STATE PERSONNEL BOARD CALENDAR

APRIL 5-6, 2005

LOS ANGELES, CALIFORNIA

State of California

Memorandum

DATE: **March 25, 2005**

TO: ALL INTERESTED PARTIES

FROM: **STATE PERSONNEL BOARD** - Appeals Division

SUBJECT: Notice and Agenda for the **April 5-6, 2005,** meeting of the State Personnel Board.

PLEASE TAKE NOTICE that on April 5-6, 2005, the State Personnel Board will hold its regularly scheduled meeting. The meetings will be held in the Loker Conference Center, Room A in the Ahmanson Building of the **California Science Center**, Exposition Park, 700 State Drive, Los Angeles, California 90037.

The attached Agenda provides a brief description of each item to be considered and lists the date and approximate time for discussion of the item.

Also noted is whether the item will be considered in closed or public session. Closed sessions are closed to members of the public. All discussions held in public sessions are open to those interested in attending. Interested members of the public who wish to address the Board on a public session item may request the opportunity to do so.

Should you wish to obtain a copy of any of the items considered in the public sessions for the April 5-6, 2005, meeting, please contact staff in the Secretariat's Office, State Personnel Board, 801 Capitol Mall, MS 22, Sacramento, California 95814 or by calling (916) 653-0429 or TDD (916) 654-2360, or the Internet at:
http://www.spb.ca.gov/calendar.htm

Should you have any questions regarding this Notice and Agenda, please contact staff in the Secretariat's Office at the address or telephone numbers above.

WAYNE D. GROSS
Secretariat's Office

Attachment

CALIFORNIA STATE PERSONNEL BOARD
801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov
ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE PERSONNEL BOARD MEETING[1]
801 Capitol Mall
Sacramento, California

Public Session Location –
California Science Center
Exposition Park
700 State Drive
Los Angeles, California 90037

TWO-DAY FULL BOARD MEETING –APRIL 5-6, 2005

[1] Sign Language Interpreter will be provided for Board Meeting upon request - contact Secretariat at (916) 653-0429, or CALNET 453-0429, TDD (916) 654-2360.

TWO DAY FULL BOARD MEETING AGENDA[2]

DAY ONE – APRIL 5, 2005

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(10:00 a.m. – 10:30 a.m.)

1. ROLL CALL

2. REPORT OF THE EXECUTIVE OFFICER - Floyd D. Shimomura

3. REPORT ON THE PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

4. REPORT OF THE CHIEF COUNSEL - Elise Rose

5. NEW BUSINESS

6. REPORT ON LEGISLATION - Sherry Hicks

The Board may be asked to adopt a position with respect to the bills listed on the legislation memorandum attached hereto.

(10:30 a.m. - 10:45 a.m.)

CLOSED SESSION OF THE STATE PERSONNEL BOARD

7. DELIBERATION ON ADVERSE ACTION, DISCRIMINATION COMPLAINTS, AND OTHER PROPOSED DECISIONS SUBMITTED BY ADMINISTRATIVE LAW JUDGES

Deliberations on matters submitted at prior hearing; on proposed, rejected, remanded, and submitted decisions; petitions for rehearing; and other matters related to cases heard by Administrative Law Judges of the State Personnel Board or by the Board itself. [Government Code Sections 11126 (d), and 18653 (2).]

8. PENDING LITIGATION

Conference with legal counsel to confer with and receive advice regarding pending litigation when discussion in open session would be prejudicial**.** [Government Code sections 11126(e)(1) and 18653.]

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[2] The Agenda for the Board can be obtained at the following internet address: http://www.spb.ca.gov/calendar.htm

State Personnel Board v. Department of Personnel Administration,
California Supreme Court Case No. S119498.

State Personnel Board v. California State Employees Association,
California Supreme Court Case No. S122058.

Connerly v. State Personnel Board, California Supreme Court
Case No. S125502.

International Union of Operating Engineers v. State Personnel Board,
Public Employment Relations Board (PERB) Case No. SA-CE-1295-S.

State Compensation Ins. Fund v. State Personnel Board/CSEA,
Sacramento Superior Court No. 04CS00049.

