



(Approved May 17, 2018)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 4/19/18](#)
Thursday, April 19, 2018

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Chair Remke called the meeting to order at 10:07 am on April 19, 2018, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Chair Remke and Commissioners Cardenas, Hatch, and Hayward were present. Commissioner Audero attended the meeting via teleconference.

Welcome

Jodi Remke, FPPC Chair

Chair Remke: okay let's go ahead and take the role

Sasha: Commissioner Audero

Commissioner Audero: Here by phone

Sasha: Commissioner Cardenas

Commissioner Cardenas: here

Sasha: Commissioner Hatch

Commissioner Hatch: here

Sasha: Commissioner Hayward

Commissioner Hayward: here

Sasha: Chair Remke

Chair Remke: here okay good morning just before we get started I did want to provide a update and let everyone know that the Enforcement Division priorities and procedures as well as the streamlined settlement program review IP meeting has been set it's set for May 9th at 10:30 here in the hearing room or you can call in all the relevant information is on our website under the IP meeting page so just so everyone knows May 9th at 10:30 please look at that page if you're interested in any additional information including the material that's prepared to date from the various legal division and enforcement

Public Comment

- 1. Public Comment for Items not on Agenda.** During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

Chair Remke: okay with that is there public comment for items not on the agenda today?

Approval of Commission Minutes

- 2. Approval of March 2018 Commission Hearing Minutes.**

Chair Remke: okay seeing none like we will move right on to the first matter which is approval of the March 2018 Commission hearing minutes any comments or statements from the Commissioners on those minutes? okay is there a motion to approve?

Commissioner Hayward: I'll move approval

Chair Remke: is there a second oh I'll second let's take a vote

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: yes

Sasha: Commissioner Hatch

Commissioner Hatch: yes

Sasha: Commissioner Hayward

Commissioner Hayward: yes

Sasha: Chair Remke

Chair Remke: yes

Sasha: the motion passes

Enforcement Consent Calendar 3-23

Items on the consent calendar will be taken up and voted on as a group. A Commissioner may request that an item be removed from consent, in which case it will be discussed separately in the meeting.

Chair Remke: okay next we have the enforcement consent calendar items 3 through 23 do the Commissioners have any items they'd like removed from the consent calendar to be voted on separately or to abstain from a vote

Commissioner Hatch: I have two that I had questions on

Chair Remke: well questions but do you want them removed from consent okay anyone want items removed from consent okay hearing none we'll move on to the questions Miss West you want to introduce yourself

Ms. West: Galena West, Chief of Enforcement

Chair Remke: Commissioner Hatch

Commissioner Hatch: I just had the question on the two defaults would you just give us an update on what efforts and what results you got between this last meeting and today

Ms. West: certainly for Gloria Olmos that was the one that we put over from last meeting and we have been unsuccessful in getting any response from Miss Olmos and she has declined well not decline she just hasn't filed and and won't be responsive and Mr. Navarro was pulled from last month's agenda so it wouldn't be considered to because he reached out to us saying that he wanted to file his statements not necessarily pay a fine but he wanted to file his statements and he did not do that and then this morning at 7:00 a.m. he sent another email saying that he would do it and that he would file a statements but still it was the same communication that we got last month where we did pull it off last month to give him that opportunity

Commissioner Hatch: thank you

Chair Remke: okay any other questions from Commissioners regarding the remaining items on consent Commissioner Audero any from you

Commissioner Audero: No

Chair Remke: okay any public comment regard their items on consent okay seeing none is there a motion

Commissioner Hatch: move for adoption

Commissioner Hayward: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: yes

Sasha: Chair Remke

Chair Remke: yes

Sasha: the motion passes

Chair Remke: okay I would just note that item 24 is a notice issue and Miss West would you like to just tell us what Enforcement is doing with these matters

Ms. West: certainly in response to Commissioner Hatch's request that we give these matters more public notice what we decided to institute was a almost a pre notice of default to get the word out in a public way to show the respondents that everybody in the world now knows this is a default that will be presented to the Commission for approval next month please contact us and to hope that their local media picks up on the story and contacts them for comment which is generally the way default respondents start to reach out to us so we're hoping that this will then spur people into filing their statements coming up to date and participating

Chair Remke: thank you I think it's a good idea make sure that even after the 20 attempts to contact these people we give them one last chance like you say and probably the public notice is a pretty good idea so okay so that's 24 no action it will probably see that is that next month and it will be back

Ms. West: correct

Chair Remke: okay thank you

One Bank Account Rule/Personal Use

- 3. In the Matter of Donna Munoz for County Supervisor 2016, Donna Munoz, and Max Hazard; FPPC No. 17/140.** Staff: Commission Counsel Christopher Burton. Donna Munoz was an unsuccessful candidate for San Bernardino County Supervisor in the June 7, 2016 Primary Election. Donna Munoz for County Supervisor 2016 was Munoz's candidate-controlled committee. Max Hazard was the Committee's treasurer. The Committee, Munoz, and Hazard failed to timely file 24-Hour Reports, in violation of Section 84203 (1 count); failed to pay expenses from the designated campaign bank account, in violation of Section 85201, subdivisions (d) and (e) (1 count); and made expenditures of campaign funds not related to a political, legislative, or governmental purpose, in violation of Section 89512 (1 count). **Total Proposed Penalty: \$6,500.**

Campaign Contribution Limit Violations

- 4. In the Matter of IBEW Local 1245 Political Action Committee, Cecelia De La Torre, and Tom Dalzell; FPPC No. 17/597.** Staff: Commission Counsel Christopher Burton. IBEW Local 1245 Political Action Committee is a state general purpose committee. Cecelia De La Torre is the Committee's treasurer. Tom Dalzell is the Committee's principal officer. The Committee, De La Torre, and Dalzell made campaign contributions to a candidate that exceeded the campaign contribution limit for State Assembly candidates, in violation of Government Code Section 85301, subdivision (a); and Regulation 18545, subdivision (a)(1) (1 count). **Total Proposed Penalty: \$3,000.**

Cash Contributions

- 5. In the Matter of Committee to Elect Sandra Brown for Sheriff 2014, Sandra Brown and Edward Murray; FPPC No. 17/071.** Staff: Senior Commission Counsel Bridgette Castillo. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Sandra Brown was an unsuccessful candidate in the June 3, 2014 Primary Election. Committee to Elect Sandra Brown 2014 was her candidate-controlled committee. Edward Murray was the Committee's treasurer. The Committee, Brown and Murray accepted 12 cash contributions of \$100 or more, in violation of Government Code Sections 84300, subdivisions (a) and (c) (1 count). **Total Proposed Penalty: \$2,000.**

Mass Mailing at Public Expense

- 6. In the Matter of Imperial Irrigation District; FPPC No. 17/1176.** Staff: Senior Commission Counsel Angela Brereton. Imperial Irrigation District, a public agency providing water and energy to Imperial County and parts of Riverside and San Diego

counties, produced and sent approximately 152,000 copies of a newsletter in or about September 2017, at public expense. These newsletters featured the photograph and name of a governing board member, in violation of Government Code Section 89001 (1 count). **Total Proposed Penalty: \$2,000.**

Lobbying Non-Filer

- 7. In the Matter of Golden State Manufactured-Home Owners League, Inc. and Tim Sheahan; FPPC No. 17/463 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Golden State Manufactured-Home Owners League, Inc., a lobbyist employer, failed to timely file six lobbyist employer reports for the reporting periods of January 1, 2016 through June 30, 2017, in violation of Government Code Section 86117 (6 counts). **Total Proposed Penalty: \$1,733.**
- 8. In the Matter of Strategies to Empower People (STEP); FPPC No. 18/14 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Strategies to Empower People (STEP), a lobbyist employer, failed to timely file two lobbyist employer reports covering the periods of October 1, 2016 through March 31, 2017, in violation of Government Code Section 86117 (2 counts). **Total Proposed Penalty: \$860.**
- 9. In the Matter of Brain Injury Association of California; FPPC No. 17/689 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Chloe Hackert. Brain Injury Association of California, a lobbyist employer, failed to timely file three lobbyist employer reports for the reporting periods of April 20, 2016 through December 31, 2016, in violation of Government Code Section 86117 (3 counts). **Total Proposed Penalty: \$600.**

Campaign Non-Filer

- 10. In the Matter of Sullivan Luxury Cars, LLC dba Lexis Santa Monica; FPPC No. 17/1455 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. In September 2016, Sullivan Luxury Cars, LLC dba Lexis Santa Monica qualified as a major donor committee and failed to timely file a major donor campaign statement for the reporting period covering January 1, 2016 through December 31, 2016, in violation of Government Code Sections 84200 (1 count); and failed to timely file 24-Hour Reports, in violation of Government Code Section 84203, subdivision (b) (1 count). **Total Proposed Penalty: \$800.**
- 11. In the Matter of Citizens for Accountable Government and Marilyn Will, Treasurer; FPPC No. 17/1383 (Streamline Settlement).** Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Citizens for Accountable Government was a local committee Primarily formed to support two unsuccessful candidates for city council on the November 7, 2017 General Election ballot in the City of Palm Springs. Marilyn Will was the Committee's treasurer. The Committee and Will failed to timely

file one pre-election campaign statement covering the reporting period of January 1, 2017 through October 21, 2017, in violation of Government Code Section 84200.5 (1 count); and failed to timely file two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$741.**

12. In the Matter of Saint John's Health Center Foundation; FPPC No. 17/1454 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Saint John's Health Center Foundation qualified as a major donor committee and failed to timely file a major donor campaign statement for the reporting period covering January 1, 2016 through December 31, 2016, in violation of Government Code Section 84200 (1 count); and failed to timely file a 24-Hour Report, in violation of Government Code Section 84203, subdivision (b) (1 count). **Total Proposed Penalty: \$600.**

13. In the Matter of Providence Saint John's Health Center; FPPC No. 17/1459 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. In October 2016, Providence Saint John's Health Center qualified as a major donor committee and failed to timely file a major donor campaign statement for the reporting period covering January 1, 2016 through December 31, 2016, in violation of Government Code Section 84200 (1 count); and failed to timely file a 24-Hour Report, in violation of Government Code Section 84203, subdivision (b) (1 count). **Total Proposed Penalty: \$600.**

14. In the Matter of Brian Contreras for City Council Area 1 2016, and Timothy Fitzgerald; FPPC No. 17/701 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Brian Contreras was an unsuccessful candidate for Salinas City Council in the November 8, 2016 General Election. Brian Contreras for City Council Area 1 2016 was his candidate-controlled committee. Timothy Fitzgerald served as the Committee's treasurer. The Committee, Contreras, and Fitzgerald failed to timely file two semiannual campaign statements covering the reporting periods of October 23, 2016 through June 30, 2017, in violation of Government Code Section 84200 (2 counts). **Total Proposed Penalty: \$505.**

15. In the Matter of Rutger Parris for Water Board 2017 and Rutger Parris; FPPC No. 17/1339 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Rutger Parris was an unsuccessful candidate for the Quartz Hill Water District Board in the November 7, 2017 General Election. Rutger Parris for Water Board 2017 was his candidate-controlled committee. The Committee and Parris failed to timely file one pre-election campaign statement covering the reporting period of January 1, 2017 through September 23, 2017, in violation of Government Code Section 84200.5 (1 count). **Total Proposed Penalty: \$219.**

16. In the Matter of Brian Stearns Lakeside Union High School Board 2016 and Brian Stearns; FPPC No. 17/587 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Brian Stearns was an unsuccessful

candidate for the Lakeside Union High School Board in the November 8, 2016 General Election. Brian Stearns Lakeside Union High School Board 2016 was his candidate-controlled committee. The Committee and Stearns failed to timely file one semiannual campaign statement covering the reporting period of January 1, 2017 through June 30, 2017, in violation of Government Code Section 84200 (1 count). **Total Proposed Penalty: \$200.**

Campaign Non-Reporter

17. In the Matter of American Federation of Teachers – Kids, Families and Teachers Supporting Torlakson for Superintendent of Public Instruction 2014 (MPO) and Loretta Johnson; FPPC No. 17/845. Staff: Commission Counsel Christopher Burton. This matter arose from an audit performed by the Franchise Tax Board’s Political Reform Audit Program. American Federation of Teachers – Kids, Families and Teachers Supporting Torlakson for Superintendent of Public Instruction 2014 (MPO) was a committee Primarily formed to support Tom Torlakson, a successful candidate for Superintendent of Public Instruction in the November 4, 2014 General Election. The Committee was sponsored by the American Federation of Teachers, AFL-CIO. Lorretta Johnson was the Committee’s treasurer. The Committee and Johnson failed to timely report independent expenditures on 24-Hour Reports, in violation of Government Code Section 84204 (1 count); and failed to timely report subvendor payments made during the reporting period of October 19, 2014 to December 22, 2014, in violation of Government Code Sections 84303 and 84211, subdivision (k)(6) (1 count). **Total Proposed Penalty: \$6,000.**

18. In the Matter of 2014 Committee to Elect Bill Sandke to City Council, Bill Sandke, and Katheryn Keitzer; FPPC No. 17/953 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Bill Sandke was a successful candidate for the Coronado City Council in the November 4, 2014 General Election. 2014 Committee to Elect Bill Sandke to City Council is his candidate-controlled committee. Katheryn Keitzer is the Committee’s treasurer. The Committee, Sandke, and Keitzer failed to properly report the occupation and employer information for contributions received, and failed to accurately report campaign activity, in violation of Government Code Section 84211 (2 counts). **Total Proposed Penalty: \$428.**

Statement of Economic Interests Non-Filer

19. In the Matter of Michael Gaul; FPPC No. 17/937 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Enforcement Intake Manager Tara Stock. Michael Gaul, a Planning Commissioner for the City of Burlingame, failed to timely file a 2016 Annual Statement of Economic Interests, in violation of Government Code Section 87203 (1 count). **Total Proposed Penalty: \$200.**

Statement of Economic Interests Non-Reporter

20. In the Matter of Nanny Bosch; FPPC No. 18/43 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Nanny Bosch, Project Management Group Manager for the Department of Motor Vehicles, failed to timely disclose investments in and income from The Bosch Group, and Fortuna BMC on her 2014, 2015, and 2016 Annual Statements of Economic Interests, in violation of Government Code Section 87300 (3 counts). **Total Proposed Penalty: \$300.**

21. In the Matter of Karla Nemeth; FPPC No. 18/157 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Karla Nemeth, Deputy Secretary for Water Policy for the California Natural Resources Agency, failed to timely disclose investments in and income from the Karla A. Nemeth Trust on her 2014, 2015, and 2016 Annual Statements of Economic Interests, in violation of Government Code Section 87300 (3 counts). **Total Proposed Penalty: \$300.**

Default Proceedings

Default Proceedings Requesting Commission Action

22. In the Matter of Gil Navarro Legal Defense Fund, Navarro for 47th Assembly 2014, and Gilbert “Gil” Navarro; FPPC No. 16/137 (Default Decision – Final Notice).

Staff: Commission Counsel Ruth Yang and Associate Governmental Program Analyst Dominika Wojenska. Gil Navarro formerly served as a member of the San Bernardino County Board of Education from 2006 to 2013. Navarro was elected to the San Bernardino Valley Municipal Water District Board of Directors in the November 6, 2012 General Election and attempted to hold both offices simultaneously. Gil Navarro Legal Defense Fund is Navarro’s recipient committee formed to defend against his removal from the Board of Education. The Defense Committee and Navarro failed to timely file two semiannual campaign statements, in violation of Government Code Section 84200 (2 counts), and failed to timely terminate the Defense Committee, in violation of Government Code Section 85304.5 and Regulation 18530.45, subdivision (k) (1 count). Navarro also was an unsuccessful candidate for the 47th District of the California State Assembly in the November 4, 2014 General Election. Navarro for 47th Assembly 2014 was his candidate-controlled committee the 2014 election. The Assembly Committee and Navarro failed to file two pre-election campaign statements, in violation of Government Code Section 84200.7, subdivision (b) (2 counts); and failed to timely file four semiannual campaign statements, in violation of Government Code Section 84200 (4 counts). **Total Proposed Penalty: \$36,500.**

23. In the Matter of Gloria Olmos, Re-Elect Gloria Olmos for School Board 2013, and Committee to Elect Gloria Olmos for South El Monte City Council Member 2015; FPPC No. 14/1263 (Default Decision – Final Notice). Staff: Commission Counsel Michael W. Hamilton and Staff Services Analyst Dominika Wojenska. Gloria Olmos was a successful candidate for the Valle School Board in the November 5, 2013 General Election. Re-Elect Gloria Olmos for School Board 2013 was her candidate-controlled committee for the 2013 election. Olmos and the School Board Committee failed to timely

file three semiannual campaign statements, in violation of Government Code Section 84200, subdivision (a) (3 counts). Olmos was a successful candidate for the South El Monte City Council on the November 3, 2015 General Election. Committee to Elect Gloria Olmos for South El Monte City Council Member 2015 was her candidate-controlled committee for the 2015 election. Olmos and the City Council Committee failed to timely and accurately report expenditures made on a pre-election statement and on a semiannual campaign statement, in violation of Government Code Section 84211, subdivisions (j) and (k) (2 counts). **Total Proposed Penalty: \$18,000.**

Notice of Intent to Present Default Decision and Order at Next Commission Meeting

24. In the Matter of Brenda Lewis and Lewis for Water Board 2013; FPPC No. 16/322 (Default Decision – Initial Notice). Brenda Lewis was the successful candidate for and presently serves as a member of the Monterey Peninsula Water Management District Board of Directors. Lewis served as the treasurer of her committee, Lewis for Water Board 2013. The Committee and Lewis failed to timely file campaign statements (7 counts). **Total Proposed Penalty: \$28,000.**

General Items 25-29

25. Assignment of Hearing to Administrative Law Judge (ALJ): In the Matter of Kevoork N. “George” Ashkharian; FPPC No. 14/876. Staff: Executive Director Erin V. Peth, Chief of Enforcement Galena West, and Senior Commission Counsel Angela Brereton. The Executive Director and the Chief of Enforcement are recommending that a hearing be conducted before an ALJ pursuant to Government Code Section 11512, subdivision (a). The ALJ will make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then have the opportunity to review the proposed decision and make the final determination on the case. If the Commission agrees with this recommendation, no action is required.

Staff Memo

Chair Remke: as for item 25 this is the Executive Director and the Chief of Enforcement are recommending that a hearing be conducted by an Administrative Law Judge after that hearing is held the Administrative Law Judge would make a recommendation to the Commission on findings of fact law and if appropriate a penalty the Commission would then have the opportunity to review the proposed decision and make any final determination so if the Commission agrees with that recommendation to send this matter to an Administrative Law Judge no action is required do the Commissioners have any questions or comments on item 25 okay hearing none so that well be then sent to an ALJ thank you

26. Pre-notice Discussion of Regulations 18308, 18308.1, 18308.2, and 18308.3 on Commission Governance. At the October 19, 2017 meeting, the Commission established an Ad Hoc Committee of Commissioner Hayward and Commissioner Hatch

to review the Commission's Statement of Governance Principles. At the March 22, 2018 meeting, the Commission considered the Report and Recommendations from the Ad Hoc Committee, and instructed the Committee to propose regulations promulgating governance rules for the Commission. The Ad Hoc Committee will be presenting its proposed Regulation 18308 (Commission Governance), 18308.1 (Authority of the Commission), 18308.2 (Authority of the Chair), and 18308.3 (Authority of the Executive Director).

