

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
PALO ALTO, CA 94303-4739
(415) 494-1335



03/11/93

DATE: • March 25 & 26	PLACE: • Sacramento
• March 25 (Thursday) 10:00 am - 5:00 pm	State Capitol Room 444
• March 26 (Friday) 9:00 am - 4:00 pm	State Capitol Room 2040
<p>NOTE: Changes may be made in this agenda, or the meeting may be rescheduled, on short notice. IF YOU PLAN TO ATTEND THE MEETING, PLEASE CALL (415) 494-1335 AND YOU WILL BE NOTIFIED OF LATE CHANGES.</p> <p>Individual items on this agenda are available for purchase at the prices indicated or to be determined. Prices include handling, shipping, and sales tax. Orders must be accompanied by a check in the proper amount made out to the "California Law Revision Commission".</p>	

FINAL AGENDA*for meeting of***CALIFORNIA LAW REVISION COMMISSION**Thursday, March 25, 1993

1. MINUTES OF JANUARY 28-29, 1993, COMMISSION MEETING (sent 2/24/93)

2. ADMINISTRATIVE MATTERS

Communications from Interested Persons

3. 1993 LEGISLATIVE PROGRAM

Status of Legislative Program

Memorandum 93-19 (NS) (to be sent)

Study H-501 - Quieting Title to Personal Property

Memorandum 93-26 (NS) (to be sent)

4. STUDY L-3044 - COMPREHENSIVE POWERS OF ATTORNEY STATUTE

Work in Progress

Memorandum 93-20 (SU) (to be sent)

5. STUDY N-100 - ADMINISTRATIVE ADJUDICATION

SPECIAL
ORDER
OF
BUSINESS
AT
3:00 PM

Revised Draft of Statute

Memorandum 92-70 (NS) (sent 10/13/92) (\$25.00)

Note. We will continue consideration of this memorandum beginning at page 47 of the draft.

Implementation of Decisions on Revised Draft of Statute

Memorandum 93-21 (NS) (sent 2/24/93)

Adoption and Compilation of Regulations

Memorandum 93-25 (NS) (enclosed)

6. STUDY N-201 - JUDICIAL REVIEW OF AGENCY ACTION--STANDING AND TIMING

Draft of Initial Decisions

Memorandum 93-22 (NS) (enclosed)

Friday, March 26, 1993

7. STUDY N-202 - JUDICIAL REVIEW OF AGENCY ACTION--SCOPE OF REVIEW

Consultant's Background Study

Memorandum 93-23 (NS) (sent 2/8/93) (\$25.00)

First Supplement to Memorandum 93-23 (enclosed)

\$\$\$

MEETING SCHEDULE

March 1993

Mar. 25 (Thur.) 10:00 a.m. - 5:00 p.m.
Mar. 26 (Fri.) 9:00 a.m. - 4:00 p.m.

Sacramento

April 1993

No Meeting

May 1993

May 13 (Thur.) 10:00 a.m. - 5:00 p.m.
May 14 (Fri.) 9:00 a.m. - 4:00 p.m.

Sacramento

June 1993

No Meeting

July 1993

July 22 (Thur.) 10:00 a.m. - 5:00 p.m.
July 23 (Fri.) 9:00 a.m. - 4:00 p.m.

Sacramento

August 1993

No Meeting

September 1993

Sep. 23 (Thur.) 10:00 a.m. - 5:00 p.m.
Sep. 24 (Fri.) 9:00 a.m. - 4:00 p.m.

Sacramento

October 1993

No Meeting

November 1993

Nov. 18 (Thur.) 10:00 a.m. - 6:00 p.m.
Nov. 19 (Fri.) 9:00 a.m. - 4:00 p.m.

Los Angeles

December 1993

No Meeting

ad08

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
MARCH 25-26, 1993
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on March 25-26, 1993. A quorum not being established, the members present acted as a subcommittee. Commission decisions made at the meeting are subject to ratification at a future meeting when a quorum is established.