9. RECOMMENDATIONS TO THE LEGISLATURE

Deliberations on recommendations to the legislature.
[Government Code section 18653.]

10. RECOMMENDATIONS TO THE GOVERNOR

Deliberations on recommendations to the Governor. [Government Code section 18653.]

(10:45 a.m. – 11:15 a.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

11. ORAL ARGUMENT

Oral argument in the matter of ERNEST J. DURAN, CASE NO. 04-0853A.
Appeal from demotion. Special Agent in Charge. Department of Justice.

(11:15 a.m. – 11:30 a.m.)

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(11:30 a.m. – 12:00 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

12. DISCUSSION OF COMING BOARD MEETING SCHEDULE OF APRIL 19, 2005, IN SACRAMENTO, CALIFORNIA

13. ADOPTION OF THE STATE PERSONNEL BOARD SUMMARY MINUTES

14. EVIDENTIARY CASES - (See Case Listing on pages 12-18)

15. NON-EVIDENTIARY CASES - (See Case Listing on pages 18 - 20)

(12:00 p.m. – 1:00 p.m.)

LUNCH

(1:00 p.m. – 2:30 p.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

16. PERFORMANCE MEASUREMENT –Denzil Verardo/Pete Williams/ Mary Fernandez

An informational session on the California performance review's (CPR) Strategic Planning and performance Measurement Initiative. This session will include a brief overview of the CPR Recommendation, a detailed presentation on Performance measurement, and a discussion on the State personnel Board's role.

(2:30 p.m. – onwards)

A D J O U R N M E N T

TWO DAY FULL BOARD MEETING AGENDA[3]

DAY TWO – APRIL 6, 2005

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

(9:00 a.m. - 9:05 a.m.)

1. ROLL CALL

(9:05 a.m. - 9:30 a.m.)

2. THE CALIFORNIA PERFORMANCE REVIEW (CPR) UPDATE – Floyd D. Shimomura

The CPR was established to examine executive branch reorganization, program performance assessment, budgeting, improved services and productivity, and acquisition reform.

(9:30 a.m. – 10:00 a.m.)

3. ORAL ARGUMENT

Oral argument in the matter of **ANTHONY VEGAS, CASE NO. 03-2204A.** Appeal from dismissal. Parole Agent 1 (Adult Parole). Department of Corrections – Stockton.

(10:00 a.m. – 10:30 a.m.)

4. NON-HEARING CALENDAR - (See Agenda – Page 9)

5. STAFF CALENDAR ITEMS FOR BOARD INFORMATION - (See Agenda - Page 9)

6. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY - (See Agenda - Pages 9 - 11)

7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS - (See Agenda - Page 11**)**

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[3] The Agenda for the Board can be obtained at the following internet address: http://www.spb.ca.gov/calendar.htm

8. WRITTEN STAFF REPORT FOR BOARD INFORMATION –
(See Agenda - Page 11)

9. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY –
(See Agenda - Page 11)

10. BOARD ACTIONS - (See Agenda – Page 8)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

11. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION - (See Agenda - Page 21**)**

(10:30 a.m. – 11:00 a.m.)

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(11:00 a.m. – 11:30 a.m.)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

12. PSC NO. 04-06 – CALIFORNIA REGIONAL WATER CONTROL BOARD AND THE CITY OF GLENDALE

Appeal of the California Regional Water Quality Control Board (RWQCB) from the Executive Officer's October 27, 2004 Disapproval of a Contract with the City of Glendale (Glendale) Reviewed at the Request of the California Association of Professional Scientists (CAPS).

(11:30 a.m. – 11:45 a.m.)

CLOSED SESSION OF THE STATE PERSONNEL BOARD

(11:45 p.m. – onwards)

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

ADJOURNMENT

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERELY), ETC.
Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

2. VOCATIONAL INSTRUCTOR (SAFETY)(VARIOUS SPECIALTIES)
Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002.)

3. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Hearing held March 4, 2003.)

