

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 7910	Department Office of Administrative Law	Priority No. 1
Budget Request Name 7910-001-BCP-BR-2016-GB		Program 6440-REGULATORY OVERSIGHT	Subprogram

Budget Request Description
 Enhanced Regulatory Training

Budget Request Summary

The Office of Administrative Law (OAL) is requesting funding in the amount of \$177,000 (\$101,000 General Fund - \$50,000 of which is reimbursements – and \$76,000 Central Service Cost Recovery Fund) for one Attorney III position to provide an increase in the number of training classes on how to conduct rulemaking actions to address the demand by state agencies and to enhance the current training provided.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Debra M. Cornez	Date 12/14/15	Reviewed By <i>12/15/2015</i>	Date
Department Director Debra M. Cornez <i>Debra M Cornez</i>	Date 12/14/15	Agency Secretary <i>Yanibel Batiz</i>	Date <i>12/15/2015</i>

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Original signed by Jeff Carosone	Date submitted to the Legislature <i>1-7-16</i>
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2015 ORIGINAL
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DEPARTMENT OF FINANCE
COR/JUD

BCP Fiscal Detail Sheet

BCP Title: Enhanced Training

DP Name: 7910-001-BCP-DP-2016-GB

Budget Request Summary

	FY16					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	1.0	1.0	1.0	1.0	1.0
Total Positions	0.0	1.0	1.0	1.0	1.0	1.0
Salaries and Wages						
Earnings - Permanent	0	110	110	110	110	110
Total Salaries and Wages	\$0	\$110	\$110	\$110	\$110	\$110
Total Staff Benefits	0	47	47	47	47	47
Total Personal Services	\$0	\$157	\$157	\$157	\$157	\$157
Operating Expenses and Equipment						
539X - Other	0	20	20	20	20	20
Total Operating Expenses and Equipment	\$0	\$20	\$20	\$20	\$20	\$20
Total Budget Request	\$0	\$177	\$177	\$177	\$177	\$177

Fund Summary

Fund Source - State Operations						
0001 - General Fund	0	51	51	51	51	51
9740 - Central Service Cost Recovery Fund	0	76	76	76	76	76
0995 - Reimbursements	0	50	50	50	50	50
Total State Operations Expenditures	\$0	\$177	\$177	\$177	\$177	\$177
Total All Funds	\$0	\$177	\$177	\$177	\$177	\$177

Program Summary

Program Funding						
6440 - Regulatory Oversight	0	177	177	177	177	177
Total All Programs	\$0	\$177	\$177	\$177	\$177	\$177

Analysis of Problem

A. Budget Request Summary

The Office of Administrative Law (OAL) is requesting funding in the amount of \$177,000 (\$101,000 General Fund - \$50,000 of which is reimbursements – and \$76,000 Central Service Cost Recovery Fund) for one Attorney III position to provide an increase in the number of training classes on how to conduct rulemaking actions to address the demand by state agencies and to enhance the current training provided.

B. Background/History

OAL is responsible for reviewing administrative regulations proposed by over 200 state agencies for compliance with the standards set forth in California's Administrative Procedure Act (APA), for transmitting these regulations to the Secretary of State and for publishing regulations in the California Code of Regulations. OAL is also responsible for reviewing and researching petitions submitted to OAL that challenge a state agency rule (policy or procedure) alleging that the rule is an underground regulation. OAL will issue a legal opinion as to whether the state agency is operating with an underground regulation. Courts have found underground regulations to be invalid and unenforceable.

OAL's 3-day Training Class on the APA Rulemaking Process

OAL teaches state agencies how to understand and comply with APA rulemaking requirements through a formal training program. State agencies adopt regulations that govern businesses and individuals of California. OAL's training focuses on adopting regulations that are clearly written, necessary and legally valid and properly conducting the economic impact assessment of the proposed regulatory action. The training also focuses on how to determine whether a state agency rule needs to go through the APA rulemaking process so that the state agency does not conduct its actions pursuant to an underground regulation.

In 1989, due to the high demand from state agencies, OAL developed a 3-day training program on the rulemaking process for state employees. Since 1989, OAL has trained approximately 7,000 state employees. From 1989 to May 2005, the training class was conducted primarily by an OAL Senior Attorney (this attorney continued to do the training until October 2012 after he retired in 2005). Another OAL attorney who participated in the training retired in 2012, and another participating OAL attorney retired in 2014. The training is now divided up and conducted by four full time attorneys at OAL. These attorneys prepare for and conduct the training in addition to their regular workload. Each year, approximately nine training classes are scheduled.