Ad Hoc Committee Memo Proposed Regulations 18308, 18308.1, 18308.2, and 18308.3

Chair Remke: okay moving to item 26 this is the ongoing review of the Commission Statement of Governance as everyone knows last month the Ad Hoc Committee made a presentation regarding a proposal on some changes it was agreed that it should be done pursuant to regulation so now we have a draft regulation from the Ad Hoc Committee draft regulation from Legal Division along with a memo draft regulation from myself the Chair with the one-pager so that's where we're at now we have a lot of options to discuss and with that I will first turn it over to the Chair of the Ad Hoc Committee Commissioner Hayward

Commissioner Hayward: yes thank you very much so yeah first of all although the Chairs already done it I want to make sure that people who have the documents were going to be discussed or people who want to have the documents were discussing half of them so there would be the agenda packet draft of ours something titled to Chair Remke from Jack Woodside dated April 17th something from Chair Remke dated April 18th and then also there's a letter from the Governor's Legal Affairs Secretary that I think will want to take a little minute talking about in addition you know following the the procedure that we were supposed to follow with regarding ex parte contacts I want to let everybody here know that I shared our reg on the listserv the election law lawyers look at I shared it with the former Commissioners and Executive Staff that have worked with us on the Ad Hoc Committee project and I got back not very much I got back three emails if you're really interested I could tell you who they're from or the LA Times will find out anyway and and that kind of disappointed me so I'm here to try and invigorate the the many smart people who either watch our broadcasts listen to them or sitting in this room that to the extent you have ideas on how the governance of the FPPC through the art governance project could be improved now is the time to share that okay so in that spirit I guess I also want to inquire of the Chair and the Executive Director and the General Counsel about your meeting with the governor's office last Friday I'd love to know how it went

Chair Remke: I guess I could answer to that I think how it went is the concerns expressed in legal divisions memo were shared with the governor's office and in response you have the letter from the governor's office which I think sets out a summary of their concerns that were shared with us so I think that pretty much summarizes both ways of communication

10:00

Commissioner Hayward: so you represent the Commission as a whole in between meetings of the Commission correct and it was what what capacity were you serving in when you took the General Counsel and the Executive Director over to the governor's office

Chair Remke: well that was let me back up because I think the capacity the capacity was as Chair and the appointee of the governor and I think the concern has expressed both in legal diff memo as well as my memo there are no secrets that there are considerable concerns with the proposal and in fact even the way in which it was drafted and created which I'd really have no idea who's been talked to who's been reached out to what questions were asked all of the above but putting that aside there are considerable concerns again that have now been stated and legal's memo my memo the governor's office and as the appointee of the governor I thought it was important that the governor's office realized that this Ad Hoc Committee was attempting to really change as I saw it the structure of the Commission the role of the Chair and the role of the Chair which I thought is and I continue to think is inconsistent with the statute which was adopted by the people so I thought it was a significant enough concern that it should be brought to the governor's attention so that is the reason I went to the governor's office to discuss the concerns as you stated it seems very hard to get anyone interested in the way in which the committee governs itself and we've had very little input from others I mean you could speculate why perhaps the regulated community sees the proposal as a benefit to them perhaps the good government groups don't really understand or care that much how we govern ourselves but I think it's extremely problematic what's being proposed and I think it's important enough that we did raise it to the governor's office

Commissioner Hayward: I'd like to ask the General Counsel question do you feel like we have not been responsive to the various calls and memos that you've sent us

Mr. Woodside: no it's it's not that you haven't been responsive I think all of this is the the the structure we haven't known about it for a long time we haven't been able to necessarily weigh in on it and so our conference call with you that was really the first time that we had been able to talk to you about it and really our concerns were with bagley-keene and we tried to get that across and when you came back with the revisions part of the concerns had been resolved but there was still the two members standing committees so we just felt like we needed to you know keep telling you that we do have concerns like other state agencies do and yeah so that's

Commissioner Hayward: because I think I think that the Bagley Keene concerns are not trivial and I think we've we've talked about some ways of perhaps you know working on that but it's really I mean I'm disappointed I think there's a certain lack of candor here and I'll leave it at that

Chair Remke: I don't think that's appropriate yes I'm actually the Chair and I'm recognizing myself I don't think it's appropriate to say there's a lack of candor and leave it at that let's flush this out because I think part of the concern again as I expressed I'm having is the isolation in which these proposals are coming forward and again I understand that you and Commissioner Hatch meet and you have conversations with others again that's part of the concern about a to Commissioner committee where you go off meet with people talk with people review documents none of that is shared I mean I just find that unusual that you're presenting a proposal to change the entire structure of the way the agency is run without a full disclosure of what's been looked at what's been shared who's been talked to and so this idea of lack of candor we just I just told you what happened at the governor's office and why so I don't appreciate this notion that there's a

lack of candor and I think the concerns that I have that legal division has have been fully expressed to you but then the way this is done is that I can't even know what they're saying to you until it comes out in a memo which is really problematic and I think the other Commissioners I would hope would have the same concern that we don't see plans proposals until the day of posting again this is just a very awkward way to move forward for an agency that's about transparency.

Commissioner Audero: Chair Remke, This is Maria Audero. Can I be recognized?

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I share the concern about the lack of candor I didn't know that the Chair went to the governor's office I don't think we would have known but for the fact that Commissioner Hayward just asked it could have been included in the Chairs memo because apparently the Chairs memo is a result of that meeting as I understand it so I am troubled by that especially in light of the fact that the Chair I still don't have an understanding of in what capacity the Chair went because if the Chair went in her capacity as Chair then I don't think that what I understand was discussed was a representation of how the Commission feels because as the Chair well knows we there is strong disagreement about these these regulations one way or the other it doesn't matter the fact is the Commission hasn't taken a position so to the extent that the Chair went in her capacity as Chair I think is deeply troubling if the Chair went as a Commissioner then fine I guess that I can go as a Commissioner to the governor's office as well and so can commissioner Hayward so you know I I do I I am a little troubled that we are just now learning that the Chair went to the governor's office on this issue I guess well we'll leave it at that I do share the Chair is concerned about the problems of seeing some of these things for the first time but I don't I don't believe that that's a result of the Ad Hoc Committees function I think that's a result of Bagley Keene as very well detailed in the little little Hoover Commission report which I commend to everyone's reading for more reasons than just it's very interesting but so so you know there is a concern of the Chair that a two-person Ad Hoc Committee creates this problem I think is really unfounded because we have no way of getting things done through if we if we appoint an Ad Hoc Committee which I believe the Chair voted for back in the day as I recall and I could be wrong about that but but at the very least it was voted on by the Commission so I think to now attack the Ad Hoc Committee as not providing full disclosure is really just a very unfounded accusation and I and I I for one I'm not in accord with that and I just want the record to be clear on that Thank You

Chair Remke: Commissioner Hatch

Commissioner Hatch: I'd like to ask the Chair and indeed the other two participants of that meeting how you thought you were advancing the democratic process of this commission

20:00 Chair Remke: sounds like a rhetorical question but again all I can repeat is that there's been concerns about the proposal that was obviously moving forward and again as the appointee of the governor and the Chair of a commission the only full-time member of the Commission I was concerned that the proposal was somewhat geared toward eliminating or severely nullifying the

role of the Chair the governor's appointee which again I felt was important enough to share that with the governor's office in addition to just the problems in the proposal itself significant drafting problems the underground regs again it just showed a certain lack of understanding of which the way the agency runs and again the greatest concern I have is that this proposal in this process because it is taken obviously a lot of time from everyone to address these concerns so again my concern is that this proposal and the process in which it is being brought forward is really going to ultimately paralyze the agency in moving forward with the important mission we have it's taken a lot of staff time so I know it's taken two Commissioners time I just don't think this is a productive way to move forward so I thought that was important to bring out those issues so that we could further the purpose and mission of this agency

Commissioner Hatch: I have another question of you is this the first and only time yet you brought this subject up with anyone in the governor's office or did you have other meetings

Chair Remke: there's been two meetings with the governor's office after the first draft and then I would say to a large extent the second one was a request follow-up by the governor's office whether the concerns had been addressed when we expressed they had not been addressed and as long as let me finish sir

Commissioner Hatch: we're a month ago that

Chair Remke: I don't think it's almost as if

Commissioner Hatch: we got a filibuster yeah I asked a direct question that would be a yes or no and then you give me a half an hour of you know

Chair Remke: I don't really feel that the cross-examination in which I'm being put under is appropriate nothing I did was inappropriate bringing concerns to the governor and his office regarding a commission in which he has two appointees I think is more than appropriate now again if we're concerned about who's talking to whom I think we should start with the list of who each member of this Commission has talked to regarding this proposal I've yet to see a single name I just keep hearing references to conversations concerns and support but so I think in fairness let's start going one question at a time then and asking for who's everyone's talked to and reached out to

Commissioner Hatch: Are you accusing this committee of what violating a bagley-keene a

Chair Remke: no I'm just saying if you're as interested in my discussions regarding the proposal and the purposes for those discussions I think all discussions are relevant in the concerns regarding this proposal

Commissioner Hatch: sure Alison did a lot of jobs of detailing all of the various people that we outreach to you know past Commissioners and Chairs and Executive Directors and whatnot and summarized it all on our first proposal despite the fact that we have been busting our hump to react to the suggestions of council that were very done in a very cooperative manner we let them

know that we were trying to find out a way to make a to committee to member committee structure work and it helped help us work on language that would accomplish that instead we get the alternative thing it would concentrate the power even more than it is now and make it less transparent than it is now and now I find out today that you never even started to work with us you immediately ran to the governor's office and tried to derail this thing you you pitched a story in the in the Los Angeles Times a month ago that described the last month's meeting as a pitched battle between you know warring factions and that was if you look at the record it was anything but that I really resent what I feel is a is undermining of this process you're supposed to articulate your concerns with us at the meeting last month you didn't say a word but you'd run over the governor's office and got a letter put in the file the night before the the meeting oh you do the same thing again I'm really disgusted at your behavior

Chair Remke: well that's unfortunate and I think it's inappropriate decorum that we're reaching at this point and I would ask if you could just try to keep this to the merits of it again I don't think there is anything wrong with um bringing concerns to the governor's office let me finish number one of course I did not write the letter

Commissioner Hatch: you filibuster on

Chair Remke: a letter the governor's office acts on its own behalf clearly not at my direction but clearly they feel that there are significant enough issues here that they thought it was appropriate to write a letter I did not put again I have no control over the LA Times and what they decide to write so this well again this that you know I think it's probably best if we go to the merits of the proposals and have substantive conversation and I'm happy again to bring them out as to what mine are you thought I didn't say anything last time I was hoping that the Ad Hoc Committee would hear the concerns that were stated I didn't feel I needed to pile on and that we'd come back with a different approach that didn't happen and that's where I felt I needed to offer an alternative approach which I do think gives you what you claim the goal behind this is greater oversight

Commissioner Hatch: mm-hmm

Chair Remke: so again if we can get to the merits of the various proposals and see how we're gonna proceed forward I think that's the best approach here and if we can limit the direct attacks on each other that would be much appreciated

Commissioner Hatch: all right

Commissioner Audero: Chair Remke.

Chair Remke: you don't have the floor sir. Commissioner Audero.

Commissioner Audero: I'm sorry. Commissioner Hatch were you finished

Commissioner Hatch: oh I can save it

Commissioner Audero: I didn't mean to interrupt you

Commissioner Hatch: no please go ahead

Commissioner Audero: thank you I have a question because I've now heard this twice from the Chair referencing these I guess what will end up being regulations in whatever form they turn out to be as underground regulations and I'm very concerned about that terminology I take very seriously the work that we do to ensure that we don't create any underground regulations I believe that we are following the APA to the letter with respect to passing these regulations and I'm interested in on what basis this accusation that this process is going to end up creating an underground regulation

Chair Remke: all right are you asking for my response

Commissioner Audero: Yeah I am just that you are the one that made the comment so I am just curious to the basis of your comment

Chair Remke: Sure as you know Government Code section 83112 explicitly states that the Commission may adopt to amend and rescind rules and regulations to govern procedures of the but that must be done in accordance with the APA I could go through line by line of the proposal but in many places it talks about significant issues that would govern the Commission but it stated in such things as adopt criteria resolutions policies and again my concern is the drafting of this leaves open whether or not there's an understanding that all of those things that govern the Commission must be done pursuant to the APA and not internal policies criterias resolutions

Commissioner Audero: I'm sorry I misunderstood I thought that you were talking about the process that we were undertaking to pass a 18308.1 and the ones we have before us I thought you were suggesting that we weren't following the right procedures just to pass those but I understand what you're saying I don't agree with it but I understand your comment now thank you

Chair Remke: okay further comments from Commissioners?

Commissioner Hatch: yes

Chair Remke: Commissioner Hatch

30:00

Commissioner Hatch: at the last meeting at the close of the meeting when I move that we not waste our time and go ahead and rewrite this policy that we had originally presented as a regulation and I asked for two things at that meeting I asked that we that we notice for this meeting a hearing without a vote for public input and that it be scheduled with the 45 said 45 days notice John corrected me to 30 day notice to have this put on the May agenda for vote I find out this morning just moments before coming in here then in fact that was not done and Madam Chair you're in charge of the agendas what happened why was that not filed when we submitted it for a 45 day notice 30-day take it as you will still ends up 45 days why was that not done I found out this morning has not done has not been done as of yet

Chair Remke: I don't believe that that was either the discussion or the motion I understood that this was the the proposal was going to be put in regulation form and brought back as pre notice which it has so to the extent that that was misunderstood I don't know what I can tell you other than my understanding and I guess I should say thought was that these were still preliminary regulations or proposals and not something ready to be sent out to the office of administrative law but they were still open for discussion I'm getting the sense that they're not open for discussion and we're not going to get to the point of discussing the merits of the proposals

Commissioner Hatch: so you felt that you didn't have sufficient direction to go ahead and and file the 40 the 30 day notice when we submitted the language to you in the in the regulation format

Chair Remke: I never received the language in the submitted regulation format until the day of posting which was April 9th that was the first time I saw the language in the regulation format again at that point I continue to have serious concerns regarding the language and I was hoping that we would get to a discussion that has been suggested we would on the merits of the proposal and that things would be changed so again it did not seem to me even as of April 9th that we had anything that would be sent to the Office of Administrative Law that's correct

Commissioner Hatch: I think you let us off a cliff and I'm now wondering whether or not was was on purpose I repeatedly asked at the end of the meeting if you had it where we wanted to have two things we wanted to be able to discuss it at this meeting and vote for vote on it in the May meeting and that you said oh we will pre notice it for this and will notice it for that

Chair Remke: I don't recall that discussion that I said there would be a vote in May again I know that we talked about turning these into regulation form and having a pre notice at this meeting that is what I recall that is what's happening again I did not see the language until April 9th again I would suggest that we get to the merits of these proposals

Commissioner Hatch: notwithstanding that fact you sandbagged us

Chair Remke: if by sandbagging I put an item on that was requested as a pre notice now we follow the procedure there's amendments or changes to the pre notice regs we would modify it and send it to the office administrative law hold an IP and bring it back in a timely manner that's what's happened I'm getting frustrated by the notion that having a discussion one meeting fixing something and bringing it back for a vote as another meeting is sandbagging and and this this need to rush things through with this commission that have been of the practice of late is troubling and I don't think it's consistent with the notion of this agency and transparency and full discussion

Commissioner Hatch: I would remind the Chair that the 2001 policy that stands today was in fact meets your definition of an underground regulation we were more than happy to when it was raid when the issue was raised by council so we immediately said we want to redo this as a regulation we didn't screw around with it and I for some reason I didn't get a copy the minutes

this morning that's why I was fumbling when you're asking for a vote on the minutes I now have Commissioner Hayward's copy of the minutes and there is an interchange between yourself and myself about this very issue and about it being noticed for both at the same time for a 30 day notice I said 45 I was corrected to 30 so that it could be voted on on the merits in May but would have a public hearing for input in April so here we are it's now the April meeting and I find out today that that notice was never given

Chair Remke: I'm not sure where are you referring to in the minutes and again I I'm not

Commissioner Hatch: you got your minutes

Chair Remke: yes but again I'll repeat I'm not under cross-examination I'm trying to move this process forward

Commissioner Hatch: you just called into question my reading of the minutes do you want to know the page number

Chair Remke: actually I don't

Commissioner Hatch: I didn't think so okay yeah

Chair Remke: Oh sir please again if you could just try to conduct this in a professional manner

Commissioner Hatch: If you had been straightforward with this commission we wouldn't be having this kind of discussion

Chair Remke: it's getting to the point where I'm gonna have to say you're out of order

Commissioner Hatch: you're out of order

Chair Remke: okay that's perhaps we should take a 5-minute break so everyone could calm down and we could try to move this forward in a more professional manner without the personal attacks again Commissioner Hatch I'll say for the third and final time I did not receive your proposed regulations until April 9th I'm not sure what you thought I was supposed to be sending forward to the office of administrative law before then I had hoped that your changed regulations would have addressed the concern so I anticipated a significantly modified proposal even as of April 9th but it was changed so again nothing could have been sent to the office of administrative law before April 9th is there anyone else who has anything to say regarding the merits of the proposals

Commissioner Hatch: what happened the break

Chair Remke: do you want a ten-minute break

Commissioner Hatch: yes I would

Chair Remke: let's go off the record and we'll come back at 5 minutes to 11:00

Meeting came to a recess at 10:44 a.m. and returned at 10:56 a.m.