4. HEARING - PSC #04-03
Appeal of the California State Employees Association from the Executive Officer's April 15, 2004, Approval of Master Contracts between the California Department of Corrections and Staffing Solutions, CliniStaff, Inc., Staff USA, Inc., CareerStaff Unlimited, MSI International, Inc., Access Medical Staffing & Service, Drug Consultants, Infinity Quality Services Corporation, Licensed Medical Staffing, Inc., Morgan Management Services, Inc., Asereth Medical Services, and PrideStaff dba Rx Relief. (Hearing held August 12, 2004.)

5. HEARING
Proposed new and revised State Personnel Board Regulations effecting equal opportunity, discrimination complaints and reasonable accommodation policies and procedures. (Hearing held July 7, 2004.)

6. HEARING - PSC #04-04
Appeal of the Secretary of State from the Executive Officer's October 15, 2004 disapproval of SOS's contract with Renne & Holtzman Public Law Group upon the review request submitted by the California Attorneys, Administrative Law Judge (Hearing held on March 9, 2005.)

4. NON-HEARING CALENDAR

The following proposals are made to the State Personnel Board by either the Board staff or Department of Personnel Administration staff. It is anticipated that the Board will act on these proposals without a hearing.

Anyone with concerns or opposition to any of these proposals should submit a written notice to the Executive Officer clearly stating the nature of the concern or opposition. Such notice should explain how the issue in dispute is a merit employment matter within the Board's scope of authority as set forth in the State Civil Service Act (Government Code section 18500 et seq.) and Article VII, California Constitution. Matters within the Board's scope of authority include, but are not limited to, personnel selection, employee status, discrimination and affirmative action. Matters outside the Board's scope of authority include, but are not limited to, compensation, employee benefits, position allocation, and organization structure. Such notice must be received not later than close of business on the Wednesday before the Board meeting at which the proposal is scheduled. Such notice from an exclusive bargaining representative will not be entertained after this deadline, provided the representative has received advance notice of the classification proposal pursuant to the applicable memorandum of understanding. In investigating matters outlined above, the Executive Officer shall act as the Board's authorized representative and recommend the Board either act on the proposals as submitted without a hearing or schedule the items for a hearing, including a staff recommendation on resolution of the merit issues in dispute.

NONE

5. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

NONE

6. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

This section of the Agenda serves to inform interested individuals and departments of proposed and approved CEA position actions.

The first section lists position actions that have been proposed and are currently under consideration.

Any parties having concerns with the merits of a proposed CEA position action should submit their concerns in writing to the Classification and Compensation Division of the Department of Personnel Administration, the Merit Employment and Technical Resources Division of the State Personnel Board, and the department proposing the action.

To assure adequate time to consider objections to a CEA position action, issues should be presented immediately upon receipt of the State Personnel Board Agenda in which the proposed position action is noticed as being under consideration, and generally no later than a week to ten days after its publication.

In cases where a merit issue has been raised regarding a proposed CEA position action and the dispute cannot be resolved, a hearing before the five-member Board may be scheduled. If no merit issues are raised regarding a proposed CEA position action, and it is approved by the State Personnel Board, the action becomes effective without further action by the Board.

The second section of this portion of the Agenda reports those position actions that have been approved. They are effective as of the date they were approved by the Executive Officer of the State Personnel Board.

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

DEPUTY DIRECTOR
The Department of Boating and Waterways proposes to allocate the above position to the CEA category. The Deputy Director formulates and implements department-wide policies affecting California's waterways.

PROGRAM MANAGER, OFFICE OF TECHNOLOGY RESOURCES, ENTERPRISE RESOURCE PLANNING PROGRAM
The Department of General Services proposes to allocate the above position to the CEA category. The Program Manager, Office of Technology Resources, Enterprise Resource Planning Program is responsible for providing leadership, project planning, and oversight for the statewide e-Procurement and Fleet Management initiatives.

CHIEF, APPLICATIONS DEVELOPMENT AND DATA CENTER DIVISION, INFORMATION TECHNOLOGY BRANCH
The California Public Employees' Retirement System (CalPERS) proposes to allocate the above position to the CEA category. The Chief, Applications Development and Data Center Division, Information Technology Services Branch oversees the activities of the Application Development and Support Section, and the Data Center, a full functioning computer facility, within the Application Development and Data Center Division.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

DEPUTY DIRECTOR, POLICY AND PROGRAM OPERATIONS
The Employment Development Department's (EDD) request on behalf of the Employment Training Panel (EPT) to allocate the above position to the CEA category has been approved effective February 24, 2005.

