



OFFICE OF THE GOVERNOR

April 18, 2018

Chair Jodi Remke and Commissioners Audero, Cardenas, Hayward, and Hatch
1102 Q Street, Suite 3000
Sacramento, CA 95814

Re: April 19, 2018 Meeting, Agenda Item No. 26.

Dear Chair Remke and Honorable Commissioners:

I write to respectfully provide further comment on the Ad Hoc Committee's proposed regulations regarding Commission Governance. While progress has been made, in particular by electing to proceed under the Administrative Procedures Act (APA) rather than through informal rules, the proposed regulations still risk undermining and impeding the important work of the Commission.

As an initial matter, it is unclear what the Ad Hoc Committee hopes to accomplish through these regulations that it could not accomplish under existing procedures. The Committee's proposal seems motivated by a desire for individual commissioners to have more involvement in the Commission's oversight and operation. Although active engagement by all commissioners is a laudable goal, I do not believe the proposed regulations are necessary to meet that objective. Indeed, in reviewing the Commission's recent agendas and watching video of the last few meetings, it appears that the full Commission is already reviewing many of the Commission's policies and procedures, and possesses the tools to do even more through staff directives. Rather than starting down the laborious and labyrinthine path of devising and adopting formal policies for nearly every aspect of the Commission's operations, it would appear more fruitful to continue to focus Commission staff on the specific areas in which commissioners have cause for concern.

If the Commission nevertheless believes that regulatory change is needed, I believe there are significant flaws with the current approach. First, the use of two-member standing committees seems geared toward avoidance of the Bagley-Keene Act's open meeting requirements. Given the importance of the policies that are proposed to be developed by the standing committees, I believe such a process should occur in public view. Second, each of the "policies, criteria, and schema" envisioned under the regulations would likely themselves be subject to the APA, to the extent they will be utilized as standards of general application or are rules governing the procedure of the Commission. Unless these rules and standards are adopted

pursuant to the APA, they could be subject to challenge as underground regulations. Third, the regulations appear to contemplate that the Commission will have hiring and firing authority over individuals who are civil servants, without reference to any of the protections those employees enjoy.

More fundamentally, the proposed regulations appear to have been drafted with little or no staff involvement. Commission staff are the most familiar with how the Commission works, they have historical knowledge about past practices, and expertise in various subject matter areas that individual commissioners may lack, including the regulatory process. While the individual Commissioners are ultimately responsible for the actions of the Commission, I believe that approving these regulations – and any future policies – without staff input and guidance would be a mistake.

I appreciate that there is room for improvement in the operation of the Commission, and I applaud each of the commissioners for undertaking a thorough review of how the Commission's governance can better allow individual commissioners to participate in oversight of the agency. I hope that my comments are helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Krause", written in a cursive style.

Peter A. Krause
Legal Affairs Secretary