Commission:

Present:	Arthur K. Marshall Chairperson (Mar. 26)	Daniel M. Kolkey
	Sanford Skaggs Vice Chairperson (Mar. 26)	Edwin K. Marzec (Mar. 25)
		Forrest A. Plant
Absent:	Bill Lockyer Senate Member	Christine W.S. Byrd
	Terry B. Friedman Assembly Member	Bion M. Gregory Legislative Counsel
		Colin Wied

Staff:

Present:	Nathaniel Sterling Stan Ulrich (Mar. 25)	Robert J. Murphy
Absent:	Pamela K. Mishey	

Consultants:

Michael Asimow, Administrative Law

Other Persons:

Larry Alamao, California Department of Real Estate, Sacramento
(Mar. 26)

Seymour R. Appleby, California Probate Referee's Association,
Hayward (Mar. 25)

Herb Bolz, Office of Administrative Law, Sacramento

William M. Chamberlain, California Energy Commission, Sacramento

Karl Engeman, Office of Administrative Hearings, Sacramento (Mar. 26)

Margaret Farrow, Office of the Administrative Hearings, Sacramento

Don E. Green, State Bar Estate Planning, Trust and Probate Law
Section, Sacramento (Mar. 25)

Robert Hargrove, Legal Section, Department of Motor Vehicles
(Mar. 26)
Steve Kahn, Office of the Attorney General, Sacramento
Charlene Mathias, Office of Administrative Law, Sacramento
Melanie McClure, State Teachers' Retirement System, Sacramento
Bernard McMonigle, Public Employment Relations Board, Sacramento
(Mar. 25)
Joel Perlstein, California Public Utilities Commission, San Francisco
Joel S. Primes, Office of the Attorney General, Sacramento (Mar. 26)
Dick Ratliff, California Energy Commission, Sacramento
John Sikora, Association of California State Attorneys and
Administrative Law Judges, Sacramento
Larry Starn, Department of Motor Vehicles, Sacramento (Mar. 25)
Thomas J. Stikker, Executive Committee, State Bar Estate Planning,
Trust and Probate Law Section, San Francisco (Mar. 25)

MINUTES OF JANUARY 28-29, 1993, COMMISSION MEETING

The Minutes of the January 28-29, 1993, as submitted by the staff were corrected as follows:

On page 7, at the bottom of the page, Section 1721(a) should be underscored.

On page 10, at the bottom of the page, the underscored "is" should be deleted from Section 26827.6(a).

[Also, on page 2, in the middle of the page, the references to the January 28-29, 1993, meeting should be to the October 29-30, 1992, meeting. This correction was not noted at the meeting.]

ADMINISTRATIVE MATTERS

Office Space

The Executive Secretary reported the results of his investigation of the possibility of reducing the Commission's rental expense through donated space. The University of Santa Clara Law School will be an unlikely prospect in the immediate future during transition to a new dean. The Stanford University Law School is not available. The staff has not yet contacted the University of San Francisco Law School, but will in the near future.

Several local law firms that might have surplus space available for donation have been approached without success.

State office building space is available in the area, but is not inexpensive. Current rents are the same as the Commission is presently paying. We anticipate a drop in state office building rents beginning next month, which could generate a savings of \$3,000 annually if we were to relocate to a state building. At that rate it would take two years to amortize our estimated relocation cost.

We have not investigated the possibility of donated space in Sacramento because the loss of experienced staff in a move to Sacramento would seriously impair Commission productivity and might also be inadvisable politically.

Waiver of Commission per Diems

In connection with the Commissioners' waiver of per diems for 1993-94, the Executive Secretary pointed out AB 1447 (Rainey, Andal, and Richter), which would statutorily preclude payment of part-time Commissioner per diems throughout state government. See Exhibit pp 1-2.

1993 LEGISLATIVE PROGRAM

The Commission considered Memorandum 93-19, concerning the Commission's legislative program for 1993. (The memorandum was incorrectly labeled 93-15.) The Commission approved the revision of the special needs trust statute set out at pages 2 and 3 of the memorandum, to be added to one of the pending probate bills.

The staff distributed to Commissioners a copy of AB 1500, the Family Code cleanup bill.

The Commission's action on the recommendation on quieting title to personal property, currently embodied in AB 2205, is reported below under Study H-501.

STUDY H-501 - QUIETING TITLE TO PERSONAL

The Commission considered Memorandum 93-26, concerning the Commission's proposal to add statutory language making it clear that title to personal property may be taken by adverse possession. The Commission proposal was broadly circulated for comment and no opposition was received. Based on the Commission's understanding that the proposed legislation was not controversial, it was included in the Assembly Committee on Judiciary bill relating to property.

