

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA****Consumer Protection and Safety Division****RESOLUTION TL-19099****November 19, 2010****RESOLUTION**

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO PERMANENTLY REVOKE THE OPERATING AUTHORITY OF, AND REFUSE TO ISSUE NEW OPERATING AUTHORITY TO, A CHARTER-PARTY CARRIER THAT HAS COMMITTED A VIOLATION DESCRIBED IN PUBLIC UTILITIES CODE § 5387(C)(1).

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**SUMMARY**

This resolution delegates authority to the Commission's Executive Director to permanently revoke the charter-party certificate or permit of a carrier that has committed any of six violations of law listed in Public Utilities (Pub. Util.) Code § 5387(c)(1). The Executive Director is also authorized to refuse to issue a new certificate or permit in accordance with § 5387(c)(2) to any carrier that had its authority permanently revoked or that is barred from receiving a certificate or permit pursuant to § 5387(c)(1).

**BACKGROUND**

The Commission regulates the operations and practices of charter-party carriers of passengers pursuant to the Passenger Charter-party Carriers' Act (Pub. Util. Code § 5351 et seq.).<sup>1</sup> No charter-party carrier shall engage in transportation services without first having obtained a certificate or permit to operate from the Commission. (§ 5371.) To maintain a certificate or permit, a carrier is required, among other things, to have on file with the Commission evidence of adequate liability insurance protection. (§ 5391 and General Order 115-F.) It is unlawful for a carrier to conduct any operations after the revocation or during the suspension of its certificate or permit. (§ 5379.)

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<sup>1</sup> Unless otherwise indicated, statutory references are to the Public Utilities Code.

The California Highway Patrol (CHP) is responsible for regulating the safe operation of buses and other vehicles specified in Vehicle Code (VC) § 34500. A vehicle that is used to transport persons for compensation or profit is a “bus” under the law if it is designed, used or maintained for carrying more than 10 persons, including the driver. (VC § 233(b).) Many of the vehicles operated by charter-party carriers are buses under this definition. A bus operated by a charter-party carrier is a “tour bus.” (VC § 612.)

The Commission, through its charter-party carrier licensing program, plays a support role to the CHP in bus safety. Many of the requirements every applicant for a new or renewal certificate or permit is required to meet under § 5374 are related to safety. The applicant must demonstrate that it has knowledge of and is committed to:

- maintaining its vehicles in accordance with CHP requirements;
- observing hours of service regulations;
- providing safety education and training to its employees and subcarriers;
- monitoring the driving records of employees and subcarriers; and
- participating in a controlled substance and alcohol testing program for its drivers.

Additionally, any applicant that will operate a tour bus must undergo an annual bus terminal inspection by the CHP. (§ 5371(c).) The Commission will deny an application if the CHP concludes that the applicant’s compliance with safety-related laws or regulations is unsatisfactory. (§ 5378.6 and VC § 34505.1.) A certificate or permit shall be suspended or revoked by the Commission upon the recommendation of the CHP if (1) the carrier fails to comply with safety requirements and in the CHP’s opinion that failure presents an imminent danger to the public or is a consistent failure, or (2) the carrier fails to enroll all drivers in the Department of Motor Vehicles (DMV) Pull Notice System. (§ 5378.5. and VC § 34505.1.) Commission regulations require every charter-party carrier and its drivers to comply with provisions of the VC. (General Order 157-D, Part 1.06.)

The Commission has broad powers to enforce statutes and regulations affecting charter-party carriers. Under § 5378, the Commission may cancel, revoke, or suspend a charter-party carrier certificate or permit for, among other reasons, the violation of any provision of the Passenger Charter-party Carriers’ Act or the violation of any order, decision, rule or regulation established by the Commission pursuant to the Act. As an alternative to canceling, revoking, or suspending a certificate or permit, § 5378 authorizes the Commission to impose a

penalty of up to \$7,500. Section 5413.5(a) empowers the Commission to impose a fine of not more than \$7,500 on any person or corporation that operates as a charter-party carrier without holding a certificate or permit from the Commission. Penalties under § 5378 and § 5413.5(a) apply to each day of violation per § 5415. The Pub. Util. Code also provides criminal and civil penalties for carriers that violate the law.

