary:		
10. Annual Salary Eff:2-1-94	\$31.752	\$22.032
11. Total Salaries and Wages	\$22.62	\$16.70
12. Salary Savings (line 10 x 5%)	\$1.13	\$0.84
13. Net Salaries and Wages	\$21.49	\$15.87
14. Staff Benefits Rate	1.3681	1.3681
15. Total Personal Services: (line 12 x 13)	\$29.40	\$21.71
16. TOTAL HEARING COST: (column A + B)	\$51.10	
17 Add Admin/Supervision Rate: 16% (line 15 x 1.16)	\$59.28	
<u>ASSUMPTIONS:</u>		
Prepared by: Gary Meter		Date: 6-7-94

DRIVER SAFETY COST ANALYSIS		
Project:		
Description of Activity:	NOTS III	
Program Element/Component:	In Pers. Hrg	
Volume:	1	
Classification:	DIA-B Entry	MVFR-B Entry
	A	B
1. Standard Hour Value	0.8596	0.8886
2. Volume	1	1
3. Actual Hours (line 1 x 2)	0.8596	0.8886
4. Support Activities/Leave Rate	1.19	1.19
5. Paid Hours (line 3 x 4)	1.02292	1.05743
6. Position Personnel Year Conversion	2088	2088
7. Total Position-Personnel Years: (line 5 /line 6)	.00049	.00051
8. Total Permanent:		
9. Total Temporary:		
10. Annual Salary Eff: 2-1-94	\$27,720	\$22,032
11. Total Salaries and Wages	\$13.58	\$11.16
12. Salary Savings (line 10 x 5%)	\$0.68	\$0.56
13. Net Salaries and Wages	\$12.90	\$10.60
14. Staff Benefits Rate	1.3681	1.3681
15. Total Personal Services: (line 14 x 13)	\$17.65	\$14.50
16. TOTAL HEARING COST: (column A + B)	\$32.15	
17. Add Admin/Supervision Rate: 16% (line 15 x 1.16)	\$37.30	
ASSUMPTIONS:		
1. Support activities/leave rate and staff benefits rate per Costing Manual.		
2. Includes all District Office activities.		
3. DIA-B entry level used since most eligible classes for hiring already at or above range A.		
Prepared by: Gary Meter	Date: 6-7-94	

DRIVER SAFETY COST ANALYSIS		
Project:		
Description of Activity:	In Person Hrg	
Program Element/Component:	P & M Case	
Annual Volume:	1	
Classification:	DIA-C Entry	MVFR-B Entry
	A	B
1. Standard Hour Value	1.151	0.9112
2. Volume	1	1
3. Actual Hours (line 1 x 2)	1.151	0.9112
4. Support Activities/Leave Rate	1.19	1.19
5. Paid Hours (line 3 x 4)	1.36969	1.08433
6. Position Personnel Year Conversion	2088	2088
7. Total Position-Personnel Years: (line 5 /line 6)	.00066	.00052
8. Total Permanent:		
9. Total Temporary:		
10. Annual Salary Eff: 2-1-94	\$31.752	\$22.032
11. Total Salaries and Wages	\$20.83	\$11.44
12. Salary Savings (line 10 x 5%)	\$1.04	\$0.57
13. Net Salaries and Wages	\$19.79	\$10.87
14. Staff Benefits Rate	1.3681	1.3681
15. Total Personal Services: (line 12 x 13)	\$27.07	\$14.87
16. TOTAL COST: (column A + B)	\$41.94	
17 Add Admin/Supervision Rate: 16% (line 15 x 1.16)	\$48.65	
ASSUMPTIONS:		
1. Support activities/leave rate and staff benefits rate per Costing Manual.		
2. Salary effective 2-1-94		
3. Salary is entry level.		
Prepared by: Gary Meter		Date: 6-7-94

APPENDIX D
SUPPORT ACTIVITY AND LEAVE RATE TABLE

DIVISION	ACTUAL 1992/93 FY	ESTIMATED 1993/94
EXECUTIVE/DRIVER SAFETY	19.7%	18.6%
ADMINISTRATION	21.2%	19.5%
PROGRAM AND POLICY ADMINISTRATION	24.7%	21.7%
EDP SERVICES	21.9%	20.7%
FIELD OPERATIONS	19.1%	17.8%
HEADQUARTERS OPERATIONS	20.8%	18.8%
INVESTIGATIONS AND OCCUPATIONAL LICENSING	20.9%	19.3%
DEPARTMENT TOTALS	<u>20.0%</u>	<u>18.4%</u>

* NOTE: Support Activity Leave Rate for Driver Safety are not yet separated to Executive for this fiscal year.