Chair Remke: okay let's go back on the record Commissioner Hayward would you like to bring us through the substantive issues of the proposal

Commissioner Hayward: certainly

Commissioner Audero: Madam Chair can I interrupt and ask a question real quick before we go to the substance I do believe we should go to the substance then I just have a question

Chair Remke: Commissioner Audero

Commissioner Audero: thank you and Commissioner Hayward thank you very much for allowing me to interrupt in this way

Commissioner Hayward: go ahead

Commissioner Audero: during the break I didn't leave and my phone of course has a speaker and I overheard a conversation that I would like some clarification on and I think the conversation was picked up by the mics in the air yes so it is what it is but it was a conversation between the Chair and I can't I couldn't tell the voice it was it was either Mr. Fisher or Mr. Woodside but it was a discussion about getting clarification on the 30-day issue that Mr. Hatch Commissioner Hatch had raised and whoever it was Mr. Feser Mr. Woodside or whoever the male was said to Madam Chair do you want some support on your position

Chair Remke: it was Commissioner Cardenas and I'm sure he could respond to his comments directly

Commissioner Audero: yeah I would like to understand this off the record do you want some support conversations that are being had

40:00

Commissioner Cardenas: sure I I have no problem with the Chair of any Commission in this state meeting with the office of the governor I particularly have no issue with the Chair of this commission meeting with the governor of this state both in the Chairs capacity as the Chair but also as an appointee of the governor if the State of California's political economy has been marked by by anything the last 45 years or so it's been by Edmund G Brown jr. and by the political reform act and so for his office to have an interest in this indigenous or brought to their attention is I think as it should be an entirely in keeping with the genesis letter of intent of a sacred law that was passed during a during the governor's early days the other thing that I said was that I do want to ask whatever became what was the nature of Commissioner Hatch's question regarding agendize in something for this month and what became of that request

Chair Remke: and I think in particular if I'm correct Commissioner Cardenas you are asking regarding the discussion of the 30 day versus 45 day

Mr. Lau: looking at the exchange and I apologize completely I see where you could read that too you were suggesting that it needs to go for adopting soon what was proposed was a pre notice discussion and in my entire time here we have know what the idea of the pre notice is to discuss it prior to noticing it with OAL so we have never held a pre notice discussion prior to or after noticing with the oh yeah so I think there was just some confusion there I can say in order to be up for the next meeting it would have had to go to OAL on April 3rd I mean that the timelines there are pretty difficult to meet but like I said in my entire time here we've never held a pre notice hearing and after notice – OAL needs a rough copy of the regulation and I did what the pre noticed meeting is to prepare that rough copy that we're going to provide to OAL so I'm sorry if there's any confusion but I don't see where it was specifically directed that we would come up for adoption at this meeting I just it was I see where that could be implied but I don't see an expressed they say so I'm sorry if I misunderstood

Commissioner Hatch: when

Chair Remke: Commissioner Hatch

Commissioner Hatch: when Commissioner Hayward submitted the redrafted version with in end of regulation format it was timely not only for the 10 day notice for this hearing we're having now but also to meet the 40 day time line to be on the May but it was just not done apparently

Mr. Lau: I received it before April 3rd I don't I'm pretty sure we've received it before April 3rd but by out mark my my only thought would be that my idea the idea was that this was for a pre notice discussion of that regulation which gives us the opportunity to look at it modify it prior to notice you know with oal that's that's what we've always done with the pre notice meetings so if I misunderstood I apologize

Commissioner Hatch: but you do see the more than once I asked for that clarification this was going to be both noticed for both purposes 117 and 118

Mr. Lau: I don't recall that I mean I just

Commissioner Hatch: but you just read it

Mr. Lau: I did I just read it I don't I don't recall that at the time I see that I responded that we were going to be doing a pre notice discussion and then there was another conversation that I at that point that I was no longer involved in I I don't recall that portion of the conversation

Commissioner Hatch: you just don't recall being present or listening to that portion

Mr. Lau: right I don't do not recall that portion of the conversation

Commissioner Hatch: obviously it did happen but yeah and I I had raised the quit and follow-up I had raised when you talked about a pre notice I was not sure what that meant and that's why it was trying to get clarification that I was going to get a notice for both purposes I guess now the question is be ins we kind of got short stick to here how can we get this back on track as quickly as possible and

Mr. Lau: I mean III

Commissioner Hatch: if we if we serve the notice today when could we

Mr. Lau: the soonest we did those numbers a second ago and as soon as we can get up would be June 4th which would be a Monday if you're trying to hold it for a Thursday meeting would be June 7th

Commissioner Hatch: say that again

Mr. Lau: it would be June 4th would be a Monday

Commissioner Hatch: would notices today

Mr. Lau: right now part of me I can go to the math you want to is getting kind of boring how the explanation of how that works

Commissioner Hatch: no I just would be the soon as we could hear it every days is what you said you need it's even those the 30 day notice

Mr. Lau: it's it's approximately 40 45 days

Commissioner Hatch: that's a kind of a flexible number I guess when you

Mr. Lau: it's all about publishing schedules

Commissioner Hatch: so if you if you add 45 days to to today when are and that takes us to what

Mr. Lau: June 4th

Commissioner Hatch: June 4th okay and reflecting on that Chair Hayward

Commissioner Hayward: why don't we get to the item at hand but I don't think there's much more that can be said about that okay I'm going to start working on the Ad Hoc Committee version which is distinctive only in that it has a footer in a font typeface that is different than the body so if you're looking through a pile of documents that might make it easier to spot and I guess I will do that at the same time with the legal divisions memo I'm going to flip past the cover memo and get to the regulatory language if there's things in the cover memo after I'm done

50:00

with this that you feel need to be amplified please let me know otherwise I'll just let it people read it okay so the first little wordsmithing thing that I'm gonna explain because it's either my credit or my fault depending on how you look at it is the use of fppc or agency you guys highlighted that for us on the first page of our reg the reason I want alternatives is because I think sometimes if you're talking about the Commission meaning the five-member body and then you talk about the FPPC in the same sentence it's almost like there's they're synonyms and interpretation could be more confusing where if you've got a sentence like that and use agency instead then everyone will know it's the full entity government agency that we're talking about not just the five-member Commission but there are other times where I felt like the abbreviation FPPC read better so I was using both to mean the same thing now other people have done wordsmithing too what was I thought a fairly defensible and helpful distinction I think now is a little less so and not pointing at anybody but so so there you go that was my intent I still think it probably is a useful way to have in certain sentences a word other than the word FPPC when you're talking about the Commission as a body so anyway that was that page 2 I thought the comment here in the end the strikes are to suggest that when we're talking about recommendations by these various committees that they are somehow limiting the Commission to act independently without a recommendation that was never our intent we thought it didn't read that way we've got some ideas for how to change that but but we heard you on that one and I think we'll we'll have something that that hopefully will satisfy that objection on our own motion the language on line 16 upon recommendation of the Law and Policy Committee the Commission will take positions on efforts to amend the political reform act obviously our legislative portfolio can be broader than that we don't just take positions on what other people are doing we can propose our own and so we're going to want to reword that I don't want to nail this down but I just want to tell you that I think that be something along the lines of recommending and taking positions on amendments to the political reform act or something like that but it seemed it seemed a little limiting the overlapping committee recommendations at line 18 and 19 will change so that we don't have that that was a lingering bagley-keene issue that I feel like we did not grab on the first go-round and but in general the comments that suggests that these committees have any sort of authority independent of whatever they recommend being approved by the full commission is not what we want and to the extent you see wording that suggests that we will you know that's not that's not what this is supposed to be about it's also not the case we believe that when committee is working with say a member of the staff and making a recommendation that that's somehow intimidating to that person I would like to think that as this that's the system of also moves forward that people will know that it's a collaboration that people can disagree and that ultimately it's the Commission as a body that decides not the two members standing committee or somebody else or you know the mailman or whomever it might be now I know I understand that the that the big elephant bagley-keene issue really involves the fact that if you've got a two member Commission a third Commissioner the Chair or a different Commissioner can't jump in the pool with them so one way around that would be what's been suggested was having like an advisory Commissioner tagged on to these various issue areas and that advisory Commissioner would pair up with either the Chair of the Executive Director depending on which committee another way that I think is also worth talking about is the fact that any time the third Commissioner wants to listen to what the Standing Committee is doing the Standing Committee can have a noticed and agendized committee meeting via conference call and there's nothing around with that under bagley-keene that says that that third

Commissioner can't listen can they participate no but that's an exemption and we got a we went back and forth with Ted Prim quite a bit on that one or you could notice an open public meeting and have everyone participate and would be a commission meeting now that's a little harder to do by conference call because I might memory serves a human being that's a Commissioner needs to be in this room when a full commission meeting needs but I don't think that's the case with a standing committee or at least I couldn't find anything that suggested that I've seen with other governmental entities the standing committees have like a regularly noticed weekly monthly whatever depending on how busy they are conference call and there's a number and for the you know two or three souls in America that we really want to listen to that call I not trivialize trivializing it but I'm saying realistically that is a way of doing that and I would I guess my feeling is a lot of bagley-keene issues have been pointed out to us but I don't feel like I've gotten a whole lot of suggestions for resolution of those issues other than oh don't do what you want to do okay maybe ultimately but but right now I'm not ready to give them on that one yet I want to think a little harder about that and let's see the next comment was involving

Chair Remke: can you say page in line please

Commissioner Hayward: oh sure the legends doesn't have page numbers so give me a second okay i'm on that's one two three I'm on three

Chair Remke: okay

Ms. Peth: the comments have numbers too if that's helpful

Commissioner Hayward: yes comment A5

Chair Remke: okay thank you

Commissioner Hayward: even better thank you I went through my life opposed to track changes and comments and documents so I'm a real troglodyte when it comes to this stuff yeah on so A5 is the one correcting us in how we were referring to the commission of the opinions versus informal or formal assistance and and we we heard you and I think we have fixed that because you're right we weren't seeing it quite right next page I thought and comment A6 I may just not understand the it says by statute the Commission can delegate to the Chair or Executive Director to the extent that this language attempts to limit delegation to the Executive Director the language conflicts with the statute but the language says Chair and oh that's yours Executive Director okay I'm not sure that the statute means that everything has to be delegated to both of them is that what you're trying to say help me out with that

Mr. Lau: I these are going to be limiting to feature Commission's so the idea that this regulation says these kinds of functions have to be delegated to only the Executive Director would seem to conflict with the acts required that the Commission whoever the Commission may be at that time could delegate to either/or and so all I was trying to emphasize there is that the delegation from the Commission could go to either of the two individuals under the statute

Commissioner Hatch: could I ask a question

Commissioner Hayward: Commissioner Hatch

Commissioner Hatch: I was curious in your draft it suggested changes you add back the Chair and then tell us we have a bagley-keene problem because you did why would you do that I don't understand what the point was

Mr. Lau: well this draft but this is just talking with a delegation of authority so

Commissioner Hatch: there's a blue line stuff on c5 I guess it's a paragraph five delegating execution it's the top of that page that has comment a6 on it

Mr. Lau: okay this just goes to the delegation of authority and all I'm the only point that I was trying to emphasize we were trying to emphasize is that restricting a future Commission to delegate these only obviously is up to the Commission to delegate the individual duties to the Chair or the Executive Director but a regulation stating that these delegations these authorities can only be delegated to the Executive Director is somewhat problematic

Commissioner Hatch: this is just on a specific item

Commissioner Hayward: yeah can i

Commissioner Hatch: I'm sorry

Commissioner Hayward: I'm sorry I'm gonna interrupt you now

Commissioner Hatch: yeah

Commissioner Hayward: because 83108 says the Commission may delegate authority to the Chairman or the Executive Director to act in the name of the Commission oh that's between meetings so which are you looking at

Mr. Lau: I'm just reading the the language I've drafted stated that the delegation of the Commission policy and strategic objectives to the Executive Director I mean it's a it's a it's a restriction on future Commission's to only delegate to the Executive Director

Commissioner Hayward: but if we if we don't put it in a reg it's an underground reg so if the future Commission doesn't want to do it that way I guess they'll have to change the reg

Mr. Lau: I would read that reg to conflict with the statute that says it could go either or so

Commissioner Hayward: I think we've said what we need to say there now comment a7 is the same section and I think I think I don't understand I think I don't understand can you help me out Brian Mr. Lau

1:00:00 Mr. Lau: often what we're pointing out is that there are other regulations at this point that delegated authority to the exact that that control the exec directors delegated authority which should be looked at the other issue was that this notwithstanding language is somewhat unclear to us it seems to read that 18361 doesn't apply that the new language applies regardless of what this other regulation says is how I read that so it's just a matter of drafting and determining how we're gonna delegate authority under are we going to delegate it through regulations are we going to need to we if we do we should examine the existing regulations to determine if those regulations are still valid versus whether or not those regulations need to be corrected or amended as well okay

Commissioner Hayward: Okay I think Commissioner Hatch do you have any thoughts right now

Commissioner Hatch: yeah actually I anticipated that argument when we wrote that the way we did we only have noticed of what this one regulation and if we intended my intent wasn't drafting that was that we would then come back and notice an amendment to the other regulation that it conflicts with having reviewed it further and else and I've been working on another draft to take into consideration more of the suggestions you've made that language would completely come out so it's not really not an issue at this point it's in my mind not in the public venue though

Commissioner Hayward: okay and then there's the perennial not perennial but where it is um comment A8 about what the what the term is for people that we sort of colloquially call executive staff we want a word that includes division Chiefs the communications director and the legislative director and I know they're not alike in sense of civil service rules I know they're not alike so much maybe in the way the organizational tree is written but from this side of the dais they all seem to be individuals who have particular portfolios that they work on as Chiefs for lack of a better word so that's what we were struggling with when why we were using executive staff is kind of a term for that now is there a better term that we use in other parts of the Reg that would capture the same thing we could define executive staff for purposes of this you think that's a good idea defining executive staff for purposes of this okay let's define executive staff for purposes of this so run by the changes to the standing committees I like comment A9 about the way you've suggested rewording it I think that's a good idea and then we get into okay the authority of the Chair comment A10 is again with the the the problem of the Bagley Keene problem with the two-person advisory committees I've already given you a sense of sort of where we're headed and we want to constructively come up with a way so that a bipartisan Standing Committee can work with staff in a formal way that people expect understand respect it's not a surprise and instead of the sort of ad hoc way the Commissioners now sort of you dive into issues and then you know there's a squirrel and we dive after that issue and there's a butterfly and we dive after that issue something it's a more regular and that everyone knows what to expect that's the goal okay so let's not lose sight of that and I think the many of the Executive Director comments are in the same vein I just again I'll reiterate I'm not sure that I agree with you that if the Commissioners understanding committee make recommendations to the Executive Director that she's going to feel like they're more than recommendations I think miss peth is perfectly capable of telling me when I'm wrong

Commissioner Hatch: excuse me

Commissioner Hayward: yes Mr. Hatch

Commissioner Hatch: somehow though the language we had was being misconstrued by legal to mean that we were in fact you know advising staff when in fact we or I should say we were making recommendations to the Commission not to the staff and so we've undertaken in the draft that's under polishing right now that would completely separate the recommendations of the committee's would take it all the language out of the commission stuff you know where it says upon recommendation of all the stuff would be gone to be a separate list of things that they would that the committee's within their jurisdiction might make recommendations and we would take that language again out of the other parts so it would be completely disconnected if you will and I think that seem to be a chief concern of legal

Mr. Lau: yes that is a chief concern

Commissioner Hatch: thank you

Commissioner Hayward: so that's my run through the legal divisions April 17th memo have I inappropriately glossed over or missed anything else you feel like I need to talk about before I move on to Chair Remke's proposal

Commissioner Audero: I have a question

Commissioner Hayward: yes

Commissioner Audero: going back to um nevermind I answered my own question I apologize thanks very much

Commissioner Hayward: it's great when that happens okay gentlemen

Mr. Feser: Oh committee Commissioner Hayward

Commissioner Hayward: Commissioner Cardenas?

Mr. Feser: If I may

Commissioner Hayward: Yes

Mr. Feser: it's not substantive there's a clerical error in the GU memo the cover memo all reference to section 11125.5 should be 11122.5 but it is a 21st century clerical error so every one of those is wrong I picked up on that myself

Commissioner Hayward: insistent

Commissioner Hatch: I looked them up and they they we were completely unrelated

Mr. Feser: yes

Commissioner Hatch: anything else gentlemen Commissioner Cardenas?

Commissioner Cardenas: I have a question probably tucked inside of a concern or maybe it's the inverse I don't know the concern that I have from from both a board and a staff perspective because I've I've been on I've been on each in an indifferent but important uncomfortable and disquieting ways and what I'm really referring to here I think I think two concerns one is power relationships or unequal power relationships and expectations merit it or not that that perhaps naturally arise from inequality of power relationships and dynamics and the second is a chain of command communication and ultimately see cubed type issues the the ability to to lead by knowing what the hell's going on underneath you and what informs my perspective on the one hand was an experience a long time ago as a Commissioner of the Board of Public Works in the city of Los Angeles which some of you may know is a five-member Commission not unlike this where the the only official act of the governing body was any vote of three or more and that posed a number of complications for staff we did have a situation there where there was no Executive Director it was added later with good cause but there was no Executive Director each of the there were a number of Bureau seven I believe and each of the Commissioners was kind of a lead Commissioner with respect to their department but we could speak to any of the bureau heads that the challenge is that there can be so many cross-cutting and oftentimes conflicting not necessarily intentionally communication and directives and communications which are which are taken as directives by by subordinates by staff such that it's it really complicates the ability of either the the five-member Governing Board or an Executive Director had we had one at the time that's one of the reasons why it was changed after I left to understand what in the world is going on who is talking to who what's being suggested to who what's being a quote-unquote recommended to who and I don't I don't have a a ready answer I just want to put on the record that that this is something that if it moves forward is really going to have to be closely monitored with with candor and hopefully civility because it can get really really complicated mushy and and not in a not in a good way the I've been involved in organizations both public and private where boards of directors and a private context or governing boards in a more public context are we able to speak to stuff well first of all I've been involved in organizations where there not other than through the Executive Director I've also been involved in in organizations where communications could be had with anyone in the organization as long as the CEO or the Executive Director was at least given a courtesy notification of the fact that such a communication had been had for example a cc or or some representation to the to the head of staff that about the the basic contents of the of the communication it was a little bit laborious for staff in that particular context because then staff would essentially have to memorialize in a nutshell that I mean this not just need not take the place of the real work that needs to be prosecuted but in a nutshell you know Executive Director I had the privilege of meeting with Commissioner so-and-so today and this is what we this is what we discussed so that there is there is there is a final one choke choke point and it should be co-located in the person who has the ultimate responsibility for for leadership and direction which is further complicated by the fact

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that at least on dis Commissioner's reading that's essentially bifurcated over the last forty four years between the Executive Director in the office of the Chair and the other but the other concern which is less about organizational clarity and chain of command and making sure that we're not undermining the authority and the responsibility and the ability of the Executive Director to to do her job was some semblance of of a sane communication org chart if you will is is the the issue of how things can be perceived between individuals where there are remarkably unequal power relationships in an organization and and the power continues to reside with this commission properly so we are talking about not not devolving but but certainly delegating delegating certain responsibilities and authority to two committees not the authority to act on behalf of the Commission which the legislature would have to change that or or the people but but the authority to to make recommendations to staff and I'm highly uncomfortable with that term because I've also been on the other side and in other context at the LA County MTA or at least that's what we used to be called at the time when I first moved over there from the Board of Public Works I was the chief of staff and it's you can say that that the person in superior power is merely making a recommendation to stuff but that is very often not how its received by the staff for all the understandable reasons and and very often reasons which would never appear on a balance sheet there's an awful lot at stake here and and and people know that the power is up here and people know that that these people you know the people up here were you know we almost literally have to be impeached before we leave before our term and so before our term is you know typically we're not going anywhere and that's that's pretty daunting from a staff perspective I will tell you having haven't been a not not a CEO type position but really damn close to it on behalf of a humongous staff was some very powerful leaders so I I just implore my colleagues to to give some thought to the dynamics of this and and and a very legitimate concern that I feel staff clearly has with respect to the implications of this movement and the majority of us we're all lawyers and Commissioner Hatch is a better lawyer than met many real lawyers that I've so called real lawyers I've met in the past there's a lot of legal acumen up here and we know that words have meaning and words have power and I don't I don't believe I've got verbage Commissioner Hayward and Hatch that that goes to this I'm still thinking this through but I think that there are some very legitimate concerns that are being raised but it's it's it's not just the verbage I'm hoping that we can that we can feel the feelings if you will of what's going on here it's it's it's a very uncomfortable and disquieting experience to be a staff member and to be meeting with someone like like one of the five of us or two of the five of us perhaps particularly in the absence of the Executive Director and and a couple of who are one one vote away from having an official action from being effectively the Commission are giving you a mere recommendation that may not be formal power but that's a hell of a lot of soft power and sometimes the difference is indistinguishable