The Commission has authorized the Consumer Protection and Safety Division (CPSD) to assess a penalty of up to \$20,000 against a charter-party carrier through the administrative citation procedure.<sup>2</sup> Procedures to appeal a citation issued by CPSD were adopted by the Commission in Resolution ALJ-187, dated September 22, 2005. In summary, a carrier is entitled to a speedy appeal of its citation, which is heard by one of the Commission's Administrative Law Judges (ALJ). At the conclusion of the hearing, the ALJ drafts a resolution resolving the appeal for the Commission's consideration at one of its regularly scheduled meetings.

2009 legislation amended the Public Utilities Code effective January 1, 2010, to require the permanent revocation of the permit or certificate of a charter-party carrier that commits any of several prescribed violations. Assembly Bill (AB) 636 (Chapter 248, Statutes of 2009) amended § 5387 by adding paragraphs (b), (c), and (d).<sup>3</sup> Section 5387(c) provides:

(1) A charter-party carrier shall have its authority to operate as a charter-party carrier permanently revoked by the Commission or be permanently barred from receiving a permit or certificate from the Commission if it commits any of the following acts:

(A) Operates a bus without having been issued a permit or certificate from the Commission.

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<sup>2</sup> Resolution CE 2-92, dated July 1, 1992.

<sup>3</sup> Paragraph (b) provides that a person who drives a bus for a charter-party carrier without a valid or appropriate class of driver's license shall be suspended from driving a bus for a period of five years. This provision of § 5387 will be administered by the DMV. Paragraph (d) authorizes a CHP officer to impound a bus of a charter-party carrier for 30 days if the carrier is operating without active charter-party authority or if the driver is not properly licensed.

- (B) Operates a bus with a permit that was suspended by the Commission pursuant to Section 5378.5.
- (C) Commits three or more liability insurance violations within a two-year period for which it has been cited.
- (D) Operates a bus with a permit that was suspended by the Commission during a period that the charter-party carrier's liability insurance lapsed for which it has been cited.
- (E) Knowingly employs a bus driver who does not have a current and valid driver's license of the proper class, a passenger vehicle endorsement, or the required certificate to drive a bus.
- (F) Has one or more buses improperly registered with the Department of Motor Vehicles.

(2) The Commission shall not issue a new permit or certificate to operate as a charter-party carrier if any officer, director, or owner of that charter-party carrier was an officer, director, or owner of a charter-party carrier that had its authority to operate as a charter-party carrier permanently revoked by the Commission or that was permanently barred from receiving a permit or certificate from the Commission pursuant to this subdivision.

AB 636 also added § 5387.3 as follows:

- (a) A charter-party carrier described in subdivision (c) of Section 5387, that has received a notice of refusal or revocation of its permit to operate, may submit to the Commission, within 15 days after the mailing of the notice, a written request for a hearing. The charter-party carrier shall furnish a copy of the request to the Department of the California Highway Patrol at the same time that it makes its request for a hearing to the Commission. Failure to request a hearing, in writing, within the 15-day period is a waiver of the right to a hearing.
- (b) Upon receipt by the Commission of the hearing request, the Commission shall hold a hearing within a reasonable time, not to exceed 21 days, and may appoint a hearing officer to conduct the hearing. At the hearing, the burden of proof is on the charter-party carrier to prove that it was not in violation of subdivision (c) of Section 5387.
- (c) The refusal to, or revocation of, the permit to operate, may only be rescinded by the hearing officer if the charter-party carrier proves that it

was not in violation of subdivision (c) of Section 5387, and that the basis of the refusal or revocation resulted from factual error.