C. State Level Considerations

The APA serves several important functions: it ensures that regulations adopted by agencies within the executive branch are made available to the public through publication in the California Code of Regulations; it requires public notice and gives the public an opportunity to participate in the adoption of regulations; it requires the state agency to create a record of the rulemaking proceedings for review by OAL, and if necessary, by the courts in any litigation challenging a state regulation; and it improves the quality of regulations by ensuring that regulations are clearly written, necessary, and legally valid. Duly adopted regulations protect the public and may have an economic impact on businesses and individuals in California. It is imperative that state agencies receive the proper training to conduct rulemaking actions in accordance with the law and in the most efficient manner. It is also an important element of the civil service improvement plan for state employees to receive proper training so they can do their jobs accurately and efficiently. The demographics of the state employee workplace show that a large number of state employees will be retiring in the coming years, making training critical in order to ensure continued workload demands are met. Additionally, to the extent that regulatory employees are better-trained in this area, the workload demands on OAL can be mitigated, thereby reducing the need to add new staff at OAL to process regulatory packages.

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D. Justification

Funding requested for one Attorney III position to provide an increase in the number of training classes on how to conduct rulemaking actions to address the demand by state agencies and to enhance the current training provided.

OAL is requesting \$157,000 (plus \$20,000 for operating expenses and equipment) to fund one Attorney III position to address the demand for training by state agencies and to enhance the current training program.

Classification	Mid-Range Salary	Benefits	OE & E	Total
Attorney III	\$110,000	\$47,000	\$20,000	\$177,000

The requirement that state agencies adopt their rules and procedures pursuant to the APA is not simply an OAL policy preference; it is the law. State agencies look to OAL, who has the APA expertise, to provide the training necessary to complete their rulemaking actions in an efficient manner in accordance with the APA. Since 1989, OAL has been operating a successful training program. The rulemaking class provides training to state agencies to help them avoid costly mistakes and litigation expenses.

For the past three years there has been a long waiting list to attend OAL's training program. The waiting list now has more than 250 state employees. Additionally, OAL's recently installed data system allows OAL to track the number and type of legal issues that continue to be a challenge for state agencies trying to comply with the APA. This data shows that only six percent (6%) of all matters submitted to OAL for review in the last six months were approved by OAL without any corrections needed. In order to meet the demand placed on OAL by state agencies for this training, and enhance the training so that state agency rulemaking actions are no longer substandard and are conducted as efficiently as possible, OAL is requesting funding for one Attorney III position. The new Attorney III will provide an increase in the number of training classes on how to conduct rulemaking actions to address the demand by state agencies and provide ways to enhance the current training provided. Furthermore, a well-prepared file and regulations that meet the APA standards will reduce the time spent by OAL in reviewing files.

An Attorney III will have the legal knowledge and experience to quickly become an expert in the APA and the confidence to become the sole presenter in the class. This will allow the OAL staff currently conducting the classes to return to their normal regulatory review workload. The Attorney III will allow OAL to:

- Increase the number of 3-day training classes conducted each year from 9 to 20 over a period of two fiscal years;
- Enhance the training by focusing on the requirements of the APA that state agencies frequently find most challenging; create special exercises in the class for the students that focus on the more challenging APA requirements;
- Conduct two half-day classes concerning underground regulations;
- Conduct special presentations to state agencies that concentrate in their particular area of law;

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- Conduct presentations to Senate and Assembly staff members and Office of the Legislative Counsel;
- Create “how to” webinars on parts of the APA and post the webinars on the OAL website;
- Provide workshops to meet individually with state employees to answer their questions on their specific rulemaking action.
- Respond to requests for special training that is usually received in response to new legislation that needs to be implemented and training is needed immediately.

Attorney III Workload	Hours
Conduct the 3-day training class. This assumes 20 classes per year by 2017-18.	480
Conduct training other than the formal 3-day training class, i.e., training on underground regulations; special classes for Senate and Assembly staff members and Office of the Legislative Counsel, special requests by state agencies, and workshops for individual training with individuals scheduling appointments on certain day.	200
Training preparation and any additional follow up workload from each class	500
Review emergency files and regular files that are submitted at the end of the year which is the busiest time for OAL when workload doubles	200
Create and produce “how to” webinars on the APA and post on OAL website; continue to monitor and update when necessary (10 webinars @20 hours each)	200
Other duties as required	200
TOTAL HOURS	1780

The increase in the demand for the class from 2013 to 2015 (from no waiting list, to over 250 people on the waiting list) illustrates the importance of the class and the value provided to state agencies. Also, the sudden increase is indicative of the transition that is occurring in state government due to the anticipated retirement of many state employees. The OAL class enables the state agency to conduct the rulemaking process more efficiently when the proposed action is conducted by a trained employee. When the proposed rulemaking action is conducted by a well-trained employee, this results in less time spent by OAL in reviewing properly drafted regulations and a well-done rulemaking record. It should be noted that OAL continuously receives high marks from the students’ evaluations because of the expertise of the trainers, the small class atmosphere and the type of training that is provided, blending lecture and hands on exercises.

For many years, OAL charged \$250 per student for the 3-day training class. On January 1, 2015, OAL increased the price of the class to \$350 per student. On January 1, 2016, OAL will raise the price for

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the class to \$420. The training price is being increased to reflect the increased cost of printed materials and equipment needed to operate the classes.