The staff reported that opposition to the recommendation has now surfaced. The State Bar Committee on the Administration of Justice (CAJ) opposes the legislation based on the committee's fear that, unlike real property, personal property may be taken without putting the owner or possessor of the property on notice. The committee is worried that the Commission's legislation would allow title to personal property to pass to the taker based merely on possession of the property for the statutory time period for recovery of the property, without any actual or constructive notice to the owner or possessor.

The staff reported that the common law on conversion of personal property requires more than mere possession to trigger the running of the statute of limitations. The Commission's proposed legislation would have no effect on these legal requirements for triggering the running of the statute of limitations. The staff reported that it might be possible to remove the CAJ opposition by clarifying this matter in a comment, but if not, then the legislation would need to be removed from the bill and reworked.

After discussing the matter at some length, the Commission determined that the CAJ position merited further study and could not be dealt with adequately in a comment. The Commission decided to amend the legislation out of the current Assembly bill and requested that the staff return at a future meeting with a draft of alternative proposals to meet the CAJ concerns regarding notice. The Commission decided that this issue is appropriate for Commission consideration, but noted that, given the Commission's shrinking resources, this is not a high priority project.

STUDY L-3044 - COMPREHENSIVE POWER OF ATTORNEY STATUTE

The Commission began considering Memorandum 93-20 concerning the comprehensive power of attorney statute. (The Commission considered pages 1-15 of the draft statute attached to the memorandum.) The Commission made the following decisions:

Location of Statute

The new statute should be located in the Probate Code. This decision was made in light of the new draft emphasizing durable powers of attorney, the State Bar Team's commentary concerning the estate planning purposes of durable powers of attorney, and the specific provision that the general agency statute applies to powers of attorney where there is not a special rule. A section should be added to the general agency statute, perhaps at Civil Code Section 2400, cross-referring to the power of attorney statute in the Probate Code.

Section 8019. "Person" defined

This section will be eliminated, since "person" is defined in Probate Code Section 56.

Section 8050. Types of powers of attorney governed by this part

The authority in subdivision (d) to apply the statute in other situations should be deleted as unnecessary and potentially confusing.

Section 8121. Formalities for executing a power of attorney

This section should be revised as follows:

8121. A power of attorney is legally sufficient if all of the following requirements are satisfied:

(a) The power of attorney contains the date ~~it~~ of its execution.

(b) The power of attorney is signed either (1) by the principal or (2) in the principal's name by some other person in the principal's presence and by at the principal's direction.

. . . .

Subdivision (c) concerning acknowledgment and witnessing of the signature should make clear that this section does not change the rule that an instrument has to be acknowledged to be recordable.

Section 8122. Permissible purpose

Subdivision (a) should include a reference to "other matters" in addition to property, personal care, and health care. The question of the extent to which the attorney-in-fact should be able to determine where the principal will live, perhaps subject to the veto of the principal, should be given further consideration in consultation with the State Bar Team.

Section 8127. Warning statement in preprinted forms

The warning statement required in preprinted forms should be revised to be consistent with the revisions of the execution formalities in Section 8121 and should also contain a warning about the need for acknowledgment for recordation purposes.

Section 8150. Variation of duties and liabilities as between principal and attorney-in-fact

This section should be deleted.

Section 8151. Modification or revocation by principal

For further consideration, the staff should redraft this section and related rules to provide modification formalities equivalent to execution formalities, but leaving less formal rules to govern revocation of a power of attorney. This scheme would be analogous to the statutes governing wills.

STUDY N-100 - ADMINISTRATIVE ADJUDICATION

The Commission continued consideration of Memorandum 92-70 commencing at page 47 of the attached revised draft of the administrative adjudication statute. The Commission also considered Memorandum 93-21, implementing decisions on the revised draft of the

statute, and Memorandum 93-25, concerning adoption and compilation of regulations. The Commission made the following decisions concerning these matters.

§ 601.010. Compilation of regulations

The staff should look into the possibility of requiring a compilation of procedural regulations both in a general procedural title and among the individual agency's regulations. A cross-reference might be needed to the general procedural title for additional regulations.

§ 610.190. Agency

The Comment should not refer to "former" Section 11000, since that Section will not be repealed when the new Administrative Procedure Act is enacted.

§ 610.940. Adoption of regulations

This section should be subject to any statutes excusing an agency from compliance with rulemaking provisions of the administrative procedure act.