Commissioner Hayward: Thank you Commissioner I think Commissioner Hatch corrected me before when I was sloppy and saying that the the Standing Committee recommendations would go to staff they they do go to the Commission I'm as a former staffer also quite mindful of the dynamic that you're talking about and I struggle with how to balance that with our duty to ensure that there's oversight of the Commission because there's got to be some communication to to make the oversight happen so with that let's move on to

Mr. Feser: Commissioner Hayward I'm sorry for the interruption there was one thing just related somewhat to what Commissioner Cardenas has I said okay that I engage in just sort of a discussion about how the on the ground you know at the office here how this situation would affect us on a day-to-day basis perhaps it's better if we discuss that after going through all these or discussing now I don't know how you prefer

Commissioner Hayward: well let's go through I mean I feel like right now what we're doing is we're talking about what's happening with the thing that was on the agenda and that's important to talk about too but let's do this first anyway with that let's move on to Chair Remke's proposed regulation I think I'd like to turn it over to the Chair what do you want us to get out of this

Chair Remke: I think the one-page memo for the most part speaks for itself I hear loud and clear the the concerns and the desire to have more oversight I would just say part of how we got to where we were to when you joined was pattern and practice of prior Commission's and their desires to be involved or not so involved and so a certain pattern and practice arises that people are comfortable with and we proceeded down that path now obviously there's a very different commission than there was for example four years ago when I started and I think my first point though would be and I guess it's that Commissioners should be more involved should raise questions but I continue to believe that the appropriate way is the way we are doing it with other issues the enforcement process the streamlined process I mean we are about to discuss closure letters we've discussed bagley-keene questions going to the AG I mean when issues arise and concerns are expressed and Commissioners would like to look into something in more depth I think the way that we could have been doing it perhaps could do better at that even though is in this public forum where there isn't the concern about who's talking to whom and when and what's being said I think that is it not only more transparent I do think it is a better use of resources right now for example I'll just use the two member ad-hoc committee as an example we have two members doing a lot of work we have staff doing a lot of work and then we come right back here and we do a lot of work as a commission and I just wonder if we couldn't have taken out a step by bringing the issue here to do the work as a commission with that said though I understand this desire to know have more I guess I would say of an inside view of what goes on at the Commission I would caution though I think that's probably going to be different from Commission makeup to Commission makeup and how much Commissioners have time and want to dedicate to it but nevertheless with the committee structure that's why I think what legal has suggested is an appropriate way to bring a Commissioner in to each subject matter area understand how the Commission is actually functioning now what policies we actually have now and then again with through those discussions through that opportunity then raise questions that can be discussed before the full commission so with some of that in mind so again I do have concerns I'm clearly the only one raising it about the proposal and the limitation of the role of the Chair I don't say this just in my role because again I'm on the final legs of my four-year term I think this is for future Chairs as well and I have concerns as the only full-time member of the Commission I do not think the proposal on the table by the Ad Hoc Committee understands or appreciates that the Chair does need to have day-to-day involvement and communications with the ED the division chiefs and staff so those are the things I try to address in my proposal there was the original proposal by ad hoc there was the amendments and then staff made amendments I tried to go in and it makes amendments to staffs amendments but I realized you really can't

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make a silk purse out of a sow's ear at some point so I just decided to start fresh because it was getting too hard to follow as you mentioned before Commissioner Hayward so that's why I started fresh I think what I'd like to draw the Commissioners attention to is the structure of the role of the committee's and if you still want to stay with the two Commissioner committees which I do share very much so the concerns and again just the transparency issues resource issues bagley-keene issues but I would encourage the Ad Hoc Committee in this next round of drafts I understand you're making two looked at least to page three of this proposal I think the committee's whatever shape they take need to have more structure as to what their goals are and then again what the restrictions are so that is what I tried to do on page three starting with paragraph three and moving down through paragraph five so I would highlight that as far as the committee's are concerned and the restrictions

Commissioner Hayward: I'm sorry I think I think our either page numbering is different or are you referring to the material that starts out each committee will be responsible for

Chair Remke: yes

Commissioner Hayward: I've got that on page 4 line 5

Chair Remke: I know mines different too I think sometimes the memo was page 1 and sometimes it was not page 1 that's just

Commissioner Hayward: I just want to make sure

Chair Remke: I think that's did you get that printed today anyhow yes it is section subdivision D structure and role of committees it's called starting with paragraph 3 each committee well be responsible for going through paragraph 5 I do think if we're going to continue down the road of committees they need to be clear on the structure the purpose and then again most importantly I think the restrictions which we've already talked about it doesn't seem to be a dispute that they will only be making recommendations but I think it's important that it be put in there and then again an overall riding theme which perhaps is partly what Commissioner Cardenas was addressing is this notion that these committees do not get into the daily operations or management of the Commission that's where I think it's really going to be an issue if committees don't understand that it's bigger policy set by the Commission and leaving it to staff for the daily operations I did get that language from another I got it from CalPERS actually in their governance something similar about the limitations of committees so that's where that came from that's all I have to say I'm happy to answer any questions about this proposal but if you want to just go ahead and make a motion to adopt it that's fine

Commissioner Hatch: I had a question and maybe

Commissioner Audero: I had a question

Commissioner Hatch: Oh

Commissioner Hayward: Commissioner Audero

Commissioner Audero: Thank you I'm a little confused I feel like I'm getting mixed messages and it's completely possible that I'm just not understanding something so I need some clarification on the one hand we have the legal division making also throwing bagley-keene at us at every corner right and you know I I respect bagley-keene I understand the need for it but but the whole issue that the legal division has presented with its track changes on the original regulations proposed by the Ad Hoc Committee is you know the second you create a two Commissioner committee bad things happen all hell breaks loose fire and you know and they paint this horrible picture all premise on it could create a serial meeting so I have a concern about creating policy based on it could create a serial meeting when we're all fully aware that Bagley Keene prohibits serial meetings to me that is like saying you know we have we have traffic laws that say you know you can't speed beyond I don't know whatever wherever wherever you are in the country 65 or 75 on a freeway and and then saying but because we know that there is a possibility that some people will speed we're just not gonna let you drive and I just don't think in it I think that that's the perfect analogy for the legal divisions position of you shouldn't do this because you might violate bagley-keene when in fact we're not going to violate bagley-keene cuz we're fully aware of it so that's my general thought on the admonitions from the legal division but then I have the question and now here's the mixed message part of this in Chair Remke's proposal she suggests that legislative and law policy committees should consist of two Commissioners one herself and then one other Commissioner so I'm wondering why the Chair would think that this works in light of the legal divisions admonitions that we shouldn't create two member committees and I would not want to hear that because the Chair is one of the Commissioners in this - in the legislative and law policy then bagley-keene is not at risk of being violated because the Chair is just as much a Commissioner as we are so I need some clarification on that

Chair Remke: Um sure I'm happy to address my understanding and why I think the one Advisory Commissioner with either the ED or the Chair is the better approach again as I've said all along think when you create the two Commissioner committees that are going to oversee every feasible activity within the agency you are in effect cutting out the Chair of any and all discussions from the ground up I think part of the role of the Chair is to help develop develop policies from the start based on the working knowledge of how the agency operates the daily interaction with the ED and the executive team so I think the idea here was that if you have two Commissioners who are not the Chair the reality is as we saw through this ad hoc process the ED and the executive team cannot work with or discuss with the Chair what's been said and going on at the Ad Hoc Committee so the idea was that at least the Chair can still stay engaged and or the ED stays engaged from the ground up on these policies and issues we're talking about so that what they're working with the Advisory Commissioner so that was the purpose and that's the goal

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Commissioner Hayward: I had a legal question Commissioner Audero go ahead and then I have a legal question

Commissioner Audero: okay thank you I understand the goal I don't agree with it but that's beside the point we will have to vote on that but what I what I'm confused about still is how it is that there is a threat to bagley-keene when two Commissioners are when an advisory committee committee is made up of two Commissioners that don't include the Chair but there is no threat to bagley-keene when a the committee is made up of also two Commissioners one of whom happens to be the Chair well that's where I'm confused and I feel like that wasn't answered in your statement so I'd like some clarification on that

Chair Remke: I guess I could just try to restate the same in another way which is even under the Ad Hoc Committees proposal the Chair still has the limited role I guess I would say of overseeing the Executive Director and making sure the Executive Director is complying with all policies and proposals but my point is it will be very difficult for the Chair to do an effective job of overseeing the operations and making sure that the policies are being executed pursuant to the request of the committee's the Commission if the Chair cannot have dialogue with the ED or executive staff about things that are in development or discussions that were had for example you adopt a policy through a committee it comes to the full commission it's approved and then implementing that policy arguably the ED would only be able to go back to the committee to ask questions and get clarification the Chairs out of the loop as far as executing that policy I'll just give you Commissioner compensation as an example we recently adopt a policy there are questions about how to execute it and implement it and there are discussions between me the ED and the chief of admin about what that language meant what that rule is do we have to bring this back to the Commission or not now again I would be completely out of that I mean perhaps that is the one of the major focuses of this proposal is to take the Chair out of any oversight of the agency again that's not the job I signed up for and I doubt that future Chairs would be excited about stepping in into a position where their hands are tied to do anything and that would be the concern so again I think it's just the reality of the daily operations of an agency with a full-time Chair is involved

Commissioner Audero: So you're the only oh I'm sorry I thought you were finished it sounded like there was silence

Commissioner Hayward: no this is Alison and I have my legal question which is which is burning to be asked right now why doesn't the staff briefing exemption apply

Chair Remke: I'm not sure can you give a little bit more

Commissioner Hayward: The bagley keen staff briefing exemption staff can confer with Commissioners just as long as they don't tell other Commissioners what the other Commissioners have said I mean that happens all the time you know

Chair Remke: But that's the the concern I think that I have and I'm not sure all that legal speak for itself and it's definitely discussed in is it the Hoover Commission report again it's the spoke and wheel listened when you have a Chair who can be at the hub the hub communication can continue to flow not sharing what it also was said before but at least the Chair can share that information is needed if you take the Chair and say the Chair can't be part of the wheel

Commissioner Hayward: no it would be the Executive Director or a staff member I'm not sure that the Chair can be the hub of a wheel and I think that's not my understanding of how bagley-keene works my understanding was that if you have staff working with voting members of the body the staff can do that as long as they're not facilitating some sort of secret dialogue among those voting members so the example of say we passed a policy about compensation well there's no more dialogue or work to be done on that and so I don't understand why you would feel that bagley-keene had any application there I mean it's a policy now you implement the policy nobody's conferring about it anymore nobody's voting on it anymore

Chair Remke: well there are questions and people are conferring on it is my point and I would assume

Commissioner Hatch: there's no way that we knew about

Commissioner Hayward: yeah how could we be conferring on it

Chair Remke: again staff is conferring on it

Commissioner Hayward: and voting members huh

Chair Remke: right and if there needs to be an amendment to the policy to address concerns it would be brought back to the Commission for a vote

Commissioner Hayward: yeah and then it's a fresh new day I mean I really think I think I think the interpretation of bagley-keene were pumping bumping or here doesn't reflect the Ted Prim best practices training thing that he did doesn't reflect stuff I've read I mean tell me where I'm wrong but I think that two Commissioners could work with Erin about whatever and you could ask Erin about the same whatever and as long as she doesn't divulge what we've been talking about you're fine

Chair Remke: but then again I don't know what's being discussed or what's being processed or how it's gonna impact the agency I guess again it's either you have a Chair that's actively involved and understands and can share the concerns and our approach or ideas of the agency or you don't and this proposal clearly says the Chair is not actively involved in the development of policies I think the proposal would be and the concerns would be considerably different if all the policies were already adopted and we said there's two Commissioners for each subject matter jurisdiction who oversee the adopted policies and they meet and make sure things are happening and they bring up issues that arise I think it's different which is part of the concern I have about this approach is the scope of what it's anticipating which it is adopting new policies in almost every matter in which the agency works and that all issues would first have to run through these committees before they go to the full commission again the Chair will not have an input or will not understand what's happening from the Commission level I mean the committee level until it's before the Commission I don't think that's a good approach that's just again clearly we have a

different perspective and a different notion of the role of the Chair and so I guess we're probably not going to agree on this

Commissioner Hayward: Commissioner Audero

Commissioner Audero: Thank you and going to the role of the chair Chair Remke you said that you know one of the things is the the role of the Chairs to help develop policy based on daily interaction I I think the role of all of the Commissioners is to help develop the policy and we all develop the policy at the Commission meetings where we vote policy can't be developed behind closed doors and out of sight of the other Commissioners you would agree with that right so I tell me if you disagree with that let's start with that and then I'll go on

Chair Remke: well again I I would just say I think to some extent we're seeing this play out with the governance principles and the Ad Hoc Committee I would argue that it was developed behind closed doors without input from first of all staff until after the fact and again I still am not sure who talked to whom about what all I know is that it was so I mean I think that's what I said

Commissioner Audero: I think you're twisting what I said what I'm saying is you you want the role of the Chair to be somebody who because the Chair is a full-time Commissioner gets to be involved in everything and gets to develop policy without it getting to the to the committee I mean I'm sorry to the Commission that's not how we develop policy that and and that may be a very fundamental difference in your right and how at least I can say some of us from what I'm hearing believe the role of the Chair should be I don't believe I for one and I'll speak for myself don't believe that the Chair should be making policy making any kind of policy type decisions without without concurrence or vote by the Commission that's why we meet once a month so I believe that the role of the Chair in developing policy is not at all impacted by the regulations set forth or proposed by the Ad Hoc Committee because policy is made by votes at the Commission meeting and the Chair has a vote just like everybody else so so that's that's one thing again I do want to go back

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Chair Remke: well I well can I just respond can I respond to that first comment

Commissioner Audero: No

Commissioner Hayward: Commissioner Audero

Commissioner Audero: thank you and I I do want to make the point that I still have not heard the answer to my question of why Bagley Keene is not threatened when an advisory committee has and has two members one of whom is the Chair but is absolutely threatened if you listen to the legal division when it has two Commissioners one of whom is not the Chair and you know I don't know that that's a question for you to Chair Remke perhaps the legal division who has taken this position so strongly could address it

Chair Remke: Commissioner Hayward can I just make a clarification

Commissioner Audero: I'm sorry?

Commissioner Hayward: I'm letting the Chair make a clarification and then we'll go to the legal division how about that

Chair Remke: thank you I just want to clarify my proposal and my position is not that the Chair develops policy end a story the point if I was unclear was that the Chair helps those recommendations move forward in light of the daily operations and function of the agency that all come to the Commission for a final vote number one I think that's clear in here because I adopted in my proposal all the same restrictions that the Ad Hoc Committee had on the Chair's authority not to adopt change policy adopt rules change rules so I put all those restrictions because that's not the point the point is just understanding as they move forward and I would say that's not the sole role of the Chair and that's why the proposal also has the Advisory Commission Commissioner on each issue to be part of that discussion that's all I wanted to clarify

Commissioner Hayward: Commissioner Audero are you good

Commissioner Audero: No not that's fine I'm just waiting to here from I guess you're going to turn it

Commissioner Hayward: I'm going to turn over legal vision I just because you're right now a box talking in the middle of the table I wouldn't be able to get any cues or anything

Commissioner Audero: Well I appreciate it thank you

Commissioner Hayward: Legal Division

Mr. Lau: okay this is Brian Lau it's not that there's no Bagley-Keene issues and if you have a two-person communication committee with a the Chair and another Commissioner is that the Bagley-Keene no problems are not as severe with from a staff level we don't know where we're getting direction from a two-person committee and the Chair on the side it's very hard from the staff perspective to try to walled-off those communications yes we can provide we can we can accept information we can give you the information we can give Commissioners individual advice but it's hard to do that without some sort of conversation that occurs and each one of those conversations have the potential of violating Bagley-Keene as soon as I happen to say something that came from me from a committee member that was part of a team you know two-person committee to the Chair so with the with the Chair and the individual committee we don't have that struggle every day because we we can recognize that we've already spoke to the Chair and the committee member vote and we know not to discuss something with another Commissioner at that point but if it's two Commissioners and even if we're definitely dealing with one we have to rely we have to think you're coming to us for what the perspective of two of the committee which is two Commissioners at which point that we are very hamstrung in the conversations that we could have with the Chair and that's and that's exactly the staff Executive Director whoever happened to have those conversations with the two-person committee and we're with the Chair

being a full-time Commissioner we're gonna being the only full-time Commissioner we're going to have that day the interaction I think I try to we tried to highlight that in some of the comments that were made you know when you talking up something like a budget the chief of personnel is going to talk to the community to the Chair about the budget and all likelihood prior to a point where the committee gets involved and as soon as the committee gets involved but that if the chief had already spoken to the Chair then the the Chiefs ability to speak to the committee is severely hampered so I mean by doing setting it up with this structure just that interaction back and forth on a daily level where we have to where we're answering to a Chair and to other two party committees becomes very just congested

Commissioner Hayward: okay that gets back to my confusion I believe it is the case that if you've been talking to the Chair about the budget and then the two Commissioners who are doing the budget they call you up and say we've got questions about how the budgets shaping up you could answer those questions you just can't say and the Chair thinks because that's when you start facilitating a discussion about a matter under our jurisdiction or an item of business which is what we can't do I you know I I used to talk to clients that had common interests and I was able to finagle that one I don't I'm not sure that it will really be but we haven't we've put off the the practical conversation and so maybe maybe what we should do at this point

Chair Remke: Could I just just to see so I can understand it from a different point of view can you help me understand why the Ad Hoc Committee is firm on the two Commissioner / committee proposal as opposed to both legal divisions and my proposal which would have a Commissioner on each committee

Commissioner Hayward: I will speak for myself and then Brian will speak because I think I think we came at this from different angles as a member of minority party I'm concerned about bipartisanship and I'm also familiar with how standing committees in other contexts work and they tend to be two or three depending on how big the group is individuals not the Chair because it's a it's a check on the Chair and it's a way of oversight in some respects and so that I don't think you you know budget gal on the designated legislative guy and I think I think that the concerns have been raised or legitimate ones so I think we can work them out Mr. Hatch

Commissioner Hatch: yes coming out a little differently my experience showed me and it was borne out in our interviews with past Commissioners and Chairs it was that long before our current Chairman took office there have been a pretty long-standing arrangement where sort of management of the of the agency is bifurcated between a Chair and the Executive Director so to the extent that the exec that the Chair wants to be involved in something they can be involved in if they don't they don't have to at all then falls to the day-to-day to the Executive Director all of this happens historically in sort of a way that the rest of the Commission really doesn't know what's happening until suddenly something's on the agenda for their approval and a lot of the inner workings they're there that are done in the name of the Commission I'm not talking about what the Chair does here I'm talking about staff that the the Commission has its current operation no way to meet its oversight responsibilities to assure that things are getting done the way they're supposed to and so my view was you need sub subcommittees if you use that term that are advisory to the Commission that would do its investigation take its information back and the

