

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

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| In re: |) | |
| |) | |
| AGENCY: CALIFORNIA |) | DECISION REGARDING |
| APPRENTICESHIP COUNCIL |) | DISAPPROVAL OF |
| |) | A RULEMAKING ACTION |
| |) | (Gov. Code Sec. 11349.3) |
| RULEMAKING ACTION: Adopt |) | |
| sections 232.01, 232.02, 232.03, 232.04, |) | |
| 232.05, 232.06, 232.07, 232.08, 232.09, |) | OAL File No. 03-1006-03sr |
| 232.10, 232.11, 232.12, 232.20, 232.21, |) | |
| 232.22, 232.23, 232.24, 232.25, 232.26, |) | |
| 232.27, 232.28, 232.29, 232.30, 232.31, |) | |
| 232.32, 232.33, 232.34, 232.35, 232.36, |) | |
| 232.37, 232.40, 232.41, 232.42, 232.43, |) | |
| 232.44, 232.45, 232.46, 232.47, 232.48, |) | |
| 232.49, 232.50, 232.51, 232.52, 232.53, |) | |
| 232.60, 232.61, 232.62, 232.63, 232.64, |) | |
| 232.70; repeal section 232 of title 8 of |) | |
| the California Code of Regulations |) | |

SUMMARY OF RULEMAKING ACTION

This rulemaking action establishes hearing procedures for hearings under Labor Code 1777.7, which concerns penalties for knowingly violating statutory requirements governing employment of apprentices in public works.

DECISION

On November 17, 2003, the Office of Administrative Law (OAL) disapproved the above-referenced rulemaking action, which is the second re-submittal of a filing that was disapproved by OAL on May 12, 2003. (See, OAL file no. 03-0328-02s.) The reasons for the disapproval are summarized here and explained in detail below.

- A. The STD Form 399 is not signed by the Agency Secretary, and these regulations do not have the concurrence of the Department of Finance.**

- B. The rulemaking record submitted for review is not certified closed and complete.**

DISCUSSION

The adoption of regulations by the California Apprenticeship Council ("Council") must satisfy requirements established by the part of the California Administrative Procedure Act that governs rulemaking by a state agency ("APA"). Any rule or regulation adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure is subject to the APA unless a statute *expressly* exempts the regulation from APA coverage.

Before any rule or regulation subject to the APA may become effective, the rule or regulation is reviewed by the Office of Administrative Law ("OAL") for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code Section 11349.1. Generally, to satisfy the standards a rule or regulation must be legally valid, supported by an adequate record, and easy to understand. In this review OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent executive branch check on the exercise of rulemaking powers by executive branch agencies and is intended to improve the quality of rules and regulations that implement, interpret and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on rules and regulations before they become effective.

A.

The STD Form 399 is not signed by the Agency Secretary, and these regulations do not have the concurrence of the Department of Finance.

A regulation that will result in state costs must have the approval of the Department of Finance. In this regard, section 6680 of the State Administrative Manual provides:

The STD. 399 form must be approved and signed by the Agency Secretary. The form must also be signed by the appropriate Program Budget Manager in the DOF if there are fiscal impact disclosures required by SAM Section 6600-6670, in which case the Fiscal Impact Statement (FIS) portion of STD. 399 is to be completed.

Section 6660 of the State Administrative Manual provides in part:

A state agency is not required in all instances to obtain the concurrence of DOF in its estimate of the fiscal effect of its proposed regulation on governmental entities. However, such concurrence is required for those estimates which contain any of the following elements, as depicted on STD. 399:

A.1–Reimbursable Local Costs
A.2–Non-Reimbursable Local Costs
A.3–Local Savings

B.1–State Costs
B.2–State Savings

The rulemaking record submitted by the Council includes a STD 399 form. The form, however, is not signed by the Agency Secretary as required by State Administrative Manual section 6680.

The STD 399 included in the rulemaking record indicates that there will be "minor" absorbable costs resulting from these regulations. No supporting documentation is included to support this estimate. The STD 399 does not bear the signature of the Council's Department of Finance Program Budget Manager. Consequently, the requirements of State Administrative Manual 6680 have not been satisfied.

B.

The rulemaking record submitted for review is not certified closed and complete.

Government Code, section 11347.3(b)(12) provides that the record for a rulemaking proceeding shall include: "An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete."

The record submitted for review does not include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete. Consequently, the requirements of Government Code, section 11347.3(b)(12) have not been satisfied.

For these reasons OAL disapproved the above-referenced rulemaking action.

Date: November 18, 2003

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