§ 615.110. Definitions

To avoid confusion between references to the Office of Administrative Hearings and the Office of Administrative Law, either the full phrase should be spelled out, or "OAH" rather than "office" should be the term defined in this section.

§ 615.120. Office of Administrative Hearings

Subdivision (c) should refer to a regulation as well as a statute.

§ 615.180. Study of administrative law and procedure

The existing statute giving the Office of Administrative Hearings authority to study "the subject of administrative law and procedure in all its aspects" might be limited to administrative adjudication. The Commission requested OAH and OAL to submit agreed-upon language if so desired.

§ 641.250. Applicability of rules governing administrative adjudication

Paragraph (4) of subdivision (a) was revised to provide that if the agency declines to issue a declaratory decision, the agency should "state in writing the reasons for its action. Agency action under this paragraph is not subject to administrative or judicial review."

§ 643.210. Grounds for disqualification of presiding officer

The Commission was divided on whether subdivision (b)(4) of this section, as set out in Memorandum 93-21, is overbroad. The issue is whether the presiding officer should be permitted to be assisted or advised by a person who has served in an adversary capacity in the same case.

The Commission was divided on the issue of whether a peremptory challenge to the presiding officer should be provided by statute. Arguments against providing for peremptory challenges were that they would create scheduling problems for agencies, that judicial review is available to ensure disinterested resolution of issues, and that if peremptory challenges are appropriate for a particular agency, it can provide for them by regulation. Arguments for peremptory challenges were that the grounds for bias challenges are limited in administrative proceedings, that there is need for peremptory challenges to ensure impartiality due to the presiding officer's connection with the agency, and that scheduling problems could be resolved by limiting peremptory challenges to larger agencies.

§ 643.220. Self disqualification

This section was left unchanged.

§ 643.230. Procedure for disqualification of presiding officer

The Commission was divided on the issue of whether the presiding officer should be permitted to rule on a motion for the presiding officer's own disqualification. In favor of permitting self-determination were that this is a practical necessity and is the way it is done in state and federal courts, and that administrative and judicial review of the presiding officer's decision is available. Against permitting self-determination were that this deters a proper

motion, thereby fostering a feeling of unfairness in administrative adjudication where the presiding officer is already an employee of the adjudicating agency. The possibility was discussed of permitting an agency by regulation to provide for interim administrative review of a self-denial of disqualification.

§ 643.330. When separation not required

The Commission discussed the possibility of limiting subdivision (a)(4) to service as a supervisor--there would be no exception from separation of functions requirements for assisting or advising the presiding officer in the same proceeding. The considerations favoring and opposing this proposal were the need for an unbiased presiding officer versus the practical problems for agencies complying with such a restriction. The Commission was divided on this issue and deferred decision until the presence of a quorum.

§ 643.340. Staff assistance for presiding officer

The staff should resolve any inconsistencies between the text of this section and the Comment to Section 648.540 (disclosure of ex parte communications received).

§ 645.230. Discovery of statements, writings, and reports

The phrase "and that would be admissible in evidence" was deleted from this section.

§ 645.320. Motion to compel discovery

This section was revised to provide 15 days for resolving discovery disputes, and to require a reasonable and good faith attempt "to contact" the opposing party to obtain informal resolution. The section should also provide a fixed time for a party to file an opposition to the motion; general rules of civil procedure (e.g., CCP § 2024) should be tracked to the extent practical.

§ 645.350. Order compelling discovery

The reference in subdivision (a) to 15 days after the motion should be changed to 15 days after the hearing.

§ 645.360. Review of presiding officer's order

This section should be deleted. Exceptions to exhaustion of administrative remedies will be dealt with generally in the context of judicial review.

§ 645.430. Motion to quash

The reference to Section 1987.1 of the Code of Civil Procedure should be replaced by the text of the standards found in that section.

§ 645.510. Authority of presiding officer

This section should be eliminated and its substance integrated with the general provisions giving the presiding officer control of the conduct of proceedings. The issue whether sanctions--either monetary or contempt--can or should be imposed by the presiding officer rather than a court was left for later Commission resolution.

§ 645.520. Certification to court

The Commission questioned the provision in subdivision (a)(2) for Sacramento County as venue of last resort. The staff will give further consideration to this in the context of revision of Section 645.510.

