

**STAFF REPORT
C87**

A Statewide

04/19/18

P. Huber

S Statewide

J. Frey

CONSIDER APPROVAL OF THE PROPOSED REPEAL OF CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 3, CHAPTER 1, ARTICLES 7 AND 8

BACKGROUND:

The proposed repeal of Articles 7 and 8 would repeal regulations pertinent to hearings for cessions and retrocessions of legislative jurisdiction pursuant to Government Code sections 126 and 113 prior to 2016. Sections 126 and 113 grant the Commission authority to cede concurrent criminal legislative jurisdiction to the United States and accept retrocessions of legislative jurisdiction from the United States. Before 2016, sections 126 and 113 required the Commission to hold a hearing before ceding legislative jurisdiction or accepting a retrocession of legislative jurisdiction. To implement this hearing requirement, the Commission adopted regulations specifying additional requirements associated with the hearings. The United States is required to cover any costs of cessions and retrocessions. The Legislature amended sections 113 (effective January 1, 2016) and 126 (effective January 1, 2015) and eliminated the hearing requirements, leaving the Commission with discretion over whether it will continue to impose hearing requirements.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code section 6108.

State's Best Interests Analysis:

Originally, the hearing regulations under Articles 7 and 8 were meant to implement hearings required under Government Code sections 113 and 126. However, as discussed above, the Legislature amended those sections to eliminate the hearing requirement, leaving the Commission with discretion over whether it will continue to impose hearing requirements.

The proposed repeal would delete the hearing requirements and specifications from the California Code of Regulations. The proposed repeal would also eliminate unnecessary costs to the United States. Moreover, because cessions and retrocessions are agendaized for consideration at regularly scheduled Commission meetings, any parties who wish to participate may still do so at Commission meetings.

STAFF REPORT NO. **C87** (CONT'D)

However, preserving Articles 7 and 8 would provide little benefit, if any, for the public. When hearings were held pursuant to these articles, few parties participated. Frequently, no parties would show up at all. The regularly scheduled Commission meetings serve as more cost-effective forums for public involvement in cessions and retrocessions.

For these reasons, staff believes that approval of the proposed repeal would be in the State's best interests.

OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 3.1 of the Commission's Strategic Plan to foster, improve, and enhance relationships to engage the Legislature, public, local, state and federal agencies, legislative grantees, Commission lessees, potential applicants, non-governmental organizations, and the regulated community.
2. On September 29, 2017, the Office of Administrative Law, at Commission staff's request, published notice of the proposed repeal of Articles 7 and 8 in the California Regulatory Notice Register. The comment period closed after 45 days on November 13, 2017. Staff also sent notice directly to the U.S. Attorney General, National Park Service, branches of the military, California State Association of Counties, California Police Chief Association, California State Sheriffs' Association, and the League of California Cities. During the public comment period, the Commission received one comment, which came from the Department of Defense, Office of Environment, Energy and Installations. The comment states that the Office of Environment, Energy, and Installations has "no legal objections" to the proposed repeal of Articles 7 and 8.
3. Staff recommends that the Commission find that the proposed repeal of Articles 7 and 8 does not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBIT:

- A. Text of Regulations Subject to the Proposed Repeal

STAFF REPORT NO. **C87** (CONT'D)

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the proposed repeal of Articles 7 and 8 is not subject to the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15060, subdivision (c)(3) because the subject activity is not a project as defined by Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378.

STATE'S BEST INTERESTS:

Find that the proposed repeal of Articles 7 and 8 is in the State's best interests.

AUTHORIZATION:

1. Find that no reasonable alternative would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.
2. Adopt the proposed repeal of California Code of Regulations, title 2, division 3, chapter 1, Articles 7 and 8, in the form as set forth in the attached Exhibit A.
3. Authorize staff to take whatever action is necessary and appropriate to comply with provisions of the Government Code regarding the lawful adoption of the repeal and to ensure that the repeal becomes effective.

EXHIBIT A

TEXT OF REGULATIONS SUBJECT TO THE PROPOSED REPEAL

~~Article 7, Procedures under Section 126, Government Code~~

~~Section 2600. Cost.~~

~~A contract to reimburse the Commission for costs associated with the cession shall be executed by the United States and the Commission prior to publication of notice of hearing. The procedure for determining the reimbursement shall be as set forth in Article 1 of this Chapter at Section 1905.~~

~~Authority Cited: Section 126, Government Code.~~

~~Reference: Section 126, Government Code.~~

~~Section 2601. Notice.~~

~~Not more than 30 and not less than 15 days before the hearing, a notice of hearing shall be published one time in a newspaper of general circulation in the area in which the subject land is located. Not less than 10 days before the hearing, personal service shall be made on the clerk of the county board of supervisors and the city council if appropriate. Affidavit of publication and return of service shall be filed with the Commission before the hearing.~~