NOTE: Convert these percents to decimals before using in calculations.

DEPARTMENTAL STAFF BENEFITS

USE THESE PERCENTAGES FOR "CURRENT AND NEW" POSITIONS

(Based on actual 1992-93)

(Expenditure Codes)	(1030)	(1040)	(1050)	(1060)	(1250)	(1270)	(1320)	(1330)	(1340)	(1350)	(1360)	(1370)	Total
	CSDI	Dental	Health/ Welfare	Retirement	Workers Comp	IDL	NDL	Unemploy- ment	Other	Life Ins	Vision	Medicare	Total
1993-94	6.945%	0.011%	0.096%	10.471%	2.862%	0.653%	0.263%	0.181%	14.769%	0.053%	0.474%	0.032%	36.810%
1994-95	6.945%	0.011%	0.096%	10.471%	2.862%	0.653%	0.263%	0.181%	14.769%	0.053%	0.474%	0.032%	36.810%

USE THESE PERCENTAGES FOR "ABOLISHING/REDUCING" POSITIONS

(Based on 1993-94 final budget)

(Expenditure Codes)	(1030)	(1040)	(1050)	(1060)	(1250)	(1270)	(1320)	(1330)	(1340)	(1350)	(1360)	(1370)	Total
	CSDI	Dental	Health/ Welfare	Retirement	Workers Comp	IDL	NDL	Unemploy- ment	Other	Life Ins	Vision	Medicare	Total
1993-94	6.562%	1.447%	10.038%	8.513%	2.000%	0.368%	0.277%	0.129%	0.614%	0.062%	0.400%	0.034%	30.444%