§ 646.110. Modification or inapplicability by regulation

The chapter number commencing with this section should be changed from 7 to 6.

§ 646.120. Conduct of prehearing conference

The words "without further notice" were deleted from subdivision (d). A provision was added that notice must be given of the date of the conference adjudicative hearing.

§ 647.130. Cross-examination

Subdivision (a) was deleted. Subdivision (b) should be rewritten to state more clearly that generally conference hearings are intended for types of cases where substantial cross-examination will be unnecessary.

§ 647.220. ADR authorized

The Commission discussed whether this section should be revised to incorporate an exception to binding arbitration for agencies where decision power is constitutionally vested in the agency head. The Commission decided to leave this matter to case development.

§ 647.240. Confidentiality of ADR communications

This section should be redrawn to protect communications made during alternative dispute resolution proceedings but not the final award that results from the proceedings. Confidentiality of mediation communications should be protected. Admissibility of settlement and nonbinding arbitration communications should be regulated to the same extent as admissibility is regulated in civil proceedings under the Evidence Code and Code of Civil Procedure. In this connection, the staff should review the situation where a nonbinding arbitration proceeding becomes binding by virtue of failure to request a hearing de novo.

§ 648.110. Provisions may be modified or made inapplicable by regulation

The staff should compile for Commission review a list of provisions that may not be appropriate for modification or inapplicability by regulation, e.g. Section 648.140 (open hearings).

§ 648.140. Open hearings

The staff should investigate the possibility of tracking the Code of Civil Procedure provisions governing open hearings. The provision should be sufficiently broad to encompass protections, for example, for confidential or privileged information such as trade secrets or for child witnesses in abuse or other sensitive cases.

Subdivision (b) should be expanded to require that the decision maker be in a place where the public can attend.

§ 648.210. "Language assistance"

The language assistance provisions will be overhauled in light of 1992 legislation on the subject.

The staff should consider whether this section might inadvertently expand the obligation of an agency such as the Public Utilities Commission by broader application of the new Administrative Procedure Act than the coverage of the existing statute.

§ 648.340. Affidavits

The reference in the second paragraph of the form to seven days should be changed to 10 days.

§ 648.350. Protection of child witnesses

This section might be relocated to the open hearing provisions or perhaps cross-referred to in the Comment to the open hearing provisions.

§ 648.440. Privilege

The Comment should refer to Evidence Code Sections 901 and 910 which make the privileges generally applicable in administrative proceedings.

§ 648.450. Hearsay evidence and the residuum rule

This section should provide that an objection to a finding supported only by hearsay evidence may be raised for the first time on judicial review (alternative (b1)).

STUDY N-202 - JUDICIAL REVIEW OF AGENCY ACTION
(SCOPE OF REVIEW)

The Commission considered Memorandum 93-23 and the First Supplement to Memorandum 93-23, along with the attached consultant's background study relating to scope of review issues involved in judicial review of agency action. The Commission's consultant, Professor Michael Asimow, presented the material in the background study. The Commission made the following initial decisions with respect to scope of review issues discussed at the meeting.

Judicial Review of Agency Fact Findings

The Commission considered a number of alternatives to the existing California rule of independent judgment review of administrative fact finding. Included among the alternatives were the following standards:

- (1) Clearly erroneous.
- (2) Abuse of discretion.
- (3) Substantial evidence.

(4) Independent judgment for cases currently under the Administrative Procedure Act and substantial evidence for all other cases.

(5) Independent judgment for cases under the Administrative Procedure Act where the agency head reverses a finding of fact by the presiding officer, and substantial evidence in all other cases.

(6) Independent judgment for cases under the Administrative Procedure Act where the agency head reverses a proposed penalty by the presiding officer, and substantial evidence in all other cases.

The argument in favor of retention of the independent judgment rule is that it protects against agency overreaching. Arguments for departing from the independent judgment rule include the basic administrative law concept that decision on these matters is vested in the executive branch, that agency expertise and uniformity of result is more desirable than judicial interference or home-town bias, and that the independent judgment rule consumes substantial judicial resources both in ascertaining when the standard is to apply and in applying the standard. California is the only jurisdiction in the country that adheres to an independent judgment standard.