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extent they feel necessary make recommendations to the full commission for them to either act on or say you got no problem what we got back from legal was what I I've come to understand is the quote Getman model where you have the Chair and one Commissioner who not only can act in private but can actually take action without ever bringing it back to the Commission to me that's less transparent than what we're proposing what we're proposing is that this these two member committees do their investigation their oversight bring it back to the Commission and talk to the Commission about what they found what they think is broken or what can be improved on and then and only then is it up to the Commission to decide what if anything to do about that information the Getman model is completely anti transparency and it's not been conducted in that way during this Chairmanship I don't mean to impugn the Chair in that regard I'm just saying there's a long-standing practice of doing things in a way that are not transparent at all and things fall by the wayside and this is a way to do that now we get overly enthused and had proposed four committees the legal has pointed out to us that that too many opportunities for people to know things that they shouldn't know so then we come back we propose only two committees so there's no overlap nobody's on two committees so they don't have to worry about managing the information and what I see myself in the original governance principles our language that says that the Chair at its discretion can get involved in the day-to-day management but what yet the the standing committees are doing is just doing oversight we're two different things apples and oranges now if they happen to step into a subject area together or not together but independently of each other I would just suggest that as my Chair of the committee has already pointed out quite clearly is that you got to manage your communications just as lobbyists have been required to management manage their contacts and make sure they don't violate the the TRA just because you talked to somebody about the budget over here and somebody else on a different budget question you have that staff exemption as long as you you don't tell what the other was thinking about it and their opinions expressed you can certainly share that if I'm at ur of fact you have a duty under the existing policy that if one of us inquires about something and you give them an answer you're supposed to then through the Executive Director summarize that and get the information out to all of us I can tell you in the year I've been here that has never happened I'm one of the most inquisitive kids on a block I'm always asking questions and none of that stuff gets passed on anybody else so I see oversight needed I'm trying to do it in the least obtrusive way as I can we take to heart every one of the recommendations that have been made by legal and we've revised we're on earth I think third or fourth version of this thing if you count the the policy that we started with and I feel like people just being disingenuous and it's even you know I got very upset this morning because I saw that from the very outset you guys were going outside the system and it feels like you weren't taking us seriously you're just looking for you to dump us in the trash and I got offended so to the extent that I have offended of the Chair I'm sorry but that's just how I felt I'm still trying to work and make this and we are yet polishing more based on our better understandings of legal's concerns but they too need to bend you know lean in as they say and try and work with us rather than make it look like what we're doing is not possible

Chair Remke: can I just appreciate that understanding and I would just say again as to my proposal which I do think what's still allowed the oversight would still in love the involvement as to your concern about the Chair and one Commissioner or the ED and one Commissioner adopting policy outside the Commission that's again why I put in the restrictions and I would just

again say those same restrictions regardless of what committee makeup there is should be in there and that is in my proposal as well that it says operates to assist and it's not intended to direct or adopt key policies goals or regulations it's the same restriction regardless again of the makeup I think is important so I understand the concern I just want to say I acknowledge that concern I think regardless of the committee makeup that has to be some restrictive language in there

Commissioner Hatch: I would grant you that this draft that you submitted that I read this morning for the first time is better than what we got back the last version of got back from legal but I would submit to you that in what alternative universe is it makes sense for the head of an entity who is involved in the day-to-day operations of the entity to be a part of the oversight to see whether or not they're doing a adequate job

Chair Remke: I guess I take issue a little bit and I'm not sure where it's been said now twice that part of the role goal of this is oversight of the Chair

Commissioner Hatch: well no the int the agency but you are involved in the management as well you said yourself and it's it's throughout the existing governance principles so I'm saying if I were Chair I would expect somebody else needs to do the oversight work and let me know at a Commission meeting what they see needs improvement or what does needs maybe not just needs better communications I don't know but the point is oversight needs to be objective not involved in the management and I can't see how you could set up oversight committees that are Chaired either by the this chief executive or the Chair they're just non sequiturs

Chair Remke: well again I think the oversight is and the goal I see of having that is more cooperation on the Commission and working together with someone who's well informed about the daily operations either the ED or the Chair and the Advisory Commissioner that that's I think a Laudable goal these Commission meetings can run a little bit more smoothly if people felt they had more insight and we're working with the Chair and the ED on issues obviously not going to always agree but those disagreements could be brought to the full commission so that that's I guess I say the distinction

Commissioner Hatch: Oversight is oversight so it's like an audit you have to have somebody outside do the audit of the person who's operating

Commissioner Hayward: Commissioner Cardenas would like a microphone and he has one

Commissioner Cardenas: I'd like to be able to speak into it and have it can I have the floor with the microphone

Commissioner Hayward: Yes you can

Commissioner Cardenas: well the forgive me if I'm missing a basic point in with respect to either of the two imaginations before us now it does either or both or neither contemplate the that

committees of whatever structure and composition would hold their deliberations in front of the people

Commissioner Hayward: that's indeed a possibility and that was something we were talking about earlier about the Bagley Keene issue with you know the Chair being you know roped off from what the two Commissioners were doing you could you could have an open conference call and that that number is made publicly available you would notice the conference call number you would have your little agenda and it would go out and you would do it without necessarily having to come here

Commissioner Cardenas: what I think I'm hearing from my fellow Commissioners is the perception if not the reality that there's been less than the transparency that should exist particularly given given our charge and so I am heartened by that representation I want to strongly encourage all Commissioners that to the extent that we are individually going to arrive at an affirmative vote to adopt some kind of committee structure that inherent in our vote be a being explicit commitment to hold such hearings in the full light of day for the people to see hearings deliberations meetings

Commissioner Hayward: all rightie um do we have anything more to say about the Chairs proposed Greg seeing nothing and not hearing anything from the Box in the middle of the table the last document we have is the letter from the office of the governor specifically from Peter Krause the legal affairs secretary and there's there's sort of macro problems he raises and I think what I was going to do is just address them the way I see way I would answer them anyway people can discuss them and then I'm going to make the suggestion that there be a lunch break and that the Ad Hoc Committee could use Commissioner Hatch's laptop to come up with something that hopefully encapsulate what we've been kicking around not that everyone's going to be happy and that we could share it when people come back from lunch

2:00:00

Chair Remke: so do you think the our lunch break would be sufficient to

Commissioner Hayward: yeah okay we've we know this document pretty well anyway so be that as it may okay office of the governor and I think you know I I think the observation that he's not sure that we need committees to do what we say we want to do I he could be right but I disagree I disagree in part because we need this to find out what we don't know right now the approach is is very sort of ad hoc and not organized I mean people will get a passion for something like the \$50.00 annual fee or speaking for myself and it may be that that makes sense in that that come up at that time and it may make sense that there's something related that could come up if that Commissioner knew about it could be a little more sensible and so you know I feel oftentimes like I'm reading my agenda book looking for secrets you know why why did this turn out this way and why is this penalty like this and I've read the Reg and I don't see it and I talked to people and of course if it's a stip there's limited amount to what miss West can tell me but but you know I'll try and suss things out a little bit and then we'll go through a meeting I'll and I'll learn more after the meeting that was pertinent to what we were talking about I just didn't know I didn't know it if that makes sense so I think providing the part time Commissioners with a real sort of portfolio that they can master would give me more peace in the knowledge that

whatever committee Commissioner Cardenas is on he's he's looking at that and I can look at my thing and get and take a deeper dive and what my portfolio is about and so that's my answer to to that observation is it's really hard to to say that the system right now is working well when I don't know what we don't know and second point was bagley-keene point that policies criteria and schema envisioned out of the rigs will likely themselves be subject to the APA and I think that's fair I am still scratching my head over why the compensation policy doesn't have to be a reg but this yeah I think actually it probably should be if our definition is rules governing the procedures of the Commission then this whole notion that there's internal rules that don't have to be part of the regs is wrong right but you know that's that's not an issue we're gonna be able to solve in the next couple hours and so I'm just throwing that out there is a concern I'm concerned too about underground regulations I'm also concerned about regulations that are so specific that they are difficult to work with I mean we tried to strike a balance in ours that was like not so vague you wouldn't know what we were talking about the vague enough that you could cope I don't know if we struck that balance but we tried other people could strike it better I am all ears and then the final point the Peter Krause makes that made me angry was the proposed regulations appeared to have been drafted with little or no staff involvement well when we started out this process we we did a pretty good job of finding staff and Commissioners who were alums because I didn't want people to feel like they couldn't talk to us because they might have an unpopular opinion I didn't want people to feel like they had some you know skin in the game that was different from just talking about what they thought their policy preferences would be and so that's why we did that obviously we couldn't talk to current Commissioners because the bagley-keene again but we talked to a lot of previous ones and we didn't get answers that were hugely different one from the next and if people are really interested in who we talked to there's citations throughout that long large memo from two agendas ago with names and go see who said what to him and why and hopefully or you know I'm I had to produce my notes for a Public Records Act request I'm happy to put them in a little notebook and sharing with whoever wants to see him so I that was that annoyed me and I I'm sorry the Peter Krause didn't know that we had gone to the efforts we had gotten gone to get input from experts and former staff and then once we had a body of work that we could share we shared it with current staff and we reached out to every division Chair and had a conversation with them on the phone sometimes a couple and I I don't know what more we could have done actually realistically I guess I could have moved up here for a month and like parked at that table right there and talked to people but it wasn't gonna be feasible so that's my response to Mr. Krause I'm sure he's a lovely guy if you're watching I'll take you to lunch someday um because you can't take me cuz that would be a gift anyone else have something they want to say about the Mr. Hatch

Commissioner Hatch: sorry just procedurally I know when we took the cooldown break that I needed thank you Madam Chair we lost some of the people we were waiting to testify and I'm afraid that we might do that again so before we break I think would be appropriate to ask the public if there had any input

Commissioner Hayward: Great idea, Mr. Cardenas

Commissioner Cardenas: thank you it was one other thing in the cross letter that I'm not sure it's been mentioned and that is the concern that this Commission acknowledged long-standing

and hard-won civil servants protections do we need would it not be advisable to have language and whatever we're going to be dealing with that that makes it clear that that there is no such you know we had been interesting and diminishing the

Commissioner Hayward: we had we had tried to capture that we can capture it even more yeah it was um that was something I have to say I was really not familiar with and the Executive Director and the chief administrative officer both spent time with me on the phone to get me a little more educated and so you know I'd like to think that we're working on something that that does that

Commissioner Cardenas: what are we doing or what's being done with respect to either of the of the two proposals and what are we contemplating doing after lunch

Commissioner Hayward: the my proposal was that at lunch break the Ad Hoc Committee ie Commissioners Hayward and Hatch get a sandwich and sit in front of Commissioner Hatch's laptop and try and come up with something that we think captures what we want to do and alleviates many of the concerns I can't promise all because I think I think the two Commissioner committee thing is what we want to do but but certainly the Chairs draft has has good language in it I think we could put in and and then the legal division has has called some additional things to our attention and I think that's worth at least coming up back with something that we can all look at again and go oh or yuck instead of because we are talking about too many different documents right now they're great

Commissioner Cardenas: because I do think that I'm sorry

Commissioner Hayward: go ahead

Commissioner Cardenas: I do think that there are some some language here in the Chairs proposal that is that is quite enlightening and important

Commissioner Hayward: thank you all right we are now calling for public comment it's your turn

Trent Lange: okay Trent Lange president executor of the California clean money campaign thank you very much for your time I'd again like to congratulate the Ad Hoc Committee for its a very important work on this this document it it is a very busy time for the good government community because it's a April and and there are lots of bills happening the legislature that we have to watch but we are keenly interested in this issue and as I think you saw at the last Commission hearing the large note the significant number of public comments that you had in front of the Commission we're all in favor of the general concept of what you're doing now clearly that sorts of details need to be worked out and and we really appreciate looking at listening to this discussion and I think that it's it would be important however I don't think that anybody would want the the Chair to be hamstrung in her efforts with a daily implementation of the policy of the Commission so whatever needs to be done to clarify that I think would be very valuable but I do think that from our perspective mostly as somebody that's interacted with the

2:10:00

Commission over the last year's on different legislation we I think we feel that the sort of subcommittee structure that is being proposed generally speaking seems like a very good idea so there's an extra layer where more of the Commissioners can be involved in the decision-making process at an earlier stage rather than you know the significant delays that have happened and we have seen in in practice on legislation that we've been involved with before bringing it to the full commission so I don't know and that's why I think we would agree in general with the approach of having two Commissioners that are not the Chair on those subcommittees I think that makes sense I think it definitely makes sense for the Chair to be involved in the process of making recommendations to the to the subcommittee's the way that it's worked in the past that that we have witnessed when looking at legislative recommendations it's apparently the Chair and staff working together to make recommendations to the full commission on on legislation that would seem a very appropriate to have that sort of thing still happen at the at the subcommittee level but then the the subcommittee the legislative subcommittee or the law and policy committee in which everyone would have it would then be able to weigh in and and be involved that that that seems appropriate to so whatever would need to be done to the governance to clarify that I think would certainly be welcomed by by us we haven't had a chance to dive too deeply into it but it does look I would agree with Commissioner Cardenas there are some in just a close relative not as deep we would like to look but they're reducing be some things in the Chairs proposals in terms of clarifying the the responsibilities and limitations of the subcommittees do make do make sense maybe that would be something that the Ad Hoc Committee could work into their own proposals where appropriate and I also like to say that I really do especially agree with Commissioner Cardenas at this point that the subcommittee's should be when possible be open and notice to the public so the public can be involved I think that's a very useful aspect of this I whole idea of subcommittees especially when it comes to law and policy and legislation you know maybe there are some things with budget and stuff that it doesn't necessarily make sense for the public to be involved at different points but I think that would make a lot of sense so that that is it again like to thank you for pursuing this this does seem very important and much needed and and at least from our side where we're watching very carefully and very interested in this process thank you

Commissioner Hayward: any other members of the public who would like to speak are you awake all right then um do I have the authority to call a lunch break

Chair Remke: I'll go ahead and say we'll take a lunch break until 1:35 okay we'll be back I'll go off the record and come back at 1:35 thank you

Meeting came to a recess at 12:32 p.m. and returned at 2:06 p.m.

Chair Remke: Lets go back on the record is Commissioner Audero on the phone

Commissioner Audero: yes

Chair Remke: okay thank you okay so we're back we have a printed draft in front of us and I understand that it's the latest version has been placed on our website as well under the beginning portion of the public comment what's it labeled

Sasha: it is labeled item 26 updated ad hoc proposed regulations

Chair Remke: thank you okay Commissioner Hayward

Commissioner Hayward: yes thank you um so being the crack efficient team we are we prepared a draft for you guys to look at we're only about a half hour late from what we promised and I apologize for that and we won't blame anyone just because we're moving forward in the spirit of positive communitarianism or something so yeah I just want to give everyone sort of a second to look at how we've reworded things blowing out a lot of the recommendation language that was causing problems again you know when you when you write something and you know what you mean to say it's not always evident that other people wouldn't read it that way and so we finally got that through our heads and then I wanted to point out that the committee limitations from the Chairs proposal can be found on page six from roughly line three to 19 again you know that was saying saying well and succinctly something that we already sort of hoped we were saying but she said it better so so we still have a situation where we have two two-person committees which I know is a deal breaker for some people but we think it's important we have fixed the executive staff division chief issues we have fixed the with a typo Alison what the hell on page three the the changes that legal recommended regarding the policy of regulation governing reviewing whether something should be an opinion formal advisor informal assistance trying to think of what else I can point out to people while people are leafing through it and maybe I should just give everyone a minute to read

Chair Remke: Commissioner Hayward just so I know how carefully I should be reviewing this I'm curious what the proposal is going to be as far as moving forward in light of the new language

Commissioner Hayward: we would like to get a vote to move this forward for submission to OAL and and approval at the soonest next meeting we can make possibly a special meeting if the timing is weird and we can't do it in the ordinary course I want to talk about that though

Chair Remke: I have one question clarification page 3 line 3 this is it says May by unanimous consent require a standing committee to give notice pursuant to Bagley Keene to hold a public meeting so you're saying that it takes five votes to is it the five members or is it the two members of the standing committee and

Commissioner Hayward: you know this is this is under authority of the Commission so this is the full commission

Chair Remke: so it's gonna take five votes to say that something should be a public meeting as opposed to the normal three is that what the proposal is

Commissioner Hayward: well

2:20:00 Commissioner Hatch: there's also another provision and sub D that's on page C

Commissioner Audero: are you this is Maria

Commissioner Hayward: we're reading

Commissioner Audero: I'm sorry

Commissioner Hayward: I said we're reading no I mean I didn't I thought you were asking what we were doing

Commissioner Audero: No no it sounded like Commissioner Hatch was looking for that other reference of the public meeting

Commissioner Hatch: yes

Commissioner Audero: It's on page 8 that line 20 to 22

Commissioner Hatch: yes that's what I was looking for thank you

Commissioner Audero: You're welcome

Commissioner Hayward: I think what we were trying to capture is that if the Commission feels that a committee is not being appropriately open they can make them be that way but you're pointing out that unanimous consent means that the people who don't want to have the open meeting or preventing the Commission from ordering the open meeting correct

Chair Remke: no I'm just trying to clarify because currently it takes three votes to have action and this so this is saying that it would take five votes to have actually I just want to clarify that was the intent right

Commissioner Hatch: the on page eight as we have pointed out beginning on line 18 it talks about not allowing any other Commissioner to the Chair or any other Commission to appear at a Standing Committee meeting or communicate with a member of the Standing Committee about a subject within the jurisdiction committee that's directly bagley-keene prohibitions however the committee Chair may in consultation with General Counsel give notice pursuant to Bagley Keene Act and hold a public hearing whatever committee deems appropriate to do so in the same manner as how you set a full commission meeting the Chair could set up a open committee meeting

Chair Remke: so one could trump the other well

Commissioner Hayward: that's the thing I think we were trying to anticipate a situation where there isn't and urgent Standing Committee that didn't want to have an open meeting but it was in everyone else's judgment that they should

Chair Remke: so this would trump that the first one the unanimous consent

Commissioner Hatch: would try unanimous consent with trump

Commissioner Hayward: yeah the Commission ultimately can make a committee have an open meeting if the commission deems it appropriate

Chair Remke: okay just want to clarify

Commissioner Audero: can I ask a question

Commissioner Hayward: Sure

Commissioner Audero: I think you said it earlier though Commissioner Hayward that if you already have an intransigent committee that doesn't want to hold an open meeting there's no way you get to fight vote

Commissioner Hayward: yeah and so and so I I think the Chair has pointed out something that's problematic

Commissioner Audero: yeah I agree can you make it

Commissioner Hatch: we could make it 4/5

Commissioner Audero: Could you make it majority could you just make it majority

Commissioner Hayward: yeah that would be consistent with just regular committee or regular Commission action

Commissioner Audero: yeah

Commissioner Hatch: you'd make it 4/5 which would mean you wouldn't need the intransient Chair

Commissioner Audero: Well except that if you had both of the committees members as opposed to holding an open meeting then you don't get to then the commission can't force the issue

Commissioner Hayward: see I'm not I'm not convinced that this is a real problem because I'm not aware of that being a problem in other contexts I'm familiar with and I mean Brian and I've gone back and forth on the vote requirement and I'm I think it it would it wouldn't be bad to have it just consistent with any other committee Commission action that you know you regular three votes right because if you were asking them to you know hold an open meeting if well three votes of the Commission can overturn what a committee recommends three votes the Commission it seems to be consistent with