DMV SALARY CHART
EFFECTIVE 02/01/94

Schema Code	MCR	Bargaining Unit/DMS	Class Code	Class Title	Salary Range	Hor Wee Grc
LN40	I	RO1	1353	COMPUTER OPERATOR		
LN40	I	RO1		Range A *** AR281 AR285	1878-1972-2033	2
LN40	I	RO1		Range B +	1952-2050-2153-2261-2310	2
LN40	I	CO1		Range C +	2217-2328-2444-2566-2646	2
LN40	I	CO1		Range L +	1878-1972-2033	2
LN40	I	CO1		Range M +	1952-2050-2153-2261-2310	2
LN40	I	CO1		Range N +	2217-2328-2444-2566-2646	2
CX34	I	RO4	8735	CONTROL CASHIER I (MVS)	2133-2240-2352-2470-2591	02
CX35	I	RO4	8738	CONTROL CASHIER I (VR)	2133-2240-2352-2470-2591	02
CX35	I	RO4	8737	CONTROL CASHIER II (MVS)	2297-2412-2533-2660-2793	02
CX37	I	RO4	8739	CONTROL CASHIER II (VR)	2297-2412-2533-2660-2793	02
CJ55	I	SO4	1385	DATA ENTRY MANAGER #	3467-3640-3822-4013-4214	4C
LK31	II	SO1	1381	DATA PROCESSING MANAGER I #	3843-4035-4237-4449-4636	4C
LK21	II	SO1	1384	DATA PROCESSING MANAGER II #	4219-4430-4652-4885-5091	4C
LK15	M	MO1	1393	DATA PROCESSING MANAGER III # *	5129-5385	4C
LK11	M	MO1	1387	DATA PROCESSING MANAGER IV # *	5539-5921	4C
CP00		E99	3064	DEPUTY SECY BUSINESS REG AND GENERAL COUNSEL	7183	99
CA05	II		7691	DIRECTOR OFFICE OF REAL ESTATE APPRAISERS	6847	99
V031	I	SO1	8728	DRIVER SAFETY MANAGER I	3330-3497-3672-3856-4049	4C
V020	I	SO1	8723	DRIVER SAFETY MANAGER II	3660-3843-4035-4237-4449	4C
V010	II	MO1	8722	DRIVER SAFETY MANAGER III *	4449-4671	4C
			8727	DRIVER SAFETY OFFICER		
V051	I	RO1		Range A #+ AR133	2123-2229-2340-2457-2525	4A
V051	I	RO1		Range B +	2310-2426-2547-2674-2770	4A
V051	I	RO1		Range C +#	2646-2778-2917-3063-3180	4A
LZ20	I	RO1	5602	EDITORIAL TECHNICIAN	2271-2385-2504-2629-2720	4A
S40	I	R12	5533	ELECTRICIAN I		
				Range A AR040	2897-3042-3180	2
			5532	ELECTRICIAN II		
				Range A AR040	3035-3188-3330	2
				Range B	3330-3497-3660	2
PS30	I	R12		Range A AR040	9.23 9.39 9.59	1
PS30	I	R12		Range B		1
CG76	I	E	1854	EXAMINATION PROCTOR #	2464-2567-2716-2852-2995	4A
CD40	II	RO4	1728	EXECUTIVE ASSISTANT	2265-2378-2497-2622-2752	1
CD50	I	RO4	1247	EXECUTIVE SECRETARY I	2464-2567-2716-2852-2995	4A
CD50	I	RO4	1245	EXECUTIVE SECRETARY II		
JB50	I	RO1	4287	GENERAL AUDITOR II	2909-3054-3207-3367-3497	4A
JB40	I	RO1	4285	GENERAL AUDITOR III		
JB40	I	CO1		Range A AR285	3497-3672-3856-4049-4219	4C
JB40	I	CO1		Range L	3497-3672-3856-4049-4219	4C
QA60	I	RO2	5797	GRADUATE LEGAL ASSISTANT #	2831-2973-3107	4A
			4872	GRADUATE STUDENT ASSISTANT		
MF40	I			Range A # AR062	1472-1546-1588	4A
MF40	I			Range B #	1588-1667-1716	4A
MF40	I			Range C #	1649-1731-1794	4A
MF40	I			Range D #	1716-1802-1869	4A
MF40	I			Range E #	1794-1884-1953	4A
MF40	I			Range F #	1859-1962-2033	4A
MF40	I			Range G #	2033-2135-2229	4A
CY50	I	RO2	6125	HEARING OFFICER I, NMVB #	5729-6015-6316-6632-6929	4C
CY52	I	RO2	6126	HEARING OFFICER II, NMVB #	6009-6309-6624-6955-7270	4C
CC35	I	RO4	1193	HEARING TRANSCRIBER-TYPIST *	1979-2078-2182-2291-2405	2