CPSD has consulted with the CHP regarding implementation of AB 636. The CHP anticipates that most of the violations of § 5387(c)(1) that it will encounter will be disclosed through its program of annual bus inspections that are conducted at carrier terminals. The motor carrier specialists who conduct these inspections are not peace officers and are not empowered to issue citations. CHP management has instructed the specialists to report any violations of § 5387(c)(1) disclosed during an inspection using the CHP's Safety Compliance Report form. The report with related documents will be forwarded to CHP headquarters, where it will be reviewed by Enforcement and Planning Division managers to ensure that the violation is fully supported by the evidence before the matter is referred to the Commission for action. The CHP expects that a lesser number of violations will be reported by uniformed officers engaged in on-highway enforcement. Generally, these violations will result in the issuance of a citation to the carrier, which the CHP will endeavor to report to the Commission.

CPSD notes there may be other law enforcement agencies that will encounter and report violations listed in § 5387(c)(1). Police officers at major state airports routinely check charter-party vehicles for compliance with state and airport permit requirements. Partly as a result of the outreach efforts of CPSD, an increasing number of local police agencies are interested in learning about and enforcing provisions of the Pub. Util. Code that pertain to charter-party carriers. In some cases these agencies conduct checks on their own while in others they operate in concert with CPSD investigators. CPSD cites as an example of the latter the ongoing "Hollywood Strike Force," where local police officers join with the CHP and CPSD to check for-hire limousines, vans, and buses operating in Hollywood and surrounding areas. CPSD believes other enforcement agencies can provide useful information concerning violations of § 5387(c)(1). In this regard, CPSD notes that it recently began providing special access to its Transportation Management Information System (TMIS) to public agencies that wish to obtain what is virtually real-time information (updated hourly) about the operating authority and insurance status of charter-party carriers.

### **CPSD's Proposal**

CPSD recommends that the Commission delegate to the Executive Director the authority to (1) revoke the certificate or permit of any charter-party carrier that commits a violation listed in § 5387(c)(1), and (2) refuse to issue a certificate or permit to a carrier that is barred from receiving a certificate or permit pursuant to

§ 5387(c)(2). CPSD has developed the following suggested policies and procedures:

§ 5387(c)(1)(A) - Operating a bus without a certificate or permit.

CPSD will issue an administrative citation to a charter-party carrier when its investigation establishes that the carrier operated a bus without being issued a certificate or permit. Additionally, CPSD will be receiving copies of CHP Safety Compliance Reports, and copies of citations issued by the CHP and other law enforcement agencies for conducting unlicensed charter-party carrier operations with a bus. CPSD believes the authority of any involved carrier should be revoked and it and its owners, officers, and directors should be barred from receiving a new certificate or permit.

§ 5387(c)(1)(B) - Operating a bus during a safety suspension under § 5378.5.

As noted above, charter-party carriers are subject to suspension by the Commission at the recommendation of the CHP pursuant to § 5378.5. Subdivision (e) of § 5378.5 provides that if the Commission finds a charter-party carrier has continued to operate after its authority has been suspended, the Commission shall either, under paragraph (1), revoke the operating certificate or permit of the carrier or, under paragraph (2), impose upon the carrier a penalty of not less than \$1,500 nor more than \$7,500 for each day of unlawful operations. Most violations of § 5378.5 found by CPSD have been resolved by the issuance of an administrative citation that imposes a fine under § 5378.5(e)(2). However, in view of the new requirements of AB 636, CPSD recommends that a carrier's charter-party authority be permanently revoked under §5387(c)(1) if CPSD obtains evidence through its own investigation, or receives evidence from the CHP, that the carrier conducted operations after being served with a notice of suspension of its permit or certificate<sup>4</sup> pursuant to § 5378.5

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<sup>4</sup> While this subdivision refers only to a "permit," it is evident from the legislation that the sanction of revocation is intended to apply to operations under charter-party carrier permits and certificates alike.

§ 5387(c)(1)(C) and(D) - Operating during a period of liability insurance suspension or otherwise violating liability insurance requirements.