Fiscal Year	Number of classes per Fiscal Year	Average Number of students per class	Training Fee & Materials	Authorized Reimbursement Authority	Total Dollars Reimbursed	Excess/Short fall
FY 2010-11	8 classes	26 students	\$250 per student	\$61,000	\$52,250	(8,750)
FY 2011-12	8 classes	23 students	\$250 per student	\$61,000	\$46,250	(14,750)
FY 2012-13	9 classes	25 students	\$250 per student	\$61,000	\$54,750	(6,250)
FY 2013-14	9 classes	28 students	\$250 per student	\$61,000	\$57,750	(3,250)
FY 2014-15	10 classes	21 students	4 classes \$250/student 6 classes \$350/student	\$61,000	\$68,850	\$7,850
FY 2015-16	9 classes	22 students	4 classes \$350/student 5 classes \$420/student	\$61,000	*\$77,000	\$16,000
FY 2016-17	14 classes	22 students	14 classes \$420/student	\$61,000	*\$129,000	\$68,000
FY 2017-18	20 classes	22 students	20 classes \$420/student	\$111,000	*\$185,000	\$74,000

* Estimated Reimbursements.

Because of the increase in revenue that the additional classes will provide, OAL is requesting that its reimbursement authority be increased by \$50,000 to \$111,000 from \$61,000. Though it is likely that reimbursements could exceed the \$111,000 figure, a \$50,000 increase is the level that OAL believes it can accomplish confidently and consistently as the expanded training program gets up and running. Any reimbursements received in excess of the proposed level of \$111,000 will automatically accrue to the General Fund as excess reimbursements.

E. Outcomes and Accountability

Currently, the waiting list for OAL's training class is approximately 250. Upon approval of the Attorney III position and appropriation of the funds, OAL will begin the hiring process to fill the position. OAL will develop a strategic plan so that at the time the new attorney begins, OAL will have already scheduled more classes than in the past. OAL will also reach out to the state agencies that have requested special training to see how OAL might meet their needs. OAL's success can be measured by how quickly it can reduce the waiting list to zero and grant all the requests for special classes. OAL will continue its contacts with the staff of the Senate, Assembly, and Office of the Legislative Counsel and provide training upon request. OAL will monitor the rulemaking files submitted and continue to gather data to determine what APA requirements should be the focus of the training because of the number of state agencies who are unable to comply with those particular APA issues.

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OAL will also begin to follow up with agencies it has already been in contact with regarding the creation and production of “how to” webinars regarding the APA. As soon as those webinars are finished, they can be posted on OAL’s website.

F. Analysis of All Feasible Alternatives

Alternative #1: Augment OAL’s budget to fund one new Attorney III position. Without the additional Attorney III position OAL will not be able to meet the demands placed on OAL by state agencies requesting training on how to conduct rulemaking actions mandated by state law and will not be able to enhance its current training program.

Alternative #2: Approve the Attorney III position, but do not provide the full amount for the salary. Require OAL to generate the full amount of the salary by increasing the fee for the class, especially for those agencies that ask for “special training” onsite or out of town, increase the number of classes offered each year, charge the full fee OAL would get for a normal class when a state agency wants special training for fewer than 20 students, and charge a fee for the one half-day underground regulation class that is now offered for free. OAL may continue to reduce the backlog, but increasing the fee may backfire. State agencies may decide the fee amount is too much and OAL will not be able to generate the salary amount necessary. This may be true especially since state employees register for this class on a voluntary basis and the training class requires them to be out of their office for three full days. If OAL raises the price too much, state agencies may decide it is not worth it. State agencies need to operate within their own budgets and training is usually the first to go.

Alternative #3: Make no changes and OAL will try to continue to schedule at least nine training classes each year, but cannot commit to provide additional training opportunities due to the current workload and lean staff. The fact that the waiting list has increased so dramatically in less than two years clearly illustrates that state agencies need and want to adopt regulations in full compliance with the APA, as efficiently as possible, and avoid the risk of costly litigation. The significant increase of those on the waiting list is also in response to the anticipated large number of employees who have retired or are about to retire from state service and the ripple effect that this causes. For instance, this year, the Air Resources Board, the Franchise Tax Board, and the Department of Food and Agriculture all now have new Regulations Coordinators due to the prior person retiring or being promoted to fill a position vacated by a retiree. These three agencies are some of the most frequent users of the rulemaking process.

G. Implementation Plan

OAL’s BCP does not require any statutory or regulatory changes. If approved, little time would be required to begin the advertisement of the attorney position. OAL would begin working with DGS immediately to accomplish these goals. Based on the timing of hiring a new attorney, OAL would evaluate its current training class schedule and see where it could begin adding classes or grant requests for special classes. Because OAL has its own training room, there is no issue of conflicting training schedules or the training room not being available.

H. Supplemental Information

Approval of this proposed BCP will not require any special resources to support it.

I. Recommendation

Approve Alternative #1. This would fund the addition of one Attorney III position.

If the proposed BCP is not approved, OAL will not be able to schedule additional training classes or grant requests for special training; it will take more than one year to place people currently on the waiting list in a class. This also does not address any new students who sign up today or meet the demands of state agencies who need the training immediately due to newly enacted legislation.