SEE LAST PAGE FOR FOOTNOTES, MCR AND BARGAINING UNIT INFORMATION

DMV SALARY CHART
EFFECTIVE 02/01/94

Schem Code	MCR	Bargaining Unit#/DMS	Class Code	Class Title	Salary Range	
LZ17	I	R01	5601	INFORMATION OFFICER I (SPECIALIST)		
LZ17	I	C01		Range A AR285	3330-3497-3672-3856-4018	4
LZ10	II	S01	5595	INFORMATION OFFICER II	3330-3497-3672-3856-4018	4
LN48	I	R01	1350	INFORMATION SYSTEMS TECHNICIAN	4018-4219-4430-4652-4849	4
LN48	I	R01		Range A + AR280 AR285	1878-1972-2033	2
LN48	I	R01		Range B +	1952-2050-2153-2261-2310	2
LN48	I	R01		Range C +	2217-2328-2444-2566-2646	2
LN48	I	C01		Range L +	1878-1972-2033	2
LN48	I	C01		Range M +	1952-2050-2153-2261-2310	2
LN48	I	C01		Range N +	2217-2328-2444-2566-2646	2
LN45	I	R01	1562	INFORMATION SYSTEMS TECHNICIAN SPECIALIST I		
LN45	I	C01		Range A AR285	2646-2778-2917-3063-3180	4
LN43	I	R01	1557	INFORMATION SYSTEMS TECHNICIAN SPECIALIST II	2646-2778-2917-3063-3180	4
LN44	I	S01	1408	INFORMATION SYSTEMS TECHNICIAN SUPERVISOR I	3180-3339-3506-3681-3834	4
LN42	I	S01	1407	INFORMATION SYSTEMS TECHNICIAN SUPERVISOR II	2778-2917-3063-3216-3339	4
VW15	I	R07	8829	INSPECTOR, DMV	3339-3506-3681-3865-4026	4
VW15	I	R07		Range A + AR265	2179-2288-2402-2522-2592	4
VJ25	I	R07	8554	INVESTIGATOR ASSISTANT *	2475-2599-2729-2865-2977	4
					2153-2261-2374-2448	2
DC40	I	R15	2011	JANITOR		
				Range A + AR047	1573-1652-1735-1822-1912	2
CJ50	I	R04	1419	KEY DATA OPERATOR		
CJ50	I	R04		Range A ** AR081	1615-1696-1781	7
CJ40	I	S04	1420	KEY DATA SUPERVISOR I	1836-1928-2024-2125-2231	
CJ30	I	S04	1435	KEY DATA SUPERVISOR II	2055-2158-2266-2379-2498	
CJ20	I	S04	1435	KEY DATA SUPERVISOR III	2213-2324-2440-2562-2690	1
CJ10	II	S04	1434	KEY DATA SUPERVISOR IV	2516-2642-2774-2913-3059	4
					2978-3127-3283-3447-3619	4
WR85	II	M01	9537	LABOR RELATIONS MANAGER I + *	4671-4905	4
WR85	II	E98	9535	LABOR RELATIONS SPECIALIST	3843-4035-4237-4449-4636	4
JY62	II	R01	5237	LEGAL ANALYST		
				Range A + A	2770-2909-3054-3207-3330	4
YJ56	I	R01	1820	LEGAL ASSISTANT		
YJ56	I	C01		Range A + AR285	2442-2564-2692-2827-2939	2
CE20	I	R04	1282	LEGAL SECRETARY	2442-2564-2692-2827-2939	2
CE42	I	S04	1277	LEGAL SUPPORT SUPERVISOR I	2364-2482-2606-2736-2872	1
CE42	I	S04		Range A AR142	2464-2587-2716-2852-2995	1
CE42	I	S04		Range B	2852-2995-3145	1
VS50	I	R07	8758	LICENSING-REGISTRATION EXAMINER, DMV	2995-3145-3302	1
KC84	I	R01	4687	LIMITED EXAM & APPT. PROG. CANDIDATE e	2179-2288-2402-2522-2592	2
					.00 to 109.19 Hr.	4
					.00 to 1,091.99 Day	
					.00 to 10,920.00 Mo.	
CK03	I	R04	1779	MAILING MACHINES OPERATOR I		
CK03	I	R04		Range A + AR275	1709-1794-1884-1978-2076	2
CK04	I	R04	1780	MAILING MACHINES OPERATOR II	1850-1943-2040-2142-2248	2
CK07	I	S04	1459	MAILING MACHINES SUPERVISOR I +	1985-2084-2188-2297-2411	2
DD60	I	R15	8992	MAINTENANCE & SERVICE OCCUPATIONAL TRAINEE **	2147-2254-2367-2485-2609	1
					1423-1494-1568	2