General Order 115-F requires insurance companies to give the Commission 30 days' notice of cancellation of any policy on file in connection with the licensing of charter-party carriers. As soon as possible after the receipt of a notice of cancellation, CPSD's License Section mails a Notice of Impending Suspension which informs the carrier that unless evidence of coverage is received by the cancellation date, the carrier's operating authority will be suspended. If the authority is suspended, the License Section mails a Notice of Suspension to the carrier. The authority is revoked 90 days later if the insurance deficiency has not been corrected by then.

When an investigation discloses that a carrier has operated during an insurance suspension, CPSD typically utilizes the administrative citation procedure to dispose of the violation. The primary factors considered in determining the amount of the citation fine are (1) the number of days of operation while the authority was suspended, (2) the number of vehicles the carrier operated, (3) whether there was an actual lapse in insurance coverage, and (4) the carrier's violation history.

Under § 5387(c)(1)(D), revocation shall occur when (1) a carrier operates a bus with a permit<sup>5</sup> that is suspended, (2) there is a lapse in liability insurance, and (3) the carrier is cited for that violation. CPSD recommends that the Commission revoke the operating authority of any carrier that is cited by CPSD, the CHP, or another law enforcement agency for a violation of § 5387(c)(1)(D) and CPSD determines that there was an actual lapse in insurance coverage.

Revocation also applies under § 5387(c)(1)(C) in any case where a carrier is cited for three or more liability insurance violations within a two-year period. According to CPSD, most cases under this subdivision will involve operations where the carrier is suspended for failure to maintain evidence of coverage on file, but it is later determined that coverage was actually in effect throughout the suspension period. However, liability

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<sup>5</sup> Like subdivision (B), subdivision (D) refers only to a "permit." The legislation clearly is intended to apply to a charter-party carrier certificate as well.

insurance violations could also include instances where the carrier underinsures its vehicle by failing to procure the correct amount of liability coverage or cases where the carrier fails to pay insurance premiums for every vehicle that it operates. Subdivision (C) does not specify that it applies only to the operation of a “bus.” Therefore, it could apply to liability insurance violations committed by a charter-party carrier that operates any type of vehicle. CPSD indicates it will track carriers that are cited for an insurance violation. It recommends that any carrier cited three or more times within a two-year period have its authority permanently revoked.

§ 5387(c)(1)(E) - Knowingly employing an unqualified driver to operate a bus.

The Vehicle Code prescribes special licensing requirements to drive a bus. The CHP enforces these requirements both on the road and during annual bus terminal inspections. AB 636 provides sanctions for both the charter-party carrier that employs an unqualified driver and for the driver who committed the license violation. Section 5387(b) states:

A person who drives a bus for a charter-party carrier without having a current and valid driver’s license of the proper class, a passenger vehicle endorsement, or the required certificate shall be suspended from driving a bus of any kind, including, but not limited to, a bus, school bus, school pupil activity bus, or transit bus, with passengers for a period of five years pursuant to Section 13369 of the Vehicle Code.

The DMV will be receiving notice from the courts of the conviction of any driver under § 5387(b) and has agreed to inform CPSD when it receives such information. CPSD will then conduct a follow-up investigation to determine whether the carrier involved was guilty of knowingly<sup>6</sup>

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<sup>6</sup> “CPSD recommends that “knowingly” include “should have known.” Every charter-party carrier is required by VC § 1808.1 and Part 5.02 of General Order 157-D to enroll in the DMV’s Employer Pull Notice System, a program for employers to monitor the records of drivers employed to drive certain types of vehicles, including buses operated by charter-party carriers. Before employing a driver, the prospective employer is required to obtain a report of the driver’s current driving record. Once a driver is employed, the employer receives, among other things, a notice of any action

*Footnote continued on next page*

employing a driver who did not hold the proper license. A CHP terminal bus safety inspection may also uncover this violation. The CHP will refer these matters to the Commission for revocation of the carrier's authority if it determines the carrier knowingly violated the law.

§ 5387(c)(1)(F) - Buses improperly registered with the DMV.