The Commission requested the staff to draft up some of the more politically viable alternatives for Commission review, and to invite private practitioner comment either in writing or in person. The draft should attempt to define the standards used. For example, substantial evidence might be defined in terms of a strong showing, taking into consideration both sides of the case, more than a scintilla and not a rubber stamp; solid, credible, and logically persuasive evidence, whether or not a preponderance; evidence sufficient to convince a reasonable person. Law dictionaries or other sources might be consulted in the effort to formulate a clear standard. The draft might

also seek to address the problem of review of determinations that are mixed questions of law and fact, and might distinguish between adjudicative facts and legislative facts and ratemaking.

Judicial Review of Agency Interpretation of Law

Existing law provides for independent judgment on judicial review of agency interpretation of law, giving deference to agency expertise where appropriate. A clearly erroneous test is used where there has been a statutory delegation of legal interpretations to the agency. Existing law on these matters should be codified.

Judicial Review of Agency Exercise of Discretion

Existing law on judicial review of agency decisions that represent an exercise of discretion among choices any of which would be legal is an abuse of discretion (reasonableness) standard. For the Public Utilities Commission this is whether the Commission's authority has been regularly exercised. This deferential approach to questions of agency judgment should be codified. Factual determinations that underlie the exercise of discretion should be subject to whatever standard is adopted for review of factual determinations. See discussion above.

Judicial Review of Agency Procedure

Existing law gives independent judgment authority for judicial review of agency procedures, according deference where appropriate to the agency's determination of what procedures are proper. This should be codified, but the statute should preclude judicial procedural rulemaking, as federal law does in the Vermont Yankee rule.

Closed Record

Existing law appears to be that judicial review is on a closed record basis, without admission of new evidence on review. If the evidence is insufficient for review, the matter is remanded to the agency for additional fact finding. This should be codified, but exceptions should be made for procedural objections where the evidence could not have been brought before the agency due to timing.

The court should be authorized to require the agency to prepare a table of contents of the record in an appropriate case.

Requirement of Findings and Explanations

An agency should be required to provide a brief explanation of the reasons for its action where necessary for proper judicial review. This would limit the scope of Topanga for agencies other than the state. The state would be governed by the requirement in draft Section 649.120 that the decision include "a statement of the factual and legal basis and reasons for the decision as to each of the principal controverted issues."

Burden of Proof

The person challenging the agency action has the burden of persuasion on the propriety of the agency action. This rule should be codified. Where there record has been lost, the challenger would carry the burden since review is on a closed record.

APPROVED AS SUBMITTED _____

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

Date

Chairperson

Executive Secretary

ASSEMBLY BILL

No. 1447

**Introduced by Assembly Members Rainey, Andal, and
Richter**

March 3, 1993

An act to amend Section 11009 of the Government Code,
relating to state boards and commissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1447, as introduced, Rainey. State boards and
commissions: compensation.

Existing law requires that, except as otherwise expressly
provided by law, the members of state boards and
commissions serve without compensation, but shall be
allowed necessary expenses incurred in the performance of
duty.

This bill would prohibit any member of a state board or
commission who serves for less than 24 hours per week from
receiving any wage, salary, or per diem, notwithstanding any
other provision of law. However, such a member would be
eligible to receive reimbursement for reasonable travel,
meals, and mileage expenses related to board or commission
activity.

The bill would also require each state board or commission
that has members who serve for less than 24 hours per week
to adopt regulations that provide guidelines relating to the
amount of the expenses to be reimbursed, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11009 of the Government Code
2 is amended to read:

3 11009. (a) Except as otherwise expressly provided
4 by law, the members of ~~State~~ state boards and
5 commissions shall serve without compensation, but shall
6 be allowed necessary expenses incurred in the
7 performance of duty.

8 (b) *Notwithstanding any other provision of law, no*
9 *member of a state board or commission who serves for*
10 *less than 24 hours per week shall receive any wage, salary,*
11 *or per diem. However, such a member shall be eligible to*
12 *receive reimbursement for reasonable travel, meals, and*
13 *mileage expenses related to board or commission activity.*

14 (c) *Each state board or commission that has members*
15 *who serve for less than 24 hours per week shall adopt*
16 *regulations that provide guidelines relating to the*
17 *amount of the expenses specified in subdivision (b) to be*
18 *reimbursed. These guidelines shall prohibit*
19 *reimbursement for these expenses at any greater rate*
20 *than that permitted for employees of state agencies and*
21 *departments.*

O