SEE LAST PAGE FOR FOOTNOTES, MCR AND BARGAINING UNIT INFORMATION

DMV SALARY CHART
EFFECTIVE 02/01/94

Schem Code	MCR	Bargaining Unit#/CMS	Class Code	Class Title	Salary Range	Wor Week Grd
			5278	MANAGEMENT SERVICES TECHNICIAN		
JY40	I	RD1		Range A ** AR023 AR285	1889-1983-2082-2186-2224	2
JY40	I	RD1		Range B +	2133-2240-2352-2470-2535	2
JY40	I	CD1		Range L +	1889-1983-2082-2186-2224	2
JY40	I	CD1		Range M +	2133-2240-2352-2470-2535	2
VQ85	I	SD1	8746	MANAGER I, DMV #	2525-2651-2784-2923-3069	4A
VQ80	I	SD1	8740	MANAGER II, DMV #	2770-2909-3054-3207-3367	4A
VQ75	I	SD1	8734	MANAGER III, DMV #	3330-3497-3672-3856-4049	4A
VQ70	I	SD1	8731	MANAGER IV, DMV #	3660-3843-4035-4237-4449	4A
			8747	MANAGER TRAINEE, DMV		
VQ90	I	SD1		Range A ** AR240	2133-2240-2352-2470-2535	4A
VQ90	I	SD1		Range B +	2310-2426-2547-2674-2770	4A
VQ90	I	SD1		Range C +	2525-2651-2784-2923-3069	4A
VQ60	I	M01	8730	MANAGER V, DMV # %	3525-2651-2784-2923-3069	4A
			1506	MATERIALS AND STORES SPECIALIST	4449-4671	4C
P825	I	R12		Range A AR040	2177-2286-2400-2520-2587	2
			1503	MATERIALS AND STORES SUPERVISOR		
P824	I	U12		Range A *** AR040 AR322	2411-2532-2659-2792-2897	1
P824	I	S12		Range S ***	2411-2532-2659-2792-2897	1
GAS5	I	R11	9993	MECHANICAL & TECHNICAL OCCUPATIONAL TRAINEE **	1465-1538-1615	2
			1480	MICROFILM TECHNICIAN I		
CL40	I	RD4		Range A ** AR091	1595-1665-1748-1835-1926	2
CL40	I	RD4		Range B **	1766-1854-1947-2044-2145	2
CL45	I	RD4	1481	MICROFILM TECHNICIAN II	1898-1993-2093-2198-2307	2
			1898	MOTOR VEHICLE ASSISTANT		
CZ91	I	RD4		Range A ** AR244	1709-1794-1884-1978-2076	2
CZ91	I	RD4		Range B +	1836-1928-2024-2125-2231	2
			1897	MOTOR VEHICLE FIELD REPRESENTATIVE		
CZ90	I	RD4		Range A ** AR243	1709-1794-1884-1978-2076	2
CZ90	I	RD4		Range B +	1836-1928-2024-2125-2231	2
CZ90	I	RD4		Range C +	1979-2078-2182-2291-2405	2
CZ94	I	SD4	1746	MOTOR VEHICLE PROGRAM SUPERVISOR I	2055-2158-2265-2379-2498	1
Z95	I	SD4	1766	MOTOR VEHICLE PROGRAM SUPERVISOR II	2213-2324-2440-2562-2690	1
			1899	MOTOR VEHICLE TECHNICIAN		
CZ92	I	RD4		Range A ** AR245	1836-1928-2024-2125-2231	2
CZ92	I	RD4		Range B +	1979-2078-2182-2291-2405	2
			1441	OFFICE ASSISTANT (GENERAL)		
CA55	I	RD4		Range A ** AR282	1555-1633-1715-1801-1889	2
CA55	I	RD4		Range B **	1709-1794-1884-1978-2076	2
			1379	OFFICE ASSISTANT (TYPING)		
CA52	I	RD4		Range A ** AR064	1608-1688-1772-1861-1953	2
CA52	I	RD4		Range B **	1709-1794-1884-1978-2076	2
Q950	I	S12	6673	OFFICE BUILDING MANAGER II	3820-4011-4212-4423-4606	4C
Q876	I	R12	6797	OFFICE MACHINE SERVICE TECH (ELECTRONIC)	2831-2973-3107	2
CA71	I	RD4	1107	OFFICE OCCUPATIONS CLERK *	1506-1581-1660-1743-1830	2
CA20	I	SD4	1103	OFFICE SERVICES MANAGER I	2978-3127-3283-3447-3619	4C
			1141	OFFICE SERVICES SUPERVISOR I-GENERAL		
CA38	I	U04		Range A ** AR322	1979-2078-2182-2291-2406	1
CA38	I	SD4		Range S **	1979-2078-2182-2291-2406	1
			1148	OFFICE SERVICES SUPERVISOR I-TYPING		
CA36	I	U04		Range A ** AR322	1979-2078-2182-2291-2406	01
CA36	I	SD4		Range S **	1979-2078-2182-2291-2406	01
CA28	I	SD4	1150	OFFICE SERVICES SUPERVISOR II-GENERAL	2213-2324-2440-2562-2690	1
CA23	I	SD4	1151	OFFICE SERVICES SUPERVISOR III-GENERAL	2516-2642-2774-2913-3059	4A
CA48	I	RD4	1138	OFFICE TECHNICIAN-GENERAL	1979-2078-2182-2291-2405	1
CA46	I	RD4	1139	OFFICE TECHNICIAN-TYPING	1979-2078-2182-2291-2405	2