CPSD suggests that the meaning of the language "has one or more buses improperly registered with the Department of Motor Vehicles" is open to interpretation. Since the consequences of a violation of § 5387(1)(F) are so serious, CPSD does not believe that the Legislature intended to include every possible type of vehicle registration violation. The Legislature probably did not have in mind the late payment of registration renewal fees. The more likely intent was to include registration violations that involve fraud or which could potentially affect public safety. Examples might be when a carrier brings a bus from out of state to use in California operations, but fails to re-register the vehicle in California in an effort to avoid a CHP safety inspection, or similarly, the carrier designates a bus as "non-operational" with the DMV, but operates the vehicle on the public roadways nonetheless. CPSD indicates that since the CHP provided advice to AB 636's author, and it is the agency with statewide authority to enforce registration requirements for commercial vehicles, we should rely on the CHP's interpretation and judgment to determine when a registration violation is covered by § 5387(c)(1)(F). CPSD recommends that if CHP headquarters sends the Commission a report describing and documenting what the CHP states is a violation of § 5387(1)(F), the carrier's certificate or permit should be revoked.

CPSD believes that a carrier should not be revoked or barred from receiving operating authority on the basis of a citation until the citation is "final." In the case of an administrative citation issued by CPSD, the citation would be deemed

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taken by the DMV against the driver's license and a periodic report of the driver's record. A carrier that complies with the requirements of VC § 1808.1 should know whether a driver is qualified to operate a bus. CPSD believes that if a carrier's employment of an unqualified driver is due to the carrier's failure to comply with VC § 1808.1, the employment of that driver to operate a bus should constitute a violation of § 5387(c)(1)(E).

final when either (a) the carrier agrees in writing to comply with the citation, (b) the carrier does not respond to the citation as required, or (c) the Commission upholds the citation on appeal and the time provided in law to appeal the Commission's order has run. In the case of a citation issued by a peace officer, the citation would become final when the carrier is actually convicted of the violation and the time to appeal the conviction has run. A forfeiture of bail would be considered equivalent to a conviction (in which case there would be no appeal). If the carrier fails to appear in court as promised to answer the citation, the citation would be considered final for the purpose of invoking § 5387(c)(1).

CPSD will maintain a database of carriers and their principals that have been permanently revoked or are barred from being issued a certificate or permit. If CPSD's License Section receives an application for authority from a carrier, or an owner, officer or director of a carrier listed in the database, the applicant will be informed that it is barred from being issued a certificate or permit. The application and filing fee will be returned to the carrier.

### **Appeal Process**

§ 5387.3 requires the Commission to afford a speedy hearing to a carrier that has had its certificate or permit revoked or which has received a notice of refusal to issue a certificate or permit. If the carrier wishes to appeal a revocation or refusal to issue, it must request a hearing within 15 days after mailing of the notice. The Commission shall hold a hearing not more than 21 days after the request is received. The hearing officer may rescind the revocation or refusal to issue only if the carrier proves the action resulted from factual error and that it was not in violation of § 5387(c)(1).

CPSD and the ALJ Division have developed a suggested appeal process. Under the procedures proposed, to appeal an action the carrier would file a letter with the ALJ Appeals Coordinator and send a copy of the letter to the California Highway Patrol (required by § 5387.3) and the Director of CPSD. The appeal would need to include (1) a full explanation of the basis for the appeal and (2) copies of documents that demonstrate factual error caused the revocation or refusal to issue. Only appeals that are timely filed and meet these two requirements will be considered. An ALJ will be assigned as "hearing officer" to conduct a hearing within the 21 days prescribed by statute. After the hearing the ALJ will issue a ruling that either upholds or rescinds the revocation or refusal to issue.