EXECUTIVE CONSOLIDATION OFFICER, CONSOLIDATION MANAGEMENT PROGRAM, CONSOLIDATION MANAGEMENT OFFICE
The Stephen P. Teale Data Center's request to allocate the above position (originally proposed to be titled Program Manager, Consolidation Management Office) to the CEA category has been approved effective February 24, 2005.

7. EMPLOYEE APPOINTMENTS, DISCIPLINARY MATTERS, & OTHER APPEALS

Deliberations to consider matter submitted at prior hearing. [Government Code sections 11126(d), 18653.]

8. WRITTEN STAFF REPORT FOR BOARD INFORMATION

9. PRESENTATION OF EMERGENCY ITEMS AS NECESSARY

10. BOARD ACTIONS - (See Agenda – Page 8)

These items have been taken under submission by the State Personnel Board at a prior meeting and may be before the Board for a vote at this meeting. This list does not include evidentiary cases, as those cases are listed separately by category on this agenda under Evidentiary Cases.

11. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION - (See Agenda - Page 22)

14. EVIDENTIARY CASES

The Board Administrative Law Judges conduct evidentiary hearings in appeals that include, but are not limited to, adverse actions, medical terminations, demotions, discrimination, reasonable accommodations, and whistleblower complaints.

A. BOARD CASES SUBMITTED

These items have been taken under submission by the State Personnel Board at a prior meeting. Cases that are before the Board for vote will be provided under separate cover.

(1) JOHN A. CRUZ, CASE NO. 04-1376A
Appeal from 60-calendar-days suspension
CLASSIFICATION: Automotive Equipment Operator I
DEPARTMENT: California Department of Veterans Affairs

(2) NESSLIN CRUZ, CASE NO. 03-1854A
Appeal from ten-work-days suspension
CLASSIFICATION: Employment Program Representative (Permanent/Intermittent)
DEPARTMENT: Employment Development Department

(3) HAJI JAMEEL, CASE NO. 04-0330A
Appeal from dismissal
CLASSIFICATION: Supervising Transportation Engineer
DEPARTMENT: California Public Utilities Commission

(4) JOE W. JORDAN, CASE NO. 04-0393A
Appeal from dismissal
CLASSIFICATION: Youth Correctional Counselor
DEPARTMENT: California Youth Authority

(5) SAMUEL SWEENEY, CASE NO. 04-0794A
Appeal from 20-calendar-days suspension
CLASSIFICATION: Correctional Officer
California Institution for Men – Chico
DEPARTMENT: Department of Corrections

B. CASES PENDING

ORAL ARGUMENTS

These cases are on calendar to be argued at this meeting or to be considered by the Board in closed session based on written arguments submitted by the parties.

(1) ERNEST J. DURAN, CASE NO. 04-0853A
Appeal from demotion
CLASSIFICATION: Special Agent in charge
DEPARTMENT: Department of Justice

(2) ANTHONY VEGAS, CASE NO. 03-2204A
Appeal from dismissal
CLASSIFICATION: Parole Agent 1 (Adult Parole)
DEPARTMENT: Department of Corrections - Stockton

C. CHIEF COUNSEL RESOLUTIONS

NONE

COURT REMANDS

This case has been remanded to the Board by the court for further Board action.

NONE

STIPULATIONS

These stipulations have been submitted to the Board for Board approval, pursuant to Government Code, section 18681.

NONE

D. ADMINISTRATIVE LAW JUDGE'S (ALJ) PROPOSED DECISIONS

PROPOSED DECISIONS

These are ALJ proposed decisions submitted to the Board for the first time.