SEE LAST PAGE FOR FOOTNOTES, MCR AND BARGAINING UNIT INFORMATION

DMV SALARY CHART
EFFECTIVE 02/01/94

Schem Code	MCR	Bargaining Unit/CMS	Class Code	Class Title	Salary Range
CG74		R04	6291	PERSONNEL SELECTION TECHNICIAN	
CG74		R04		Range A AR070	1709-1794-1884-1978-2076
				Range B	1979-2078-2182-2291-2405
CG65		R01	1303	PERSONNEL SERVICES SPECIALIST I	
CG65		R01		Range A #+ AR125	1876-1970-2069-2172-2281
CG65		R01		Range B +	2159-2267-2380-2499-2623
CG61		R01		Range C +	2234-2346-2463-2586-2715
CG60		S01	1743	PERSONNEL SERVICES SPECIALIST II	2413-2534-2661-2794-2933
CG50		S01	1305	PERSONNEL SERVICES SUPERVISOR I	2413-2534-2661-2794-2934
CG40		S01	1304	PERSONNEL SERVICES SUPERVISOR II	2626-2757-2895-3040-3192
			1314	PERSONNEL SERVICES SUPERVISOR III	2882-3026-3177-3336-3503
			5160	PERSONNEL TECHNICIAN I	
KY98		R01		Range A #+ AR083 AR2B5	1824-1915-2011-2112-2143
KY98		R01		Range B +	2133-2240-2352-2470-2535
KY98		CO1		Range L +	1824-1915-2011-2112-2143
KY98		CO1		Range M +	2133-2240-2352-2470-2535
KY96		S01	5139	PERSONNEL TECHNICIAN II (SUPERVISOR)	2594-2724-2860-3003-3119
KY97		R01	5161	PERSONNEL TECHNICIAN II SPECIALIST	2470-2594-2724-2860-2970
VQ35		R01	8729	PRINCIPAL DRIVER SAFETY OFFICER	3036-3188-3347-3514-3660
CL67		R14	1489	PRINTING TRADES SPECIALIST I (FINISHING)	
			1487	PRINTING TRADES SPECIALIST I (GENERAL)	1721-1807-1897-1992-2004
CL65		R14		Range A * AR040 AR2B5	1721-1807-1897-1992-2004
CL65		C14		Range L *	1721-1807-1897-1992-2004
			1499	PRINTING TRADES SPECIALIST II (GENERAL)	
CL70		R14		Range A AR040	1852-1945-2042-2144-2179
			1511	PRINTING TRADES SPECIALIST III (GENERAL)	
CL83		R14		Range A AR040	2016-2117-2223-2334-2389
CL83		R14		Range B	2223-2334-2451-2574-2633
CL85		S14	1515	PRINTING TRADES SUPERVISOR I (GENERAL)	2389-2508-2633-2765-2871
			1382	PROGRAMMER I	
LM34		R01		Range A #+ AR134 AR2B5	2352-2470-2535
LM34		R01		Range B +	2426-2547-2674-2770
LM34		CO1		Range L +	2352-2470-2535
LM34		CO1		Range M +	2426-2547-2674-2770
			1383	PROGRAMMER II	
LM30		R01		Range A # AR2B5	2909-3054-3207-3367-3497
LM30		CO1		Range L	2909-3054-3207-3367-3497
CA03		E97	0208	PUBLIC RELATIONS ASSISTANT	3273
LE48		R01	5250	RECORDS MANAGEMENT ANALYST I	2770-2909-3054-3207-3330
LE44		S01	5242	RECORDS MANAGEMENT ANALYST II (SUPERVISOR)	3330-3497-3672-3856-4018
LI10		R01	5265	RECORDS MANAGEMENT ANALYST II SPECIALIST	3330-3497-3672-3856-4018
IR85		S12	4169	REGIONAL CONSTRUCTION & MAINT. SUPERINTENDENT	3396-3566-3744-3931-4096
			5729	RESEARCH ANALYST I-GENERAL	
L020		R01		Range A #+ AR087	2352-2470-2535
L020		R01		Range B +	2426-2547-2674-2770
L020		R01		Range C +	2909-3054-3207-3367-3497
			5859	RESEARCH ANALYST I-SOCIAL/BEHAVIORAL	
L022		R01		Range A #+ AR087	2352-2470-2535
L022		R01		Range B +	2426-2547-2674-2770
L022		R01		Range C +	2909-3054-3207-3367-3497
L010		R01	5731	RESEARCH ANALYST II - GENERAL	3497-3672-3856-4049-4219
L012		R01	5732	RESEARCH ANALYST II-SOCIAL/BEHAVIORAL	3497-3672-3856-4049-4219
L052		S01	5735	RESEARCH MANAGER I-SOCIAL/BEHAVIORAL	3843-4035-4237-4449-4636
L042		S01	5738	RESEARCH MANAGER II-SOCIAL/BEHAVIORAL	4219-4430-4652-4885-5091
L030	II	MD1	5740	RESEARCH MANAGER III-GENERAL	5129-5385
L082	II	R01	5756	RESEARCH PROGRAM SPECIALIST I - SOC/BEH	3660-3843-4035-4237-4415
L072	II	R01	5767	RESEARCH PROGRAM SPECIALIST II-SOC/BEH	4018-4219-4430-4652-4849
			5920	RESEARCH SCIENTIST III/RRE	
LS78	II	S10		Range A #	4849-5091-5346-5613-5866
CAB5	I	E	1120	SEASONAL CLERK *e	1160-1218-1279-1326
CD30	I	R04	1176	SECRETARY	2014-2115-2221-2332-2448