**DISCUSSION**

We agree that delegation of authority to the Executive Director under these circumstances is appropriate. The Legislature clearly wants charter-party carriers that operate in a manner which jeopardizes public safety to be removed from the state's roadways as quickly as possible. Authorizing the Executive Director to revoke the operating authority of a carrier that violates § 5387(c)(1), and to deny the application for authority by a carrier or its principals who violate this section, is consistent with that intent. Accordingly, we will authorize the Executive Director to permanently revoke the certificate or permit of a charter-party carrier under any of the following circumstances:

- (1) The CHP's Enforcement and Planning Division headquarters sends CPSD a Safety Compliance Report completed by one of its motor carrier safety specialists that includes evidence of one of the following violations described in § 5387(c)(1): operations without a certificate or permit; operations during a safety suspension; or knowingly employing a driver who is not licensed to operate a bus.
- (2) The CHP's Enforcement and Planning Division headquarters reports a vehicle registration violation to CPSD which in the judgment of the CHP is a violation of 5387(c)(1)(F).
- (3) CPSD's investigation establishes conclusively that the carrier conducted operations as a charter-party carrier using a bus during a period when its certificate or permit was suspended at the recommendation of the CHP pursuant to § 5378.5.
- (4) CPSD receives a copy of a citation issued by a peace officer of the CHP or another law enforcement agency for one of the following violations described in § 5387(c)(1): operations without a certificate or permit; operations during a safety suspension; or operations during a liability insurance suspension when there was a lapse in coverage. The carrier must be convicted of the violation and the time provided in law to appeal the conviction must run before revocation occurs. A forfeiture of bail shall be equivalent to a conviction. The citation shall also serve as the basis for action under § 5387(c)(1) if the carrier fails to appear in court as promised to answer the citation.
- (5) CPSD issues an administrative citation to the carrier for a violation of § 5387(c)(1) involving operations without a certificate or permit or operations during the period when the carrier's certificate or permit was

suspended and there was a lapse in liability insurance coverage, and either (a) the carrier agrees in writing to comply with the citation, (b) the carrier does respond to the citation as required, or (c) the Commission upholds the citation on appeal and the time provided in law to appeal the Commission's order has run.

- (6) The carrier commits three or more liability insurance violations within a two-year period for which it is cited, and the citations were issued and resolved in the manner described in (4) or (5) above.
- (7) The DMV forwards information it received from a court that a driver has been convicted of driving a bus without holding a valid driver's license of the proper class with the required endorsement or certificate to drive a bus, and a follow-up investigation by CPSD determines that the charter-party carrier that employed the driver knew, or should have known, that the driver was unqualified to operate a bus.

We are aware that under the circumstances described in (1), (2), and (3), the carrier will not have had the opportunity for a formal appeal before a court or the Commission prior to the revocation. However, based on our longstanding relationship with the CHP's Enforcement Services Division (now the Enforcement and Planning Division),<sup>7</sup> we have every confidence that any Safety Compliance Report forwarded to CPSD will have undergone a thorough management review which confirmed a violation of § 5387(c)(1). In the case of a CPSD investigation of a carrier that operates during a CHP safety inspection, we expect CPSD to prepare a report containing the same type of evidence which in the past would have been used to support a fine or revocation under § 5378.5(e). In any event, the affected carrier will have the right to appeal the revocation and receive a speedy hearing at the Commission under § 5387.3.

We also will authorize the Executive Director to refuse to issue a certificate or permit to a charter-party carrier if any owner, officer, or director of that carrier was an owner, officer, or director of a carrier that either had its operating authority revoked or is barred from receiving a certificate or permit pursuant to § 5387(c)(1). Each notice of revocation or refusal to issue should explain to the carrier how it can appeal the action.

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<sup>7</sup> In January 2010 the Enforcement Services Division merged with the Planning and Analysis Division to create the Enforcement and Planning Division.

The appeal process outlined by CPSD and the ALJ Division is reasonable and appropriate. The Legislature has placed the burden of proof on the appellant carrier to show that it was not in violation of § 5387(c)(1) and empowers the “hearing officer” to rescind an action. These indicate a desire to have a streamlined appeal process. Accordingly, we anticipate the appeal hearing will be short and focused, especially since we will require that the carrier essentially present its case beforehand in its request for a hearing.

