



COMPLIANCE REVIEW REPORT

CALIFORNIA TRANSPORTATION COMMISSION

Compliance Review Unit
State Personnel Board
August 18, 2015

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INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authority's personnel practices in four areas: examinations, appointments, equal employment opportunity (EEO), and personal services contracts (PSC's) to ensure compliance with civil service laws and board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews. The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

The CRU conducted a routine compliance review of California Transportation Commission (CTC) personnel practices in the areas of examinations, appointments, and EEO from April 1, 2013, through March 31, 2014. The following table summarizes the compliance review findings.

Area	Finding	Severity
Examinations	Examinations Complied with Civil Service Laws and Board Rules	In Compliance
Appointments	Equal Employment Opportunity Questionnaires Were Not Separated from Applications	Very Serious
Equal Employment Opportunity	Equal Employment Opportunity Officer Does Not Monitor the Composition of Oral Panels in Departmental Exams	Very Serious

Area	Finding	Severity
Equal Employment Opportunity	A Disability Advisory Committee Has Not Been Established	Very Serious

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

BACKGROUND

The CTC is an independent public agency dedicated to ensuring a safe, financially sustainable, world-class multimodal transportation system that reduces congestion, improves the environment, and facilitates economic development through the efficient movement of people and goods.

The CTC consists of eleven voting members and two non-voting ex-officio members. Of the eleven voting members, nine are appointed by the Governor, one is appointed by the Senate Rules Committee, and one is appointed by the Speaker of the Assembly. The two ex-officio non-voting members are appointed from the State Senate and Assembly, usually the respective chairs of the transportation policy committee in each house.

The CTC is responsible for the programming and allocating of funds for the construction of highway, passenger rail, and transit improvements throughout California. The CTC, also advises and assists the Secretary of the California State Transportation Agency and the Legislature in formulating and evaluating state policies and plans for California's transportation programs. The CTC is also an active participant in the initiation and development of state and federal legislation that seeks to secure financial stability for the state's transportation needs.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing CTC examinations, appointments, and EEO program from April 1, 2013, through March 31, 2014. The primary objective of the review was to determine if the CTC personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action where deficiencies were identified.

Due to its small size, only a limited number of examinations and appointments were conducted during the compliance review period. Therefore, all of CTC's examinations and appointments were selected for review. The CRU examined the documentation that the CTC provided, which included examination plans, examination bulletins, job analyses, 511b's, scoring results, notice of personnel action forms, vacancy postings, application screening criteria, hiring interview rating criteria, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The review of the CTC EEO program included examining written EEO policies and procedures; the EEO officer's role, duties, and reporting relationship; the internal discrimination complaint process; the upward mobility program; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC). The CRU also interviewed appropriate CTC staff.

The CTC did not execute any PSC's during this review period. Therefore, the CRU did not review any contracts and there is no finding for the PSC's.

On August 06, 2015, an exit conference was held with the CTC to explain and discuss the CRU's initial findings and recommendations. The CTC was given until August 20, 2015, to submit a written response to the CRU's draft report. On August 12, 2015, the CRU received and carefully reviewed the response, which is attached to this final compliance report.

FINDINGS AND RECOMMENDATIONS

Examinations

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov.

Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931.) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application in the office of the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934.) Generally, the final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.) Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, the CTC conducted two examinations. The CRU reviewed both of these examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
Career Executive Assignment (CEA) 3 - Assistant Executive Director, California Transportation Commission	CEA	Qualification Appraisal Panel (QAP) ¹	5/17/2013	5
CEA 3 - Chief Deputy Director	CEA	Statement of Qualifications (SOQ) ²	4/16/2013	9

¹ The qualification appraisal panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.

² In a statement of qualifications (SOQ's) examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

FINDING NO. 1 – Examinations Complied with Civil Service Laws and Board Rules

The CTC administered two examinations to create eligible lists from which to make appointments. For all of the examinations, the CTC published and distributed examination bulletins containing the required information. Applications received by CTC were accepted prior to the final filing date and were thereafter properly assessed to determine whether applicants met the minimum qualifications (MQ's) for admittance to the examination. The CTC notified applicants as to whether they qualified to take the examination, and those applicants who met the MQ's were also notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. Competitors were then notified of their final scores.

The CRU found no deficiencies in the examinations that the CTC conducted during the compliance review period. Accordingly, the CTC fulfilled its responsibilities to administer these examinations in compliance with civil service laws and board rules.

Appointments

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) Appointments made from eligible lists, by way of transfer, or by way of reinstatement, must be made on the basis of merit and fitness, which requires consideration of each individual's job-related qualifications for a position, including his or her knowledge, skills, abilities, experience, and physical and mental fitness. (Cal. Code Regs., tit. 2, § 250, subd. (a).)

During the compliance review period, the CTC made five appointments. The CRU reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Senior Transportation Planner	Certification List	Permanent	Full Time	2

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
CEA 3 - Assistant Executive Director, California Transportation Commission	Information List	CEA	Full Time	1
CEA 3 - Chief Deputy Director	Information List	CEA	Full Time	1
CEA 3 - Assistant Executive Director, California Transportation Commission	Reinstatement	CEA	Full Time	1

FINDING NO. 2 - Equal Employment Opportunity Questionnaires Were Not Separated from Applications

Summary: For 32 of the 47 applications reviewed, EEO questionnaires were not separated from the STD 678 employment application.