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STATE OF CALIFORNIA—THE RESOURCES AGENCY

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
 SAN FRANCISCO, CA 94105-2219
 VOICE AND TDD (415) 904-3200



Law Revision Commission
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BY FACSIMILE

JUN 17 1994

File: _____

June 17, 1994

California Law Revision Commission
 4000 Middlefield Road, Suite D2
 Palo Alto, CA 94303-4739

Dear Sirs and Madames:

We regret that we are unable to attend today's Law Revision Commission hearing. We continue to believe that the Coastal Commission should be exempted from the proposed revised requirements concerning administrative adjudication.

We understand that the Law Revision Commission is concerning a substantially altered proposal concerning revisions to California's laws concerning administrative adjudication. We offer the following comments about the proposed changes.

1. Public participation may be limited.

The Coastal Commission's hearings often include presentations by various interested persons such as representatives of local state and federal agencies, people who live or work near the location of a proposed project, and representatives of environmental, neighborhood labor or other organizations. It is unclear whether all of these types of participants would be considered to meet the definition of "party" as that term is defined in section 610.460. If those persons were not permitted to participate in Coastal Commission hearings, public involvement would be severely restricted.

2. Agency hearing procedures would not be available to the Coastal Commission.

Although it appears that the "agency hearing" procedures set forth in Chapter 3 may have been developed to address the concerns raised earlier by the Coastal Commission and other state agencies, those procedures would not be available to the Commission. Proposed Section 633.020 limits the decisions for which agency hearing procedures may be used to those proceedings that are statutorily exempt from the requirement that they be conducted by an administrative law judge employed by the Office of Administrative Hearings. The Coastal Commission is not subject to such a statutory exemption, nevertheless, it is not statutorily subject to the requirement that it conduct its hearings using an administrative law judge employed by the Office of Administrative Hearings. Thus, the Coastal Commission could not utilize the agency hearing procedures.

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3. The separation of agency functions required under proposed section 633.030(b) may require substantial increases in agency staffing.

The Coastal Commission may be unable to comply with the requirement that it separate its adjudicatory function from its other functions as required by proposed Section 633.030 unless it hires substantial numbers of additional staff. The Commission would be prohibited from using any staff person who has assisted or advised the presiding officer from serving as an investigator, prosecutor or advocate in that proceeding under proposed section 643.320. Taken together, these requirements would have the practical effect of mandating that the Commission duplicate numerous staff people such as the Executive Director, Chief counsel, and staff managers. This is due to the fact that these individuals are called upon to advise the Commission Chairman (who would serve as the presiding officer) and would therefore be ineligible to take part in or supervise persons who perform the investigative, prosecution or advocacy functions on behalf of the Commission. As a small agency, the Coastal Commission does not have sufficient staff to duplicate the functions of those individuals, thus it would be necessary to hire additional staff.

Thank you for the opportunity to comment on the proposal.

Very truly yours,


DOROTHY DICKEY
Deputy Chief Counsel

3075L