### **COMMENTS ON DRAFT RESOLUTION**

To comply with Pub. Util. Code § 311(g), CPSD commenced publication of a Daily Calendar notice on October 15, 2010, that apprised the public of the availability of this draft resolution and solicited submission of comments by November 4, 2010. A copy of the draft resolution was mailed to the California Highway Patrol, the California Bus Association, and the Greater California Livery Association. No comments were received.

### **FINDINGS**

1. The Commission regulates the operations and practices of charter-party carriers under the Passenger Charter-party Carriers’ Act.
2. AB 636 added § 5387(b) and (c) and § 5387.3 to the Pub. Util. Code effective January 1, 2010.
3. Paragraph (1) of § 5387(c) provides that the Commission shall permanently revoke the operating authority of a charter-party carrier, or the carrier shall be permanently barred from receiving a permit or certificate, if the carrier commits any of six named violations involving operations without authority, operations during an insurance or safety suspension, violation of liability insurance requirements, employment of a bus driver who does not hold a valid or appropriate class of driver’s license, or improper registration of one or more buses with the DMV.
4. Paragraph (2) of § 5387(c) provides that the Commission shall not issue a permit or certificate to a charter-party carrier if any owner, officer, or director of that carrier was an owner, officer, or director of a carrier that either had its authority revoked or is barred from receiving a charter-party carrier permit or certificate pursuant to paragraph (1) of § 5387(c).

5. The CHP is qualified to determine whether a carrier has violated § 5387(c)(1)(F) by having one or more buses “improperly registered with the Department of Motor Vehicles.”
6. CPSD recommends that the Executive Director be authorized to permanently revoke a charter-party certificate or permit upon CPSD’s receipt of evidence that the carrier has committed a violation described in § 5387(c)(1).
7. CPSD recommends that the Executive Director be authorized to refuse to issue, pursuant to § 5387(c)(2), a charter-party certificate or permit to a carrier when any officer, director, or owner of that carrier was an officer, director, or owner of a carrier that had its operating authority permanently revoked or is barred from receiving a certificate or permit under § 5387(c)(1). Any application and filing fee received should be returned to the carrier.
8. AB 636 added § 5387.3 to the Pub. Util. Code to provide that any carrier which had its operating authority permanently revoked under § 5387(c)(1) or was refused the issuance of operating authority under § 5387(c)(2) may file a written request for a hearing, which shall be filed within 15 days after mailing of the notice of revocation or refusal to issue.
9. Under a proposal of CPSD and the ALJ Division, each appeal would have to include (a) a full explanation of the basis for the appeal and (b) copies of documents that demonstrate factual error caused the revocation or refusal to issue. A copy of the appeal would be sent to the CHP and to the Director of CPSD. Any appeal that does not meet these requirements or is not timely filed would be rejected.
10. § 5387.3 requires the Commission to hold a hearing on an appeal within 21 days of receipt. The Commission may appoint a hearing officer to conduct the hearing.
11. Under § 5387.3 the hearing officer assigned to the appeal may rescind the revocation or refusal to issue only if the charter-party carrier proves that it was not in violation of Section 5387(c)(1) and that the revocation or refusal to issue resulted from factual error.
12. Any notice of a revocation or refusal to issue under this resolution should inform the carrier of the procedures to follow to appeal the action.