Commissioner Hatch: well there are certain subjects that the budget committee can't do in an open hearing and that's why I felt it was necessary to have a supermajority to protect against that although we could have specific language on that it's something we could explore you know budget change proposals as I'm sure Erin you know that that there's they're specifically not public documents and must be held confidential from the public so it makes it difficult to you can't have an open public meeting of the Commission or a committee on the subject of or with a copy of the budget change proposal in the agenda package

Ms. Peth: yes that's previous to it being in the governor's budget once it's once something's in the governor

Commissioner Hatch: yeah that's when we're talking about is should we what you know is it adequate

Ms. Peth: I'm just clarifying on the timing of things

Commissioner Hatch: I think that's long before the legislature gets it my past experience is that often governor's offices will prevent them from being available until after it's gone to the governor's desk then they do it it's it's in the discretion of of the governor's office so that represent flows depending upon who's governor

Commissioner Hayward: yes Commissioner Cardenas

Commissioner Cardenas: to the extent that the current conversation is centering on whether and and and by what supermajority a committee if it were to be formed is to be subject to the bagley-keene I had to either I misunderstood myself or the way that I phrased my concerns about transparency lent themselves to misunderstanding what I meant to say earlier when I was seeking to echo the concerns about transparency of my fellow Commissioners is that I firmly believe that every meeting of any committee established by this body be subject to the notice and open meeting requirements of Bagley Keene if if that wasn't clear I apologize let me make that let me make that clear now I firmly believe that if anybody in this state is is going to adhere to the spirit and the letter of the Bagley Keene and the Fair Political Practices Act it should be us these meetings should be held in the open and the full light of day

Commissioner Hatch: actually legally Bagley Keene does not apply to two member bodies that does not violate Bagley Keene by holding them and I would point out to you just for information that all three proposals ours legals and the Chairs are written in such a way that they would be not subject to the Bagley Keene Act

Commissioner Cardenas: well I'm saying they should be subject to the Bagley

Commissioner Hatch: okay I get that I just letting you know that it's a uniform approach

2:30:00

Commissioner Cardenas: I understand that Bagley Keene does not compel the adherence by a two member committee to the strictures of the of the Bagley Keene Act what I am suggesting is that as the Fair Political Practices Commission presumably still interested in the kind of transparency in the operation of of this commission and its charge as I thought was expressed earlier today that we would lead by example and demonstrate that even a two member board two member committee can and should and in our case will be held and in the full light of day there's the letter of the law of Bagley Keene which does not compel a two member committee of a state agency so defined to be held to the structures of Bagley Keene act and and then and then there is it's it's spirit and and contemplating that that this this might be an issue I'd like to read into the record the the opening preamble if you know the policy statement of the Bagley Keene act itself this is section 11120 it is the policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may be may remain informed in enacting this article the legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly the people of this state do not yield their sovereignty to the agencies which serve them the people and delegating authority do not give their public servants the right to decide what is good for the people to know and what is not good for them to know the people insist on remaining informed so that they may retain control over the instruments they have created I think having our committees if we establish them however many Commissioners they be comprised of must have all of their meetings noticed and held an open pursuant to and in accordance with the Bagley Keene Act it's letter but also it's clearly enunciated spirit or we are merely stewards of the public trust they have not they have not the people have not delegated to this or any other Commission to decide what of their business is appropriate for them to know and see and what is not subject to collective bargaining legal litigation and personal actions

Commissioner Hatch: I just point out to you I appreciate your concern I just point out to you that you know all of these versions except the legals proposal certainly the Chairs and our proposals both envisions the role is strictly advised investigate advisory to the Commission and the committee all the Commission the policy the excuse me the committee reports to the Commission at a public meeting their findings and their recommendations which are not binding on anyone until the Commission votes on them I'm not sure especially with respect to the budget committee I don't know how you can have any budget oversight whatsoever in light of you know and and apply provision as the Bagley Keene Act to a two member committee and still be able to to provide your duty of oversight on budget issues because of the the limitation is imposed on budget change proposals and even the actual budget proposal itself when we we as a public agency or I should say a state agency prepare a budget proposal to the Department of Finance they expect us to treat that also as confidential and not share it to the public you know it's a balancing act you know you get to not know and not be able to do oversight or you have to find a way to do it in a way that complies with the administration's prohibitions on what they I guess it they consider working documents that are exempt from public disclosures and they enforce it rigorously

Commissioner Cardenas: I appreciate that I would I would suggest that we that we try

Commissioner Hatch: I'm all for trying to to bend over backwards to do it as often as as possible but I would not want to tie our hands to the point where we could not do our oversight in areas that were required to hold and confidence those documents I think the public interest is in being able to do the oversight and make recommendations full commission where we see weaknesses in in the agency's budget procedures and and policies on how they react to the outside forces and by that I mean you know legislation budget changes that occur in the legislature you know we don't exist in a vacuum we don't set our own budget and say that's going to be it we have to you know withstand the the budgetary process of the state

Commissioner Cardenas: I understand I'm merely suggesting that I believe that people expect and they should that public oversight of public oversight be attempted first and then if that doesn't work out then we move to private oversight of public oversight

Commissioner Hatch: well I'm a hundred percent sure on this budget issue there's not a way around it for us we've you know comply just like you have to comply with Bagley Keene if it applies to you or not have access to the information and I think that the public interest is served by us to be able to do the oversight and report back structural changes that can make it us more effective not efficient effective in and you don't have the money to do your job then we can't be enforcing the laws and to the extent that we think we should be able to we and we have a lot of legislation that passes that impacts our operation and often because we're a small agency can we kind of get brushed aside or we don't it's a sense of futility sometimes and you know we don't ask for or get what we need

Commissioner Hayward: not to change the subject but I'm about to change the subject have people had a chance to look at the new draft

Commission Audero: Hi this is Maria I have

Commissioner Hayward: okay Mr. Cardenas? Chair Remke?

Chair Remke: I mean I'm trying to review it I don't think it would be fair for me to say I've had her adequately reviewed it or the change as I'm trying to make sense of it I feel like there's some repeat provisions but maybe there's a purpose I can't anyhow so I'm reviewing I don't think there'll be a point today where I feel like I got it so

Commissioner Hatch: could I just offer as a overview on the the extra language about the first three and a half pages of this document are the Commission's duties and responsibilities with all the committee references stripped out back more like it was in the existing policy and then starting on the middle of page five you have an enumeration of excuse me no actually doesn't happen until page six you have an enumeration of the kinds of things that the committees would do and pursue of their oversight and it's clear that it's making it's in each case making recommendations to the Commission not to staff of any kind and so I separating that it makes it clear which was been a point of misunderstanding between us and then and we'd likewise there were also provisions in the the section relating to the Executive Directors directors duties and responsibilities and I like again those were stripped out the references to the the committee's

recommendations and those are again in that same part of the document so it it at least it helps to know where to look about what you're looking for

2:40:00 Chair Remke: well I skimmed my way to page 10 and I do see that the authority of the Chair has been further drastically reduced from your even earlier version from at least some oversight pursuant to Commission policies to what I see here is literally limited it to the agenda the agenda and running the Commission meeting pursuant to rules of order so I guess I have to flush that out in light of whatever else is said elsewhere which I'm not sure but that's obviously a significant change even from your draft earlier today

Commissioner Hatch: right I'm not happy with that but I've been up against this bagley-keene block that the legal staff has pointed out to me that there has to be that separation so I'd be happy if we can figure out a way with legal to finesse that you know but that's you know I just we just couldn't figure out a way to get around it in light of all the various pieces of information they provided us

Chair Remke: well I think the next Chair will have a very interesting job to get a full-time salary for barely a per diem position so Commissioner Hayward how would you like to proceed

Commissioner Hayward: well I would I would like to hear what legal has to say they've given us a lot of things to work on and we've tried to incorporate them

Mr. Lau: I guess just my initial brief review there's still problematic language there's it does still have some issues that there's still something along the lines of the legislative committee taking positions which appears to be the Commissioners official position between meetings that's on page 2 line 17 through 18 where it reads adopt criteria to be followed by the law and policy committee for taking positions on legislation

Commissioner Hayward: its criteria for taking positions and that's something

Mr. Lau: who's taken it reads if the law policy committee of taking positions as opposed to the Commission taking position

Commissioner Hatch: no that's a incorrect construction this is this is a the Commission in all cases taking the position on legislation

Mr. Lau: I'll just leave it at that I think that language may need to be reworked a little bit I share the Chairs concerns as far as the unanimous consent in the public meeting notice if we're talking about Bagley-Keene I mean I just one says they can be called by the Chair of the Commission the committee and the other one reads that it has to take unanimous consent in I mean they stay

Commissioner Hayward: this is when the Commission itself would be forcing a committee to meet publicly when the committee itself has decided it doesn't want to

Mr. Lau: but it still reads as though the Chair couldn't even appear at the one called by the by the by the committee

Commissioner Hayward: well it has to be public in that case

Mr. Lau: yes sure this actually doesn't read that the Chair could participate I think that's your intent that the Chair would participate but it could be read to ban the Chair from participating at all as even in the public meeting called by the Chair of the subcommittee so I just again I think that language also could still

Commissioner Hatch: How could that possibly be and under the law another way this is structured

Mr. Lau: because the first sentence just simply says the Chair is not allowed to participate at the committee meetings and then it says the Chair of the committee can call the meeting but it doesn't actually address if the Chairs gonna be allowed to participate at that meeting after specifically saying that the Chair cannot participate at the meeting so I just think the language needs massage

Chair Remke: I would just I'll let legal do what it wants but I just I'm not sure this is a very discussion at this point to say legal what's your position you've had 20 minutes to review this document and then criticize them or you know it's either they're gonna express their concerns or you don't want to hear the concerns and I think most of their concerns now are at least with drafting and not necessarily even policy so I don't know if there's a better way to do this then putting them on the spot right now when this is like I said I sure I have more concerns than the ones I've highlighted but I haven't had a chance to fully digest it so

Commissioner Hayward: I was asking questions I don't think I was attacking anybody

Chair Remke: no no I'm just saying it's it's I don't know how productive it is kind of at my point is on the timing

Commissioner Hatch: what was the page and line where you were referring to Brian

Mr. Lau: refer page 8 I believe is what page 8

Commissioner Hatch: Two was something you had one

Mr. Lau: page page two was the taking a position language

Commissioner Hatch: which which line was that you

Mr. Lau: line 17 and 18

Commissioner Hatch: 17 and 18 okay and then what the one on page eight you said

Mr. Lau: Page 8 was not allowing the Chair at a Standing Committee meeting which is lines 19 through 22

Commissioner Hatch: I think we can as you say massage it I know that our intent was the first Clause is about not noticed meetings in other words the front the non bagley-keene meetings and the second is to provide the Chair of the committee the ability to set a public meeting so that the other committee members can participate

Mr. Lau: I understood I think I understand their 10 I just think the language so

Commissioner Hatch: maybe you can work with this

Mr. Lau: absolutely

Commissioner Hatch: smoothing that yeah

Commissioner Audero: this is Maria can I make a suggestion

Commissioner Hayward: sure go ahead

Commissioner Audero: Thanks so I think it would be very productive if we could get some guidance instead of just saying you can't do that you can't do that you can't do that I think it would be very helpful since you're understanding what it is that this is intended to do for you to propose some language and on some things I think it's super simple I don't think it takes a lot to think about how to fix this particular one I would suggest maybe it says something to the effect of adopt criteria to be followed by the law and policy committee for reviewing and making recommendations to the Commission regarding positions on legislation fiscally impacting the operations of the FPPC there problem solved I mean I think it is you can tell me if you think it's not but you're you're you were taking issue with the implication that the law and policy committee was going to take a position that's not the intent can we just fix it and move on rather than just say no you can't no you can't no you can't

Commissioner Hatch: that's certainly what we're seeking is that kind of a collaborative arrangement how you can get to where we want to go I seriously would like for you folks illegal to take a look back at this bagley-keene interaction and see if there isn't I know we adopted the language that was written by the Chair that makes it clear now that in addition to what they're doing is that they're limited you know in an oversight role and not you know being involved in the day-to-day decision-making processes and I think there's some other provisions there so likewise could you develop some language around the Chair that says that you know she is involved in those kinds of things and not involved in the stuff that we're involved in so we could put back all those other things that you pointed out to us create bagley-keene problems you see is there a way that we could work together to do that to bring back some of those

Mr. Lau: it's not as if we dismissing everything

Commissioner Hatch: No no I know

Mr. Lau: you know we're working and trying our best I think so addressing the bagley-keene we went with the Getman proposal because it was in the initial memo it was in the initial government's proposal

Commissioner Hatch: No not in our

Commissioner Hayward: oh well importantly the getman

Mr. Lau: They said this is an option that would be available to us so that's what the reason

Commissioner Hatch: was in there okay

Commissioner Hayward: in situations where we needed somebody to act in between commission meeting

Mr. Lau: I mean as far as addressing bagley-keene I think Commissioner Cardenas position of frankly meeting obviously addresses bagley-keene I do think policy wise clarifying that the recommendations are going up to the Commission super helpful so so that there's room but we are attempting to work with you as much as possible

Commissioner Hatch: so anyway I've just to ask you guys to think if there's a way that to build a fence between those two kinds of things so that the Chair can exercise the traditional authority that the Chair has had without bumping up against bagley-keene every time we turn around

Mr. Lau: I think the very nature of the structure leads it to that and that that's our recommendation and by

Commissioner Hatch: you guys we gotta got there now but as you see that these are the Chairs a little skimpy

2:50:00 Chair Remke: I'm just again if the will of the Commission is to I think Commissioner Hayward said move this forward to send it out to OAL as far as the calendar is concerned I mean if the only requests from staff right now is some of this wordsmithing which they find to be unclear and they could work with you to clarify some principles I don't know if that would be a problem and I'm just kind of looking to legal if if there was to move this forward before it's sent to OAL could there be a day or two to do that wordsmithing without changing any of the intent in here and still have it consistent to go to OAL

Mr. Lau: yeah we actually have till next Tuesday to get it to OAL and meet all the deadlines there's

Commissioner Hatch: for what

Mr. Lau: that still meets the that that's still the requirement for the April what if we say April 4

Chair Remke: no June 4th

Mr. Lau: I'm sorry June 4th correct

Chair Remke: so then you could bring it to the June meeting which is what days the June meeting

Commissioner Hatch: wait a minute

Chair Remke: I'm just I'm just trying to get some dates down

Commissioner Hatch: yeah this should have been on the May agenda it's not water over the bridge now we want a little bit of help getting it as fast-track as possible and I don't want to wait to the regular June meeting to do so you said June 4

Mr. Lau: June 4th would be the earliest we can have we can consider it period based on the deadlines that are provided and it and whether or not we get it to them today or next Tuesday it's the same as June 4th

Chair Remke: I mean you know I understand your frustration Commissioner Hatch but again I stand by I'm not sure how we could have sped this along when we're still drafting today and considerable changes are continuing to be made as to the scope of this so what which could let me I would dispute how much depending on the changes from the initial draft to this draft to the draft later today I think the goal is to send to OAL the best position you're saying this is what we're moving on so everybody has sufficient notice of what's being proposed you can obviously change it once it comes back but the idea is if the changes are significant enough do you have to send it back out for notice so my understanding is so if the earliest it can be voted on is June 4th and we have a meeting on June 21st I understand there's talk of setting a meeting earlier but I'm just curious on the and the three-week distinction there if that that is something we need to really be pushing right now or if we should instead be focusing on if this is your proposal let's get the language as close as we can get it to OAL and bring it back

Commissioner Hayward: I would like to potentially offer two different motions one is to pass this with the understanding that the wordsmithing will be happening between now and Tuesday and get that moving

Chair Remke: and then I do the intent just to clarify

Commissioner Hayward: not changing the intent just just making this better and then a separate motion to schedule a special meeting between June 4th and the regular June date but those are two different motions

Chair Remke: okay so I'll do that sure

Commissioner Hayward: all right I would like to move that the draft of the afternoon of April 19th will be scrutinized by the able gentlemen of the legal division and the Ad Hoc Committee with an eye to getting it as it stands but better

Chair Remke: The election I was asking about the election because there is still an election going on

Commissioner Hayward: that's true very heated one in my little town yeah sasha was that was that okay

Commissioner Hatch: could you read it back

Commissioner Hayward: no she can't because I'm stuttered and everything yes Mr. Lau

Mr. Lau: I was gonna ask for a little clarification on the unanimous versus just a majority vote on the one issue I'm not sure that we could dress up in a Tuesday too I mean what would you like to see done by Tuesday related to that issue I suppose

Commissioner Hatch: majority vote

Commissioner Hayward: yeah I think majority votes probably more appropriate

Mr. Feser: Commissioner Hayward if I may I just want a clarification Commissioner Hatch with regard to the just clarification on the duties of the Chair sort of left hanging just so for guidance sake on these are some sort of substantive issues are you talking about adding the more the duties that are in the original existing government's

Commissioner Hatch: the things they in desperation we transferred over to the Executive Director because you carefully pointed out to us on all of those Chair duties that they all had the same problem with this bagley-keene thing and well I think it's in the concept of having oversight committees composed of regular Commissioners who are overseeing the management of the entity to the extent that the Chair is part of that it's difficult to have her become part of that but then there's this other thing about the distinction between oversight duties and management and I think that there is a way that you can harmonize I say I believe this in a way that the the Chair can do exercises her management duties without crossing paths with the oversight duties of committing these two committees and vice versa now that does probably require that folks watch their contacts to do as as Commissioner Hayward has pointed out the what they call this staff staff exemption you called it

Commissioner Hayward: yeah staff briefing

Commissioner Hatch: staff briefing exception so that you can brief but not you know talk about the others positions or views on on the matter I mean with that firewall I would think you could

build a fire well admonition language that prevents folks from you know requires complying with that the letter of that exemption I know I'm look I'm searching here and I know you guys are really smart so I know you could figure out a way

Chair Remke: is it is it I mean I think one of the bagley-keene ongoing issues as I tried to say earlier is this notion that all these new policies are going to be developed and again while new policies are being developed to exclude the Chair from the creation of those again I think I've expressed and I believe legal division is expressing concern just with those lines of communication I think to the extent you put back the language that was in your earlier draft which very limits the Chair but yet still acknowledges the Chair acts on behalf between meetings subject to established policies again I think it's different once it's the established policy issue so you've got that one you've got the Chair has oversight pursuant to established policies so the

Commissioner Hatch: of the Commission yeah not the committee

Chair Remke: of the Commission exactly so I'm saying I think you can put those back in there still if I'm I'm I'm gonna speak on my behalf of you if you disagree Brian but they're still see

Commissioner Hatch: I don't see that that's why I'm asking

Chair Remke: Yeah I think you can put it back in but I think the call the point that legal is making is there's the ongoing concern that you'll invite bagley-keene violations however if that is what's going to be adopted we'll just have to like you say work around it and put more firewalls up and be more conscientious of discussions again I say we could do that I don't think it cures the problem and I think it creates tension between and the ED any ED and any Chair but again that's all been that's we're beating a dead horse now but if you want to put those provisions back in it can be