(1) CHRISTOPHER ANTONIO, CASE NO. 04-1790
Appeal from dismissal
CLASSIFICATION: Foundation Driller
DEPARTMENT: Department of Transportation

(2) FRANK BRASWELL, CASE NO. 04-2459
Appeal from five percent reduction in salary for twelve months
CLASSIFICATION: Correctional Officer
DEPARTMENT: Department of Corrections

(3) GARY GARFINKLE, CASE NO. 98-3128R
Appeal from dismissal
CLASSIFICATION: Deputy Attorney General IV
DEPARTMENT: Department of Justice

(4) MARIANNE HAAS, CASE NO. 04-2624E
Appeal from denial of reasonable accommodation
CLASSIFICATION: Senior Vocational Rehabilitation Counselor
DEPARTMENT: Department of Rehabilitation

(5) MICHAEL MORGAN, CASE NO. 04-2147
Appeal from suspension for ten work days.
CLASSIFICATION: Lieutenant (CHP)
DEPARTMENT: Department of Highway Patrol

(6) JOE P. WEBER, CASE NO. 04-0365
Appeal from suspension for ten work days.
CLASSIFICATION: Transportation Engineering Technician
DEPARTMENT: Transportation Personnel, DSB

Proposed Decisions Taken Under Submission At Prior Meeting

These are ALJ proposed decisions taken under submission at a prior Board meeting, for lack of majority vote or other reason.

NONE

PROPOSED DECISIONS AFTER BOARD REMAND

NONE

PROPOSED DECISIONS AFTER SPB ARBITRATION

NONE

E. PETITIONS FOR REHEARING

ALJ PROPOSED DECISIONS ADOPTED BY THE BOARD

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a case already decided by the Board.

(1) ESTHER CHODAKIEWITZ, CASE NO. 04-1151EP
Appeal from denial of discrimination, retaliation, whistleblower complaint
CLASSIFICATION: Staff Psychiatrist, CF
DEPARTMENT: Department of Corrections

WHISTLEBLOWER NOTICE OF FINDINGS

The Board will vote to grant or deny a petition for rehearing filed by one or both parties, regarding a Notice of Findings issued by the Executive Officer under Government Code, section 19682 et seq. and Title 2, California Code of Regulations, section 56 et seq.

NONE

F. PENDING BOARD REVIEW

These cases are pending preparation of transcripts, briefs, or the setting of oral argument before the Board.

(1) JACOB ARIS, CASE NO. 04-1378E AND
NICHOLAS RUTHART, CASE NO. 04-1409E
Appeal from discrimination complaint
CLASSIFICATION: Employment Program Representatives
DEPARTMENT: Employment Development Department

Proposed decision rejected January 25, 2005
Transcripts ordered

(2) PATRICK BARBER, CASE NO. 04-0279
Appeal from dismissal
CLASSIFICATION: Youth Correctional Officer
DEPARTMENT: Department of Youth Authority

Decision adopted November 3, 2004
Modifying dismissal to 45-calendar day suspension
Petition for Rehearing granted February 8-9, 2005
Transcripts ordered

(3) DAVID BARTON, CASE NO. 04-1434
Appeal from dismissal
CLASSIFICATION: Associate Hazardous Materials Specialist
Wasco State Prison - Wasco
DEPARTMENT: Department of Corrections

Proposed decision rejected January 11, 2005
Transcripts received
Pending oral argument May 3-4, 2005, Sacramento

(4) CLETUS CURAH, CASE NO. 04-2146
Appeal from dismissal
CLASSIFICATION: Transportation Engineer
DEPARTMENT: Department of Transportation

Proposed decision rejected March 8-9, 2005
Pending transcripts

(5) ERNEST J. DURAN, CASE NO. 04-0853
Appeal from demotion
CLASSIFICATION: Special Agent in Charge
DEPARTMENT: Department of Justice

Proposed decision rejected January 11, 2005
Transcripts prepared
Pending oral argument April 5-6, 2005, Los Angeles

(6) CHAD LOOK, CASE NO. 04-1789
Appeal from 60-work-days suspension
Correctional Officer
CLASSIFICATION: Wasco State Prison – Wasco
DEPARTMENT: Department of Corrections

Proposed decision rejected January 11, 2005
Transcripts received
Pending oral argument May 3-4, 2005, Sacramento

(7) KIM RITTENHOUSE, CASE NOS. 03-3541A & 03-3542E
Appeal from denial of reasonable accommodation
and from constructive medical termination
CLASSIFICATION: Office Technician (General)
DEPARTMENT: Department of Fish and Game
Proposed decision rejected May 18, 2004