Criteria: Government Code section 19704 makes it unlawful for a hiring department to require or permit any notation or entry to be made on any application indicating or in any way suggesting or pertaining to any protected category listed in Government Code section 12940, subdivision (a) (e.g., a person's race, religious creed, color, national origin, age, or sexual orientation). Applicants for employment in state civil service are asked to provide voluntarily ethnic data about themselves where such data is determined by the CalHR to be necessary to an assessment of the ethnic and sex fairness of the selection process and to the planning and monitoring of affirmative action efforts. (Gov. Code, § 19705.) The EEO questionnaire of the state application form (STD 678) states, "This questionnaire will be separated from the application prior to the examination and will not be used in any employment decisions."

Severity: Very Serious. The applicants' protected classes were visible, subjecting the agency to potential liability.

Cause: The CTC states that they did not have procedures in place to ensure removal of the EEO questionnaire portion (flap) from the STD. 678. The CTC saw no conflict with Government Code, section 19704 because these applications are only used for examination purposes.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CTC submit to the CRU a written corrective action plan that the department will implement to ensure conformity with in the future that EEO questionnaires are separated from all applications. Copies of any relevant documentation should be included with the plan.

Equal Employment Opportunity

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to equal employment opportunity; issue procedures for filing, processing, and resolving discrimination complaints; issue procedures for providing equal upward mobility and promotional opportunities; and cooperate with the California Department of Human Resources (CalHR) by providing access to all required files, documents and data. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795.) In a state agency with less than 500 employees, like the CTC, the EEO officer may be the personnel officer. (*Ibid.*)

Because the EEO Officer investigates and ensures proper handling of discrimination, sexual harassment and other employee complaints, the position requires separation from the regular chain of command, as well as regular and unencumbered access to the head of the organization.

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the

committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

The CRU reviewed the CTC's EEO program that was in effect during the compliance review period. In addition, the CRU interviewed appropriate CTC staff.

FINDING NO. 3 – Equal Employment Opportunity Officer Does Not Monitor the Composition of Oral Panels in Departmental Exams

Summary: The CTC's EEO officer does not monitor the composition of the oral panels for departmental exams.

Criteria: The EEO officer at each department must monitor the composition of oral panels during departmental examinations. (Gov. Code, § 19795, subd. (a))

Severity: Very Serious. Requiring the EEO Officer to monitor oral panels is intended to ensure protection against discrimination in the hiring process.

Cause: The CTC states that they had no documented process in place to demonstrate compliance.

Action: It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the CTC submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19795. Copies of any relevant documentation should be included in the plan.

FINDING NO. 4 – A Disability Advisory Committee Has Not Been Established

Summary: The CTC does not have an active Disability Advisory Committee.

Criteria: Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on

issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

Severity: Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency's ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

Cause: The CTC states that they have been unable to form a DAC due to the size of the department.

Action: The CTC must take immediate steps to ensure the establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. The CTC must submit to the CRU a written report of compliance, including the DAC roster, agenda, and meeting minutes, no later than 60 days from the date of the SPB's Executive Officer's approval of these findings and recommendations.

Personal Services Contracts

During the compliance review period, the CTC did not execute any PSC's. Therefore, the CRU did not review any PSC's.

DEPARTMENTAL RESPONSE

The CTC's response is attached as Attachment 1.

SPB REPLY

Based upon the CTC's written response, the CTC will comply with the CRU recommendations and findings and provide the CRU a corrective action plan.

It is further recommended that the CTC comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

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August 11, 2015

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SUBJECT: California Transportation Commission (CTC) Compliance Review Report Response

On August 6, 2015 an exit conference was held by the CTC and Caltrans to explain and discuss the Compliance Review Unit's initial findings and recommendations. Below are the responses to the State Personnel Board's Compliance Review Report for CTC.

Response to finding number 1:

Examinations complied with civil service laws and board rules.

Response to finding number 2:

The Commission will correct this finding by ensuring that when applications are submitted, a staff member (Office Technician) not part of the application review will separate and shred the questionnaires before providing applications to the panel for review.

Cause: The Commission did not have procedures in place to ensure removal of the EEO questionnaire portion (flap) from the STD. 678. The Commission saw no conflict with Government Code, Section 19704 because these applications are only used for examination purposes.

Response to finding number 3:

The EEO officer will implement a process to monitor the composition of oral panels during departmental examinations.

Cause: The Commission had no documented process in place to demonstrate compliance.

Response to finding number 4:

Given the size of the Commission, a Commission staff member will join the Caltrans Disability Advisory Committee (DAC) and report back to the head of the Commission on issues of concern to employees with disabilities.

Cause: The Commission has been unable to form a DAC due to the size of the department.

If you have questions or need additional information, please contact Rosemary Mejia at (916) 653-2128.

Sincerely,

A handwritten signature in blue ink that reads "Will Kempton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Will Kempton
Executive Director

Cc: Lydia Lewis, Chief
Department of Transportation, Human Resources