Commissioner Hatch I'm not suggesting that

Chair Remke: yeah

Commissioner Hatch: figure out way for them to feel okay about it with whatever

Chair Remke: I just want us to have a little bit more direction before we you know if we're gonna be moving this forward so I'm assuming what you're saying is on page 7 of the draft that you that was on the agenda originally from the Ad Hoc Committee it talks about the Chairs authority and again if works you know if the proposal is the two Commissioner committees you can still have the Chair doing all this it's just going to be that ongoing tension between discussion and not discussion I don't think that changes it but I think you can put those duties back in

Commissioner Hatch: I think okay

Commissioner Hayward: Can I interject something real quick please on the new policy question I'm not sure we're going to necessarily be establishing new policies it's more like

3:00:00

identifying the ones we have to something that you know your everyday part-time Commissioner doesn't know except in an ad hoc way when a question comes up and you learn about it so I'm also I'm thinking we're envisioning very regular and persist not persistent what's it's getting late I can't remember what the word is a lot of Standing Committee talked to Erin or to whomever and there may be days where there's something up and they do talk to Phillip whoever but I'm thinking there will probably be swathes of time where the Standing Committee doesn't really feel like it has to do anything because they're not involved in the everyday management so I I don't know I mean

Chair Remke: maybe that's how it will prove out so I'm again to the extent there's acknowledgement that this latest draft really restricts any duties of the Chair I would suggest that you just put back the language you had in this morning it doesn't alleviate the concern of bagley-keene I think it's just is an issue that is going to have to be played through and see how it goes I mean I think so the two options are right now avoid any bagley-keene concerns strip the Chair of all say in involvement or put the say in involvement of oversight of established commission policies and we play it out and see how it works

Commissioner Hayward: okay yeah I think that's great guidance

Mr. Feser: just so I'm clear did I'm sorry

Commissioner Hayward: yeah Commissioner Audero

Commissioner Audero: Hi thank you I don't know that the that the two choices are as black and white as the Chair has said I think the Chair retains all of her rights like any other under this version retains all of her rights and like any other Commissioner to affect policy because policy is created at Commission meetings only and so you know this fear that the Chair is being taken out of the policymaking role I think is a red herring so I would propose and it's it's not my motion and I leave it to Commissioner Alice Hayward but I would propose we vote on this in its form subject to the words missing by next Tuesday I guess and you know to the extent that then the Chair wants with time to convince the Commission that what it has done and this policy is not workable with real life examples then I think it's something that the Commission can consider on a future date and can always change this so you know I I just I am not convinced that the world will fall apart as we know it today if if we adopt this I'm just not convinced and so I think that we should adopt this vote on adopting this and well if we adopted yes that's fine and if not not but vote on this and you know address the Chairs concerns with some real-life examples in the future

Commissioner Hayward: okay there's a motion

Commissioner Hatch: okay would you refresh

Commissioner Hayward: and the motion as I understand it is to vote on this latest draft subject to wordsmithing and I think subject to to the extent legal agrees that can be done moving the duties that used to be under the Chair back to the Chair that's my motion

Commissioner Hatch: okay they're just two friendly amendments to to be concluded by Tuesday

Mr. Lau: It has to go to OAL by Tuesday so yes

Commissioner Hayward: yeah by Monday

Mr. Lau: what pardon me end of the day tuesday

Commissioner Hatch: we'll do it by Monday end of the day to do it but okay and the other was provided that the wordsmithing will satisfy legal that we resolved it that the comment ten comment A10 the pages aren't numbered in your

Chair Remke: what's what's comment A10 I don't have in front its comment A10 Chairs oversight of the Executive Director is questionable if the Executive Director is communicating with two person advisory committees communicating between ED and Chair or communications between ED and committees will be substantially restricted due to bagley-keene again I don't think you're alleviating that concern I think we're just acknowledging that it exists is that correct Brian

Mr. Lau: that's correct whether or not these duties are articulated or not deleting them doesn't remove the concern just the nature of having a full-time Commissioner over with staff there's going to be an interaction there regardless of what these duties state remove them didn't really address that concern we're definitely open to putting these back in as proposed

Commissioner Hatch: so can you work on some window dressing then that would make it less uncomfortable

Mr. Lau: Okay we can try

Commissioner Hayward: Okay anymore clarifications

Commissioner Hatch: Between now and Monday

Commissioner Cardenas: I have a motion I have a question okay yeah I was it was and remains my intent to to offer up a an amendment a motion to make a motion for an amendment I was contemplating that that there would be that there would be some notice that we could now make motions but her motion was made and and I believe it is on the floor well if I could articulate the intent behind my amendment my proposed amendment and then you may either accept it as a friendly or perhaps with some gracious and calm graciousness and comedy we can arrive at another way to allow my idea to be voted on and what I what I would amend what I would what I would move if we could find the appropriate time and vehicle is an amendment to the latest draft that we've been working on which I which I believe is on the floor per the following an

amendment to section 18308.1 authority of Commission subsection D1 new subpart H in other words at the very end of the wording that I would propose would be each committee shall conduct all meetings and compliance with the Bagley Keene Act and then and then perhaps to the extent to the extent such would not conflict with with established state budgetary procedures I'd like that voted on by whatever vehicle

Commissioner Audero: Can I ask a question about that

Commissioner Hayward: Sure go ahead

Commissioner Cardenas: As far as I'm concerned

Commissioner Audero: So if I'm understanding the motion it sounds to me different than what you proposed earlier because to me for a two-person committee to be in compliance with bagley-keene means necessarily based on how bagley-keene is written and has been interpreted and has been trained that it doesn't need to be an open open meeting so a two-person committee can conduct a closed committee meeting in compliance and and by closed I mean a non bagley-keene noticed and open to the public meeting and still be in compliance with bagley-keene so I'm not sure I don't know if that means you've changed your mind on what you said earlier or we're not speaking the same language

Commissioner Cardenas: as I understand that the bag the Bagley Keene Act does not compel state agencies to have two member committees be subjected to the structures of the Bagley Keene act what I am suggesting is that if there is any Commission in this state which should require that its committees be nonetheless subject to the Bagley Keene act it is this very Commission

Chair Remke: so if I could

Commissioner Audero: so by saying that it be conducted in compliance with Bagley Keene you're kind of saying the opposite so maybe just to make sure that you have what you want and then it can be voted on but I think what you wanting to say and I don't mean to be to put words in your mouth but what I'm interpreting is you want bagley-keene the bagley-keene open meeting rules to apply to the two-person committee regardless of the fact that bagley-keene doesn't require

Commissioner Cardenas: indeed since my mic is still on may I further suggest that the letter of the Bagley Keene Act is not required I suggest that the spirit of the bagley-keene act compels it

3:10:00 Commissioner Audero: You know this is Maria again I don't know what that means to be very honest with you I think that's just too vague and ambiguous to be to be followed that said I understand what you mean I understand what your goal is I would only say that I think we need to then make this two separate votes because one putting adding that on could cause a vote that would not pass the

Commissioner Hayward: Well yeah we'll vote on the amendment first main motion and then we'll vote on the main motion that's oftentimes how it happens in real life okay you've moved

Chair Remke: okay I'll second

Commissioner Hayward: okay

Commissioner Audero: What the is the so are we moving can I hear the motion again please

Commissioner Cardenas: that the proposed changes to the governance regulations of this commission presented on this day include the following section 18308.1 authority of commission subsection d1h that's new subsection d1h each committee shall conduct all meetings and compliance with the Bagley Keene Act

Chair Remke: we can wordsmith that just like everything else will be wordsmith to reach his point which is that they'll be subject to it meaning that public meetings will be held that correct Commissioner Cardenas

Commissioner Cardenas: yes

Commissioner Hayward: okay okay so there's a motion in a second so it's actually on page seven and there's apparently public comment

Trent Lange: yes thank you Trent Lange president of Californian money campaign just want to say again thank you very very fast work over lunch on these these changes I think that from our perspective the spirit of Commissioner cardenas' request that those subcommittee meetings be held in public whenever possible would certainly fit with our desires and we believe would benefit the public in general thank you

Commissioner Hatch: You would then apply that to budget where they

Trent Lange: it seems to be more important

Commissioner Hatch: required to be confidential which means we don't do it at all

Trent Lange: you know I I think that those issues are probably more the public openness is more important for the legislative and policy committee discussions which more interact with the public and don't have those same privacy concerns as you describe

Chair Remke: I think Commissioner Cardenas did you not say that you're fine with adding at the tail of your proposal that it says not including any budget discussions which much must remain confidential under law or whatever the language is

Commissioner Cardenas: yes may I just recite what my what I think might work

Chair Remke: Yeah

Commissioner Cardenas: to the extent such adherence does not conflict with established state budgetary procedures

Commissioner Audero: what about personnel issues

Chair Remke: those are already excluded and I'll actually let legal answer

Commissioner Hayward: all right so

Trent Lange: thank you

Commissioner Hayward: do we all understand what the amendment is good

Commissioner Hatch: did you get that it is

Sasha: It is recorded

Commissioner Hatch: okay

Commissioner Hayward: there's a motion it's been seconded sasha could you please call the roll

Sasha: Commissioner Audero

Commissioner Audero: No, I just don't think its workable no

Sasha: Commissioner Cardenas

Commissioner Cardenas: Yes

Sasha: Commissioner Hatch

Commissioner Hatch: I abstain

Sasha: Commissioner Hayward

Commissioner Hayward: no

Sasha: Chair Remke

Chair Remke: yes

Sasha: the motion is tied abstain

Commissioner Hatch: I beg your pardon

Chair Remke: it did not no action is taken the motion fails essentially

Commissioner Hayward: yeah

Chair Remke: okay so now there's still a pending motion craft

Commissioner Hayward: yes the main motion of the wordsmithing of the regs that have been presented this afternoon do we need any more clarification or discussion on this

Commissioner Hatch: I was just word that this word smithing would be come to a close by the end of business Monday and was the other

Commissioner Hayward: we did that I think we did that

Commissioner Hatch: sorry

Ms. Peth: I think the role of the Chair is that what you're

Commissioner Hatch: yeah that we find a way to bring the as best as possible the roles of the Chair back consistent with our previous draft

Commissioner Hayward: okay all right so everyone understand what the motion is

Commissioner Audero: can you clarify I'm sorry there's just been a lot of discussion so we're gonna we're gonna vote on whether we adopt this with a version of things that are going to be put back that none of us are gonna get to see except for the two ad-hoc committee members is that what you're asking us to vote on

Commissioner Hayward: well it's gonna look a lot like the the previous version

Commissioner Hatch: right the one that was noticed

Commissioner Hayward: the one that was on the agenda packet

Commissioner Hatch: in the agenda packet under the

Commissioner Audero: A lot like or like I mean are you putting back all those duties or I mean

Commissioner Hayward: that's the idea

Commissioner Audero: I don't know what we're voting I think I think it's difficult to vote on this because I'm gonna hang up and I'm gonna go off on my trip and who knows what I'm going

to come back to I just honestly I just don't think that that's a good way to proceed because I think it requires a vote on something that I'm not seeing

Commissioner Hayward: Commissioner Audero what would you prefer

Commissioner Audero: I would prefer voting on something that I'm seeing right now what I'm seeing is this particular draft and I think that that is something that I would feel comfortable voting on one way or the other I would not feel comfortable voting on something that I'm not seeing and I think that those other things can be brought in later by the Chair if she wants to in the future with some evidence that the world has fallen apart without

Commissioner Hayward: the motion that has been made and seconded includes moving the duties back as they were in the draft that was agendized and having the wordsmith thing done by Tuesday and there's probably something else I'm forgetting but that's the motion that we've got right now and it's seconded so it's it's live and that's what we're gonna be voting on now okay

Commissioner Audero: Okay sounds fine

Commissioner Hayward: all right Sasha

Sasha: Commissioner Audero

Commissioner Audero: No

Sasha: Commissioner Cardenas

Commissioner Cardenas: No

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: aye

Sasha: Chair Remke

Chair Remke: No

Sasha: the motion fails

Chair Remke: Do you want to try a different motion

Commissioner Audero: Okay now I would like to make a motion

Commissioner Hayward: excellent go right ahead

Commissioner Audero: I move that we adopt the draft that is that was circulated after lunch subject to wordsmithing that will be done by the Ad Hoc Committee working in conjunction with the legal division to carry out the intent of what was circulated after lunch not changing the substance but wordsmithing so that it's workable

Commissioner Hayward: okay do we have a second

Commissioner Hatch: second

Commissioner Hayward: everyone understand the motion Sasha could you please call the roll

Sasha: Commissioner Audero

Commissioner Audero: Yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: No

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: aye

Sasha: Chair Remke

Chair Remke: No

Sasha: the motion passes

Chair Remke: okay is are we able to now Commissioner Hayward to move on to item 27

Commissioner Hatch: we if you would when it is appropriate to talk about either moving or having a special meeting to take this matter up

Chair Remke: you just want to avoid the word special meeting which as you may recall in the past has caused problems I think you're just saying you'd like to set a meeting for a date certain before June 21st

Commissioner Hatch: well before the 7th or on or before the 7th I think that's a Thursday right yeah

Chair Remke: but I'll just remind you the elections June 5th too

Commissioner Hatch: I know but this would have been on the May agenda

Commissioner Audero: Is it possible to pick a date

Commissioner Hatch: yes

3:20:00 Commissioner Audero: before we all go off because I may have some conflicts that week

Commissioner Hatch: fifth sixth or seventh fourth

Commissioner Audero: See I was gonna ask for the fourth

Commissioner Hatch: The fourth? I is that is that

Chair Remke: the day before the elections

Commissioner Hatch: Is that the we're not allowed to participate in the elections anyways I don't know

Chair Remke: our agency is just very busy and I just try to keep bringing that to everyone's attention not just enforcement it's legal division responding to last-minute requests for advice everyone every PRC it's just extremely busy I understand the five members here might not be but it's just taking a lot of tasks for a specific date when we could wait a day or two is what I would

Commissioner Hatch: Well this essentially could be a one item agenda because you've got your regular meeting unless you would prefer to move the regular meeting up is the fourth it seemed to me you said the fourth was the earliest date that it could happen if you went ahead and filed this so we could have it on the fourth

Commissioner Audero: Can I have a can I ask a question how is it possible that we are dealing with very specific timeframes and the end doesn't change if even if we do something today versus tomorrow versus the next day I can you tell me how you're coming up with this rule that it is the fourth no matter when we do this

Mr. Lau: the 30 days is triggered by publication publication is done by OAL publication only occurs on the Friday and you must submit for publication on the Friday you must submit two Tuesday's ahead of that Friday

Commissioner Hatch: okay two Tuesday's I guess

Commissioner Hayward: well I need to run

Commissioner Audero: what

Chair Remke: Commissioner Hayward is leaving she has left the meeting so we'll just proceed I guess without her continue

Commissioner Audero: Okay my question has been answered thank you

Commissioner Hatch: we could hold it on Tuesday would you how would you ask that I phrase that as a special or not a special but

Chair Remke: just to set a meeting for is that Tuesday June 4th is that what you're suggesting

Commissioner Hatch: right that's my motion

Mr. Lau: I think that's a Monday

Chair Remke: Monday is the June 4th Tuesday is the election so that's the motion is there a second

Commissioner Cardenas: I have a question is that what's AOL administrative

Chair Remke: Office of administrative law

Commissioner Cardenas: oh so it's OAL

Chair Remke: yeah what did I say AOL

Commissioner Cardenas: Nevermind

Commissioner Hatch: Oh that's the other guys with the emailing

Commissioner Cardenas: yeah ok are they like on vacation the second half of July what's the rush here

Chair Remke: I think the rush is coming from this commission not them they're just thought OAL just follows this normal schedule that Brian just described about when something needs to be submitted in the earliest they'll consider it noticed so again I I don't know if it's the same concern you have I just not sure we have a meeting set for June 21st several weeks after the election when staff will have more time to focus on this and get it back to us with the regular meeting but the proposal is to set a special meeting or a an additional meeting I should say it's just regular meeting

Commissioner Cardenas: I'm just wondering why what why not do it on the 21st of that's when we would ordinarily be meeting

Commissioner Hatch: well when I left last month's meeting I was assured that we would this would be noticed so that we could hold that vote on the May meeting now and when I got here this morning I found that lo and behold it wasn't done and it's important to me it's important to Allison I know she she had told me earlier today she absolutely had to leave in order to catch her train for an important meeting she has to go to so I get that she left because she couldn't I think she's had literally run the clock out so I'm asking that we set this meeting if we have no other business on it or if you want to make that the June meeting and move it up I'm open either way but I beg your indulgence on this

Chair Remke: so that's the motion is there a second yeah

Commissioner Audero: I just have a problem with the with any date after the 4th so

Commissioner Hatch: this motion is to make it on the fourth

Commissioner Audero: Oh I see and early in the morning?

Commissioner Hatch: How early

Commissioner Audero: I'd rather be earlier than later

Commissioner Hatch: before 10:00

Commissioner Audero: I don't know what

Commissioner Hatch: did you say before 10:00

Commissioner Audero: I mean I'd rather have it be before 10 can we do it at 9

Commissioner Hatch: I mean I can make it at 9 this would be June 4th

Ms. Peth: um Commissioner Cardenas the election is on June 5th Tuesday

Commissioner Cardenas: so what would happen on on this special meeting that we're not calling a special meeting what exactly would we be poised to do just so I understand why we're moving mountains here

Commissioner Hatch: we it would be eligible for adoption or rejection

Commissioner Cardenas: when does it go to the oal

Commissioner Hatch: if we submit it by what Monday it would go away all right away or even if we did it today we would still go to it OAL they only publish on Fridays is that correct

Mr. Lau: correct

Commissioner Hatch: so it that's why it's kind of slushy so two Tuesday's before

Commissioner Cardenas: so these regulations would actually become effective the day before the election

Commissioner Hatch: no

Mr. Lau: no the effective date is different that's based on when we file it back with oal and then they have to file it with Secretary of State the effective date is actually 30 days after the oal files it with Secretary of State so as somewhere in the 30 to 60 day range

Commissioner Cardenas: so when might it have become effective then let's say that we had this this special non special meeting on the 4th right before the election

Mr. Lau: You would submitted fourth through the fifth we would submit it that day or the next day and it would it generally takes at least 30 days but anywhere up to 60 days before it's actually has an effective date we can't pinpoint the date other than that thirty to sixty day time period

Commissioner Cardenas what am I not seeing here

Chair Remke: while you ponder that unless you have another specific question I'm just gonna I'm still not sure there's a second on the ocean and I want to make sure that we're keep moving along

Commissioner Hatch: Commissioner Audero you still in the line

Commissioner Audero: I am

Commissioner Hatch: would you mind seconding this motion

Commissioner Audero: Oh, so yes sorry june 4th at 9 am I second

Sasha: Commissioner Audero

Commissioner Audero: Yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: No

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Chair Remke

Chair Remke: No

Sasha: the motion is tied

Commissioner Cardenas: Look I'm open to persuasion but there's something there's a reason here that's not being stated and I just the day before the election are are we not all busy

Commissioner Hatch: I had assurances that it would be at the may meeting

Commissioner Cardenas: I understand that and and and I joined you and and you know asking what we know what in the world happened here so you know it is what it is and we're gonna meet the day before the election

Chair Remke: alright I'm not sure what's going on now but if we're having a off-the-record conversation perhaps excuse me gentlemen this is not appropriate right now to be having a conversation perhaps to persuade a vote I'm not sure Commissioner Hatch again I'll say this isn't appropriate so as it stands now the motion to move this forward this regulation past legal will work with the Ad Hoc Committee to get it to OAL before Tuesday it will come back and we'll hear it at the June 21st meeting all right so I'll move on to item 27

3:30:00 Commissioner Audero: Hold on can we go back to that item if the only choice is then june 21st I'll try to clear my calendar for june 5th how about that

Chair Remke: are you making a motion to have a meeting on June 5th the Election Day

Commissioner Audero: Yes by then you'll have answered all the questions right

Chair Remke: If only but go on is there a second for June 5th

Commissioner Audero: I mean there's only so much delay that can be done here come on

Commissioner Hatch: I second

Sasha: Commissioner Audero

Commissioner Audero: Yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: No

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Chair Remke

Chair Remke: No

Sasha: the motion is tied

Commissioner Hatch: I didn't say anything to you I'm just muttering.