Pending transcripts

(8) DARYL STONE, CASE NO. 04-0279
Appeal from dismissal
CLASSIFICATION: Police Officer I
DEPARTMENT: Department of Developmental Services

Proposed decision rejected February 8, 2005
Proposed decision rejected on February 8, 2005
Transcripts ordered

(9) ANTHONY VEGAS, Case No. 03-2204A
Appeal from dismissal
CLASSIFICATION: Parole Agent I (Adult Parole)
DEPARTMENT: Department of Corrections - Stockton
Proposed decision rejected November 3, 2004

Transcripts ordered
Pending oral argument April 5-6, 2005, Los Angeles

(10) ANNA WONG, Case Nos. 04-1490P, 04-1490PA, 04-1490PD
Appeal from Whistleblower complaint
CLASSIFICATION: Public Health Microbiologist II
DEPARTMENT: Department of Health Services

Petition for rehearing granted March 22, 2005
Pending transcripts

15. NON-EVIDENTIARY CASES

A. WITHHOLD APPEALS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

WITHHOLD FROM CERTIFICATION
CASES HEARD BY A STAFF HEARING OFFICER

NONE

WITHHOLD FROM CERTIFICATION
CASES NOT HEARD BY A STAFF HEARING OFFICER

(1) PHILLIP BOONE, CASE NO. 04-1311
CLASSIFICATION: Correctional Officer
DEPARTMENT: Corrections
ISSUE: Suitability; firearm prohibition

(2) URSULA COBIA, CASE NO. 04-0542
CLASSIFICATION: Youth Correctional Officer
DEPARTMENT: Youth Authority
ISSUE: Suitability; furnished inaccurate information and omitted pertinent information during the selection process, failure to comply with legal obligations and negative employment record.

(3) ENRIQUE GARCIA, CASE NO. 04-1097
CLASSIFICATION: Correctional Officer
DEPARTMENT: Corrections
ISSUE: Suitability; furnished inaccurate information, and had negative driving and employment record.

(4) JANN GUTIERREZ, CASE NO. 04-1765
CLASSIFICATION: Correctional Officer
DEPARTMENT: Corrections
ISSUE: Suitability and furnished inaccurate information.

(5) JULIO MARTINEZ, CASE NO. 04-1823
CLASSIFICATION: Correctional Officer
DEPARTMENT: California Department of Corrections
ISSUE: Suitability; omitted pertinent information and furnished inaccurate information.

(6) JULIO MARTINEZ, CASE NO. 04-1744
CLASSIFICATION: Correctional Officer
DEPARTMENT: Corrections
ISSUE: Suitability; furnishing inaccurate information and negative law enforcement contacts.

(7) KARYN SOMERFIELD, CASE NO. 04-1989
CLASSIFICATION: Correctional Officer
DEPARTMENT: California Department of Corrections
ISSUE: Suitability; omitted pertinent information and furnished inaccurate information.

B. MEDICAL AND PSYCHOLOGICAL SCREENING APPEALS

Cases heard by a Staff Hearing Panel comprised of a managerial staff member of the State Personnel Board and a medical professional. The Board will be presented recommendations by a Hearing Panel on each appeal.

NONE

C. EXAMINATION APPEALS MINIMUM QUALIFICATIONS MERIT ISSUE COMPLAINTS

Cases heard by a Staff Hearing Officer, a managerial staff member of the State Personnel Board or investigated by Appeals Division staff. The Board will be presented recommendations by a Staff Hearing Officer or Appeals Division staff for final decision on each appeal.

EXAMINATION APPEALS

NONE

MINIMUM QUALIFICATIONS

NONE

MERIT ISSUE COMPLAINTS

NONE

D. RULE 211 APPEALS
RULE 212 OUT OF CLASS APPEALS
VOIDED APPOINTMENT APPEALS

Cases heard by a Staff Hearing Officer, or a managerial staff member of the State Personnel Board. The Board will be presented recommendations by a Staff Hearing Officer for final decision on each appeal.

NONE

E. REQUEST TO FILE CHARGES CASES

Investigated by Appeals Division staff. The Board will be presented recommendations by Appeals Division staff for final decision on each request.