~~The notice shall be entitled "Notice of Hearing to Determine Cession of Jurisdiction by the United States Over Land Known as _____." The notice shall contain a description of the lands and shall set forth the date, the time and place of the public hearing.~~

~~The notice shall recite that the hearing shall be had pursuant to Government Code Section 126, and amendments, if any, and shall advise that interested parties may appear personally or through counsel or by letter to present evidence on whether cession of jurisdiction is in the best interests of the State.~~

~~Authority Cited: Section 126, Government Code.~~

~~Reference: Section 6110, Public Resources Code.~~

~~Section 2602. Type of Hearing.~~

The hearing held pursuant to said published notice may be conducted by both oral and written presentations. The hearing may be before the Commission, or a staff member designated by the Commission to conduct the hearing.

Authority Cited: Section 126, Government Code.

Reference: Section 6110, Public Resources Code.

~~Section 2603. Procedure on Hearing Argument.~~

Unless otherwise ordered by the Commission, the person requesting the hearing shall present material evidence in support of his application. After such person rests, any other interested person may present any material evidence in support of or in opposition to such application. The Commission may, in its discretion, limit cumulative evidence and may refuse or allow argument, and in case of allowance, may limit the same.

Authority Cited: Section 126, Government Code.

Reference: Section 126, Government Code.

~~Section 2604. Evidence.~~

Oral evidence shall be taken only on oath or affirmation. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Hearsay evidence may be received upon a showing satisfactory to the Commission of the difficulty of obtaining direct evidence.

Authority Cited: Section 126, Government Code.

Reference: Section 126, Government Code.

~~Section 2605. Decision.~~

After all of the evidence has been received, the Commission shall make its decision at the next regularly scheduled public meeting.

Authority Cited: Section 126, Government Code.

Reference: Section 6110, Public Resources Code.

~~Section 2606. Extension of Jurisdiction.~~

~~Where concurrent criminal jurisdiction has been granted under Government Code Section 126 for five years, any application for renewal and extension of such jurisdiction shall be considered as a new application.~~

~~Authority Cited: Section 126, Government Code.~~

~~Reference: Section 126, Government Code.~~

~~Article 8, Procedures under Government Code Section 113~~

~~Section 2700. Cost.~~

~~A contract to reimburse the Commission for costs associated with the retrocession shall be executed by the United States and the Commission prior to publication of notice of hearing. The procedure for determining the reimbursement shall be as set forth in Article 1 of this Chapter at Section 1905.~~

~~Authority Cited: Section 113, Government Code.~~

~~Reference: Section 113, Government Code.~~

~~Section 2701. Notice.~~

~~Not more than thirty (30) and not less than fifteen (15) days before the hearing, a notice of hearing shall be published one time in a newspaper of general circulation in the area in which the subject land is located. Not less than ten (10) days before the hearing, personal service shall be made on the clerk of the county board of supervisors and the city council if appropriate. Affidavit of publication and return of service shall be filed with the Commission before the hearing.~~

~~The notice shall be entitled "Notice of Hearing to Determine Retrocession of Jurisdiction by the United States Over Land Known as _____." The notice shall contain a description of the land and shall set forth the date, time, and place of the public hearing.~~

~~The notice shall recite that the hearing shall be had pursuant to Government Code Section 113, and amendments, if any, and shall advise that interested parties may appear personally or through counsel or by letter to present evidence on whether retrocession of jurisdiction is in the best interest of the State.~~

~~Authority Cited: Section 113, Government Code.~~

Reference: Section 113, Government Code.

~~Section 2702. Type of Hearing.~~

~~The hearing held pursuant to said published notice may be conducted by both oral and written presentations. The hearing may be before the Commission, or a staff member designated by the Commission to conduct the hearing.~~

Authority Cited: Section 113, Government Code.

Reference: Section 6110, Public Resources Code.

~~Section 2703. Procedure on Hearing Argument.~~

~~Unless otherwise ordered by the Commission, the person requesting hearing shall present material evidence in support of his application. After such person rests, any other interested person may present any material evidence in support of or in opposition to such application. The Commission may, in its discretion, limit cumulative evidence and may refuse or allow argument, and in case of allowance, may limit the same.~~

Authority Cited: Section 113, Government Code.

Reference: Section 113, Government Code.

~~Section 2704. Evidence.~~

~~Oral evidence shall be taken only on oath or affirmation. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Hearsay evidence may be received upon a showing satisfactory to the Commission of the difficulty of obtaining direct evidence.~~

Authority Cited: Section 113, Government Code.

Reference: Section 113, Government Code.

~~Section 2705. Decision.~~

~~After all of the evidence has been received, the Commission shall make its decision at the next regularly scheduled public meeting.~~

~~Authority Cited: Section 113, Government Code.~~

~~Reference: Section 6110, Public Resources Code.~~