Chair Remke: I know but I'm just asking that we would not crosstalk and again I just want to stress to this again this will be bought back June 21st having been properly noticed the language out there

27. Closure letters in Enforcement Staff: Zachary Norton. Review of the Commission's ability to review and modify no action closure letter's issued by the Enforcement Division. Commissioner Audero's requested agenda description states: "During the January 2018 Commission meeting, specifically during the discussion of the Lucan matter, the question arose whether Commissioners have the authority to set aside a closure letter. Specifically, the question was whether the Commissioners could instruct the Enforcement Division to re-write all or part of a closure letter with language that the Commissioners would approve, or otherwise rescind and issue it with that language. Our Legal Division did not weigh in during our discussion last month and the question was left unanswered. The Legal Division will present an impartial legal memorandum to the Commission with an answer to this question, including (1) legal authorities to support any position taken, if any; (2) an analysis of how to interpret the absence of legal authorities if that is the case; and (3) a recommendation on how to proceed in future similar circumstances with an explanation of whether that recommendation was reached based on the law or on best practices. In addition, we will take public comment on the issue. Based on this, the Commission will vote on whether to adopt the recommendation of the Legal Division as a go-forward procedure or to send this matter to the Attorney General's office requesting a formal opinion. This is an agenda item for FORMAL ACTION."

Staff Memo

Chair Remke: let's move on to item 27 closure letters and enforcement we have the staff memo I believe legal division Zack Norton's going to come up Commissioner Audero you requested this item as stated on the agenda would you like to take the lead

Commissioner Audero: Yes thank you and given the time of day it is and the fact that I also should've been on the road already I'm gonna ask that this be moved to the May Meeting

Chair Remke: okay so you'd like to put over this to the main meeting without it without objection I'll go ahead and put this on the May agenda any objection

Commissioner Hatch: no

Chair Remke: okay thank you

28. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief

Legal Division. Jack Woodside, General Counsel

External Affairs and Education. Courtney Miller, Manager

Legislative and External Affairs. Phillip Ung, Director

Chair Remke: last thing is executive staff reports I just want to take a minute we keep raising the election I just want to take a minute to thank staff as detailed in the staff report all the time that is being spent responding to questions both from PRCs and legal legal attorneys and obviously the External Affairs and education division and they had a particular busy month responding to 1357 phone requests a lot of that obviously went to form 700 information but I just want to again thank staff I know this is an extremely busy time and your people being pulled in a lot of directions but I do appreciate the work you do for the agency and I know that the public does as well with all your excellent advice and response to questions any other comments or questions from the Commissioners regarding the staff report

Commissioner Hatch: yes

Chair Remke: Commissioner Hatch

Commissioner Hatch: I wore myself out on the advice letters so I'm not gonna go there but I did have some questions on the legislative report or a question

Chair Remke: okay

Phillip Ung: Phillip Ung legislative director good afternoon

Commissioner Hatch: good afternoon we're getting to that part of the year where budget subcommittees are going crazy trying to get all of the stuff acted on before they can take the next step before the governor's revised and so it made me think about I don't recall during my tenure here in the last thirteen fourteen months seeing any budget bills in your ledge report is it is the past practice that you don't list them or that you do

Phillip Ung: we have not in the past listed the specific budget vehicles or trailer bills well I don't think that the FPPC isn't mentioned in trailer bills but the the main budget bill

Commissioner Hatch: the main budget bill

Phillip Ung: is we haven't put it into budget reports in the past or or any other subcommittee items budget subcommittee items

Commissioner Hatch: well I know that they do get to you eventually in these budget subcommittees and and the full budget committees because you're in the we are in the budget so I would ask that we please in the future add the budget bills to the legislative report if that's not too much trouble

Phillip Ung: Okay

Commissioner Hatch: I don't expect you to analyze the entire budget but would you could you know summarize what what's what's at stake for the Commission

Phillip Ung: I you're talking about just the main budget bill that or you also because there are there are budget items that move through subcommittees that are kind of like bills but they're not

Commissioner Hatch: well they're part of

Phillip Ung: do you want

Commissioner Hatch: there is the pieces of bill but I'm talking about for the discussion purposes you want the bill number of the budget bill and then you can also disclose in your little analysis what item we're in

Phillip Ung: okay you know

Commissioner Hatch: I just wanna clarify how much information then you know progress on it where we are

Phillip Ung: okay

Commissioner Hatch: now how are we doing on that this year you I know we're small so we're probably at the tail end and we have they got to us yet or

Chair Remke: I'm just gonna say you're not really the I think you should direct your questions regarding the budget to Erin Peth as the oversight of the budget

Commissioner Hatch: okay yeah

Ms. Peth: we have three our excuse me for positions that we're asking for three budget change proposals to implement legislation that passed last year three positions for the disclose act and one position for I believe it's Senate bill 21, 45 okay got that one wrong which was one of the mass mailing bills and so we've already gotten through the assembly subcommittee and we're waiting for the Senate

Commissioner Hatch: did so they're in as its presented they're saying those positions reflected in what's before the budget subs now

Ms. Peth: correct yes

Commissioner Hatch: okay thank you

Ms. Peth: and well we can obviously continue to update once we get through the Senate

Commissioner Hatch: good okay thank you that's all I have Chair

Chair Remke: thank you other commission comments or questions from Commissioners regarding the executive staff report

Commissioner Audero: Yes this is Maria I do

Chair Remke: okay Commissioner Audero

Commissioner Audero: Yes on the enforcement division report

Chair Remke: okay

Ms. West: okay Galena West here

Commissioner Audero: Hi, hi Galena I have a question on the backlogs of cases am I reading this correctly that we have 955 cases backlogged at this point?

Ms. West: we have a 916 case workload right now so many cases come in each month as you can see we received 83 complaints last month and 96 non filer referrals so it's a constant moving circle of 916 cases

Commissioner Audero: I think it'd be really helpful for this report to start showing us an aging of these cases because I don't have a sense of you know how many of these cases are a year old two years old a month old obviously you know a month is not something that I would be concerned about because especially you know as you pointed out and you know in this election year everything changes right but I think that that it would be very very helpful for the Commissioners to know a little bit more about the various stages of resolution the aging the types of cases because I think that for example if you know it it might make a difference to me as I'm looking at this to know you know we have you know that all the cases that are 2 years old are you know the conflict of interest cases that takes so so long to investigate you know that might be something that is an excellent an explanation for a very old case so I'm wondering what kind of reporting you could give us that would flush some of this out and actually provide some insight

Ms. West: we started looking into this with a new case management system so we should be able to have some answers

Commissioner Audero: So what kind of answer might we see I think we need to talk about what Commissioners would like to see but I don't know you know what's what's readily available versus you know something that you'd have to actually have to sit down and think about or or look at your you know count them but I mean you obviously know how many there are so you've got to have them on some kind of database I would imagine

3:40:00 Ms. West: right in fact as I said we just started looking into this so the analyst that does these reports for us I believe her words yesterday was that's gonna be rough so that was the description I've gotten so far and so we're now drilling down into what we could do because I started looking at with the enforcement review what la ethics puts out every month in their report and what San Francisco Ethics puts out in there all their reports in order for us to be proactive to see what information we should also be producing so I've gathered that information and then now I'm looking at what our capabilities are

Commissioner Hatch: You said in-house analyst

Ms. West: yes she's a SSA staff service analyst

Commissioner Audero: okay so you're trying to get your head or hands around what what your backlog is and I think that that's fine I think I would like to start seeing some reporting on that regularly and then I think more of a long term I think that I would like to see a plan for reducing this backlog because 916 cases I don't you know I you know it would be nice is to have you create a history of what the backlogs have been every year because it just it seems to me the 900 and I could be completely wrong but it seems like 916 cases is an awful lot of cases if you're receiving 80 cases a month let's say they're all flowing I mean that that means that you've got to have cases that are over a year old

Ms. West: no we received 83 plus 96 cases last month requests to be cases

Commissioner Audero: So you don't think you have any cases that are over a year old

Ms. West: no that's not I'm saying I was just giving you the correct numbers

Chair Remke: and I would just this is a Chair Remke I would just caution the repeated use of backlog I think the appropriate term is case pendency because we don't have a point in time backlog has a very significant meaning that something is older than an established time line as you probably know Commissioner Audero all courts adopt court performance standards which have when something reaches the point of backlog acknowledging as Miss West had said that there's rolling cases coming in and out and I know since I've been here the goal has always been before miss West and since miss west the cases should be resolved in a year or less and in fact I have a general statistic from I looked at a couple years ago on average about 75 percent of the cases are resolved in a hundred and eighty days or less so again you have this rolling case load in

cases are in case pendency again backlog has a very negative term which I don't think is appropriate in this context until we get down and look at the numbers a little bit more closely

Commissioner Hatch: If you're in the manufacturing business that's good

Commissioner Audero: I'm sorry Commissioner Hatch

Chair Remke: go ahead Commissioner Audero

Commissioner Audero: No, I'm ceding to Commissioner Hatch because I think he had a comment

Commissioner Hatch: I apologize for butting in

Commissioner Audero: No, that's fine go ahead

Commissioner Hatch: I just said in manufacturing backlog is a good word

Commissioner Audero: okay well I think that at some point we as a commission are gonna be able to determine what is that point of when something becomes backlogged and I think that it may be different depending on the types of cases but you know while I appreciate it a comment I don't appreciate a cautionary note so I'm gonna leave it at that but I would like to start seeing some more reporting on this that provides information for the Commissioners to be able to see you know how we're performing on that end you know and I think that there's gonna be different you know i-i-i imagine that there are some things that you can crank through really quickly and and you know and I think that there are some cases that obviously you're going to take you longer so I think that it would be good to as you report on the cases that haven't been resolved yet what types of cases they are and then by you know by types of cases how aging them so if you could do that in these reports going forward that would be really helpful

Ms. West: okay I'll look into that

Commissioner Audero: Thank you

29. Proposed Future Agenda Items.

Note: The Commission may not discuss or take action on any matter raised during public comment that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).) Below is a list of items currently pending for future agendas and the Commissioners who requested them.

- (Hayward and Audero) Solicit Attorney General's opinion to clarify some of the advice provided by deputies attorney general at a presentation on the Bagley-Keene Open Meeting Act.

- (Audero) Request the Attorney General's office review its 1977 advice letter (*The Honorable Michael Bennett*, 60 Ops. Cal. Atty. Gen. 16), and let us know if the advice is still applicable considering the application of California's minimum wage law to state employees as of January 1, 2001.
- (Hayward) Review the feasibility of holding a future Commission meeting in a location other than Sacramento.

Chair Remke: any other questions or comments from Commissioners well Commissioner Cardenas

Commissioner Cardenas: regarding the executive report or future

Chair Remke: well let's finish the executive report anything else on the executive report if not that will be submitted okay and now you want to say something on future issues Commissioner

Commissioner Cardenas: but I just I want to want wonder out loud how can we with respect to future agenda items how can we ensure better that expressed requests directions from this commission are for for having things on the agenda and for moving things at a particular pace or in the case of Commissioner Hatch last month it was rather more specific than that I think is it possible to when you know that you've got a specific request coming from a Commissioner made it made from the dais at the end of a meeting that if there's any doubt you just email the Commissioner and say did you did you mean that you want us to do something next month because it's not it's not real clear to us I mean is that is that problematic for any but because you know I I might I might well have stood differently 45 minutes ago on a particular vote of some importance but but it's it's too late for me to understand how my vote perhaps should have been different but if if the Commissioners request last month had been adhere to in the way that that he thinks he asked that it be and and and I think he's right about that then you know the minutes from this meeting might reflect different votes and and that's a that's a tough position for any of us to be in and I don't appreciate being in this position at all

Chair Remke: right well I'll say two things number one that's why we did add proposed future agenda items to see what's coming up and I know that at least as to one of these or two of these there's been follow-up from the Commissioner as to when is that going to appear on the agenda and some of that is against staffing concerns but I think the other thing and I know there is a big dispute as to what was said or what was agreed to and I guess I fall into Brian's category of not understanding that was the intent because again understanding that pre-notice meant pre notice and we'd send out what we're gonna send out after prenotice that was my understanding as well so all we can do is try to be as specific as possible that's why I think it was good with this meeting that the proposed regulation has been clearly established a timeline with the Ad Hoc Committee working with legal division to resolve something before Tuesday to go to OAL at the latest on Tuesday and the agreement that it's coming back June 21st hearing so I think to the extent we can be as specific as possible as to timing so that we're all in agreement that's what I would recommend

Commissioner Cardenas: I think if there's any doubt just just ask us

Chair Remke: right I agree

Commissioner Hatch: and before we do adjourn are we gonna get on the agenda for June 22nd with respect to item 26

Chair Remke: right that's what I just said I think we said those several time so I would say yes the answer is yes but I believe it's June 21st June 21st is the next hearing that it will be on June 21st for the proposed regulation that was moved forward today

Commissioner Audero: Chair I have a question

Chair Remke: okay

Commissioner Audero: we can always come back via email or via call and say hey can we have a meeting on June 6 I mean it was it's different it's difficult to it became problematic I think because Commissioner Hayward had to run off and I understand she has to catch her train and and I respect that but I think the vote might have been different if Commissioner Hayward had been present and so I think that if somebody sends an email saying hey can we can we vote on this because all we're asking is setting a meeting right which Mr. Prim said could be done via email as long as we don't discuss the substance of the purpose of that and I and I believe I have that very clearly in in those wonderful minutes that we get every month we could we could revote on that meeting via email correct we could just two Commissioners can request it and then they will it will happen right

3:50:00

Chair Remke: I think it would have to be a vote but I do believe you could set a regular meeting outside the Commission hearing I'm looking I'm saying that slowly as I look at legal and I'll let them answer the question

Commissioner Audero: I would just direct your attention to what Mr. Prim says to us because I think its very clearly stated there

Commissioner Cardenas: do you need a moment because if so I could interject something that's totally off the topic but yet immensely important but only if only if you need a moment

Mr. Lau: sure

Commissioner Cardenas: Sunday is Earth Day and I just want to bring that to everyone's attention as we recall that now we are at well over 400 parts per million of carbon dioxide in the atmosphere that hasn't happened on this particular planet since over 10,000 years ago when the Holocene began and it's only during this 10,000 year period where the average global mean temperature has been plus or minus one one degree that we have been able to establish civilizations at all happy Earth Day

Commissioner Audero: I thought you were going to tell use to stop talking and breathing hot air into the atmosphere

Commissioner Cardenas: it's it's well you know we reduce our carbon footprint in in other ways

Commissioner Hatch: glad you mentioned that as like our electric car owner third generation I'm keeping my footprint small I take the bus from the airport every meeting I take the bus to the airport every meeting I'm doing my part

Chair Remke: okay legal do you have an answer

Mr. Woodside: Chair Remke can we research this and get back to you

Chair Remke: yeah why don't you just send us

Commissioner Hatch: my understanding was I think members could

Chair Remke: which may be fine but let's if you're asking for legal and they're saying they need a minute so have them they can send out the email and if that's the answer and that's the will of the Commissioners they could respond to that email with the request for a hearing if that's where we're going with this so they'll send out the email to all Commissioners straight up with the law on setting a meeting more and then it could be followed up anything else

Commissioner Audero: Yeah I have something a couple things

Chair Remke: okay Commissioner Audero

Commissioner Audero: Thank you I want to make sure as item 27 from this month's agenda transfers to next month's agenda we clarify how it was written before my quoted portion I have a concern I was going to raise it today as part of our discussion but but I I can raise it now and maybe I can just be very quickly fixed but I notice that the way the first sentence the way that it was written says that we are it says we're only going to review and and we're gonna we review of the Commission's ability to review and modify and if you read my agenda item it says we're gonna vote on it so I don't know if that was intentional or just a mishap but I I don't want it to be I don't want it to be a situation where we have to bicker over whether we can vote on this item so

Chair Remke: well I think it says clearly this is an agenda item for formal action so it's hard to dispute that

Commissioner Audero: But it also says Chair Remke review of the Commission's ability and it doesn't say anything about vote and so it creates an ambiguity the problem of which I don't want to deal with at the beginning of next month's meeting I would like it to simply be resolved by having this accurately reflect what I requested so I requested a review and a vote I would like this to be absolutely crystal clear that that's what we're going to do

Chair Remke: okay anything else

Commissioner Audero: Yes in addition to that I would like to change this to that very last sentence I think I think I would like to change it to based on this the Commission will vote on whether to adopt the recommendation of the legal division as a go forward procedure , adopt another go forward procedure , or send this matter to the attorney general's office requesting a formal opinion

Chair Remke: okay

Commissioner Audero: I want a third choice in there

Chair Remke: okay I'll put that in there

Commissioner Audero: so that's that the other thing is I would like another agenda item that would follow this one it can't come before it as you'll see why in a second and it would be depending on the action taken by the Commission on agenda item and then you'll fill in the number whatever you're going to number this then I would say I'll hold on sorry I thought I had this handy oh gosh my apologies so so it would say depending on the action taken by the Commission if any on agenda item whatever the Commission will review the language of the closure letter in the Lucan matter matter 16/284 and we'll consider and vote on whether , and if so how , to amend that letter consistent with it action on agenda item whatever whatever whatever you're gonna fill it

Chair Remke: okay anything else

Commissioner Audero: no I just want to make sure that those two go together for me

Chair Remke: okay

Commissioner Audero: is there any question about the two going is there any question about those agenda items that I could clarify before we hang up

Chair Remke: no

Commissioner Audero: if you come up with a question will you send it to us so that were circulated to me so that I can answer it in time for this to make it appropriately on the May agenda

Chair Remke: I'm going to put it on the agenda exactly as you stated

Commissioner Audero: Oh good thank you

Chair Remke: anything else

Commissioner Cardenas: well 243 years ago this nation began to be conceived in the sense that it was at about 5:00 a.m. on this date 243 years ago that the running Battle of Lexington and Concord begun and just so we'll remember that otherwise what wouldn't be here thanks very much for your indulgence

Chair Remke: okay anything else from the Commissioners or we'll adjourn

Commissioner Cardenas: okay well a hundred and forty two issues

Chair Remke: okay the meetings adjourned thank you go off the record

The meeting adjourned at 3:50 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved May 7, 2018

Joann Remke, Chair
Fair Political Practices Commission