NONE

PETITIONS FOR REHEARING CASES

(1) PATRICK COLOCHO, CASE NO. 03-3435P
CLASSIFICATION: Caltrans Equipment Operator II
DEPARTMENT: Department of Transportation
ISSUE: Whether SPB erred in determining appellant received disparate treatment and could be hired to the position prior to receiving confirmation of passing a drug/alcohol-screening test.

F. PSYCHOLOGICAL SCREENING CASES

Cases reviewed by Appeals Division staff, but no hearing was held. It is anticipated that the Board will act on these proposals without a hearing.

NONE

NOTICE OF GOVERNMENT CODE SECTION 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE SECTION 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code section 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

CALIFORNIA STATE PERSONNEL BOARD
801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov
ARNOLD SCHWARZENEGGER, Gov

(Cal. 4/5-6/05)

TO: Members
State Personnel Board

FROM: State Personnel Board - Legislative Office

SUBJECT: LEGISLATION

The status of major legislation being followed for impact on Board programs and the general administration of the State Civil Service Merit System is detailed in the attached report.

Any legislative action that takes place after the printing of this report, which requires discussion with the Board, will be covered during the Board meeting.

Please contact me directly should you have any questions or comments regarding this report. I can be reached at (916) 653-0453.

Sherry Hicks

Sherry Hicks
Director of Legislation

Attachment

STATE PERSONNEL BOARD LEGISLATIVE TRACKING REPORT 2005-06 SESSION

Status as of March 21, 2005

ASSEMBLY/SENATE BILLS
(Tracking)

BILL/ AUTHOR	BOARD POSITION	SUBJECT	STATUS OF BILL
AB 38 (Tran)	**OPPOSE**	AB 38 proposes suspending the salaries of specific state board and commission members for the fiscal years 2005 through 2009. The State Personnel Board is one of those boards that would not receive salaries for those fiscal years.	Assembly Business and Professions Committee
AB 53 (Negrete McLeod)		This bill would declare the Legislature's intent to build upon efforts to, eliminate governmental waste and inefficiency, consolidate 5 separate state agencies into a single entity with specified responsibilities, create an Office of Management and Budget with responsibility for the state's fiscal affairs, personnel management, and procurement systems, and consolidate the Teale Data Center and the Health and Human Services Data Center.	Not assigned to Committee
AB 94 (Haynes)	**NEUTRAL**	Among other things, this bill would require various state agencies to prepare and provide a report to the Senate Committee on Rules, the Assembly Committee on Rules, and to each member of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget on the financial activities of the agency, board, commission, department, or office for the 2000-01, 2001-02, 2002-03, 2003-04 and 2004-05 fiscal years no later than January 15, 2006, and for each subsequent fiscal year by January 15 of the following year.	Assembly Business and Professions Committee

AB 124 (Dymally)	**SUPPORT**	This bill would repeal requirements to annually establish employment goals and timetables based on race or gender that were invalidated by the California Court of Appeal in *Connerly v. State Personnel Board*, and re-title Chapter 12 of Part 2, Division 5, Title 2 of the Government Code from "Affirmative Action Program" to "State Equal Employment Opportunity Program". In addition, it would strengthen equal employment opportunity requirements.	From Assembly PERSS Committee to Appropriations (SPB Sponsored)
AB 194 (Dymally)		The Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend. This bill would remove the requirement that the legislative body be allowed to cure or correct an alleged violation prior to commencement of a legal action and would remove provisions that preclude specified actions from being determined to be null and void.	Assembly Committee on Local Government
AB 195 (Dymally)		This bill would expand the remedies available to individuals who file discrimination complaints with the State Personnel Board by authorizing the State Personnel Board to award reasonable attorney's fees and costs, including expert witness fees.	From Assembly Judiciary Committee to Appropriations
AB 277 (Mountjoy)	**SUPPORT**	This bill also would authorize the Board of Administration of the Public Employees' Retirement System to hold closed sessions when considering matters relating to the development of rates and competitive strategy for long-term care insurance plans.	Assembly PERSS Committee AND Government Organization Committee
AB 297 (Yee)	**SUPPORT**	This bill would specify that a current patient of a facility operated by the State Department of Mental Health may not file these charges against a state employee.	Assembly PERSS Committee (SPB Sponsored)