**THEREFORE, IT IS ORDERED** that:

1. The Executive Director is authorized to permanently revoke the certificate or permit of a charter-party carrier when evidence of a violation of Public Utilities (Pub. Util.) Code § 5387(c)(1) is received under any of the following circumstances:
  - (a) The Consumer Protection and Safety Division receives a Safety Compliance Report from the California Highway Patrol's Enforcement and Planning Division headquarters which includes evidence that the carrier has committed a violation described in Pub. Util. Code § 5387(c)(1)(A), (B), or (E), involving operations without a certificate or permit, operations during a safety suspension, or employment of a driver who the carrier knew, or should have known, was unqualified to operate a bus.
  - (b) The Consumer Protection and Safety Division receives a copy of a citation issued by a peace officer of the California Highway Patrol or another law enforcement agency for a violation described in Pub. Util. Code § 5387(c)(1)(A), (B), or (D), involving operations without a certificate or permit, operations during a safety suspension, or operations during a liability insurance suspension when there was a lapse in coverage. The carrier must be convicted of the violation and the time provided in law to appeal the conviction must run. A forfeiture of bail shall be equivalent to a conviction. Revocation shall also occur, or the carrier shall be barred from receiving a certificate or permit, if the carrier fails to appear in court as promised to answer the citation.
  - (c) The Consumer Protection and Safety Division issues an administrative citation to the carrier for a violation of Pub. Util. Code § 5387(c)(1)(A) or (D), involving operations without a certificate or permit, or operations during a liability insurance suspension when there was a lapse in insurance coverage, and either (a) the carrier agrees in writing to comply with the citation, (b) the carrier does not respond to the citation as required, or (c) the Commission upholds the citation on appeal and the time provided in law to appeal the Commission's order has run.
  - (d) A carrier commits three or more liability insurance violations within a two-year period, for which it is cited. Such violations may involve operating during a period of liability insurance suspension, insuring vehicles in an amount which is less than the amount prescribed by

General Order 115-F, or failing to notify the insurance company of every vehicle operated. The citations shall be issued and resolved in the manner described in (b) and (c) above.

- (e) An investigation by the Consumer Protection and Safety Division establishes conclusively that the carrier conducted operations as a charter-party carrier using a bus during a period when its certificate or permit was suspended pursuant to Pub. Util. Code § 5378.5.
  - (f) The Department of Motor Vehicles forwards information it received from a court that a driver has been convicted of driving a bus without holding a valid driver's license of the proper class with the required endorsement or certificate to drive a bus, and a follow-up investigation by the Consumer Protection and Safety Division determines that the charter-party carrier that employed the driver knew, or should have known, that the driver was unqualified to operate a bus.
  - (g) The Consumer Protection and Safety Division receives a report from the headquarters of the California Highway Patrol's Enforcement and Planning Division that documents a vehicle registration violation which in the judgment of the Patrol constitutes a violation of Pub. Util. Code § 5387(c)(1)(F).
2. The Executive Director is authorized to refuse to issue a certificate or permit to operate as a charter-party carrier if any officer, director, or owner of the carrier was an officer, director, or owner of a charter-party carrier that had its authority to operate permanently revoked or that was permanently barred from receiving a certificate or permit pursuant to Pub. Util. Code § 5387(c) (1). Any application and filing fee received shall be returned to the carrier.
  3. The notice that is sent to the charter-party carrier regarding a permanent revocation or refusal to issue under Ordering Paragraphs 1 and 2 shall inform the carrier how it may appeal the action.
  4. An appeal of a revocation or refusal to issue shall be filed within 15 days of mailing of the notice to the carrier. The letter of appeal shall be addressed to the Administrative Law Judge Division's Appeals Coordinator or electronically sent to ALJ Division Appeals Coordinator @cpuc.ca.gov, and a copy sent to the California Highway Patrol and the Director of the Consumer Protection and Safety Division. Appeals that are not timely filed shall be rejected. The appeal shall include (1) a full explanation of the basis for the

appeal and (2) copies of documents that demonstrate factual error caused the revocation or refusal to issue.

5. The Administrative Law Judge Division shall assign one of its judges to act as a hearing officer on the appeal. The hearing officer shall conduct a hearing within 21 days of receipt of the appeal.
6. After the hearing, and as expeditiously as possible, the hearing officer shall issue a ruling either rescinding or upholding the revocation or refusal to issue. The hearing officer may rescind the action only if the carrier proved at the hearing that the revocation or refusal to issue resulted from a factual error.
7. The hearing officer's ruling on the matter shall be the final order of the Commission.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on November 19, 2010. The following Commissioners voted favorably thereon:

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PAUL CLANON  
Executive Director

MICHAEL R. PEEVEY  
President  
DIAN M. GRUENEICH  
JOHN A. BOHN  
TIMOTHY ALAN SIMON  
NANCY E. RYAN  
Commissioners