AB 219 (Nakanishi)		This bill would require all state departments, commissions, or other agencies to submit an electronic copy of each publication issued to the State Library. It would require the State Library to create and maintain a Web site that includes a monthly or quarterly list of each state publication issued during the immediately preceding month or quarter and that provides access to an electronic copy of each publication. It would provide that if a copy of a state publication is available on the State Library Web site, it shall be deemed distributed in compliance with specified redistribution requirements.	Assembly Business and Professions Committee
AB 529 (Goldberg)		This bill would authorize an employee who alleges that the trustees have not complied with this requirement with respect to his or her situation to request a hearing by the State Personnel Board. The bill would authorize the State Personnel Board to render a decision to determine whether the trustees have complied with the pertinent requirements in that instance. This bill contains other related provisions and other existing laws.	Assembly Higher Education
AB 708 (Karnette)		This bill would require the California State University to employ an independent investigator on all complaints. This bill contains other existing laws.	Assembly PERSS Committee
AB 775 (Yee)		This bill would prohibit any state or local governmental agency, or any public or private agency, organization, entity, or program that receives state funding, from using any child, or permitting any child to be used, as an interpreter, as defined, in any hospital, clinic, or physician office in the context of diagnosis and treatment, except as specified. The bill would require each such agency, organization, entity, or program that receives state funding to have in place, and available for inspection, an established procedure for providing competent interpretation services that does not involve the use of children, as defined, in this manner. This bill contains other related provisions and other existing laws.	Assembly Business and Professions Committee
AB 836 (Huff)		This bill would require that these budgets utilize a zero-based budget method, as defined.	Assembly Budget Committee

AB 1066 (Horton, Jerome)		This bill would add the condition that a state agency may not submit a proposed contract for review if that state agency, in the preceding 12 month period, submitted a contract for the same services to be performed by the same contractor for which the State Personnel Board made a determination that the contract did not satisfy the specified conditions for a personal service contract. This bill would provide that all personal services contracts are of no force and effect until approved by the State Personnel Board, as provided. This bill contains other related provisions.	Assembly PERSS Committee
SB 163 (Scott)		This bill would require a pharmaceutical company entering into a contract with an agency of the state to disclose the percentage of its operating budget that is expended on marketing purposes. The bill would prohibit a state department or agency from entering into a contract with a pharmaceutical company in the absence of that disclosure	Assembly Judiciary Committee
SB 165 (Speier)		This bill would create the Office of the Special Counsel (OSC) as a separate branch of the State Personnel Board (Board), to protect state employees and applicants for state employment who have been retaliated against as a result of their having made protected disclosures under the Whistleblower Protection Act (Government Code section 8547 *et seq*.).	Senate Committee on Government Modernization, Efficiency, and Accountability
SB 1083 (Ackerman)		This bill would provide that the California Medical Assistance Commission shall be reimbursed at the annual salary of members of the State Personnel Board.	Senate Committee on Health
SB 1095 (Chesbro)		This bill would authorize the Director of the California Conservation Corps to to make limited-term (LT) appointments, beyond the current 2 years, to up to 4 years without SPB approval.	Senate Committee on Government Modernization, Efficiency, and Accountability

CALIFORNIA STATE PERSONNEL BOARD
ARNOLD SCHWARZENEGGER, Governor
801 Capitol Mall • Sacramento, California 95814 • www.spb.ca.gov

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MEMORANDUM

Date: March 9, 2005

To: Members of the State Personnel Board

From: Dorothy Bacskai Egel, Senior Staff Counsel
State Personnel Board

Reviewed: Elise S. Rose, Chief Counsel
State Personnel Board

Subject: PSC No.04-06: Appeal of the California Regional Water Quality Control Board from the Executive Officer's October 27, 2004 Disapproval of a Contract with the City of Glendale (Glendale) Reviewed at the Request of the California Association of Professional Scientists (CAPS)

REASON FOR HEARING

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) has appealed to the State Personnel Board (SPB or Board) from the Executive Officer's decision dated October 27, 2004 disapproving a memorandum of understanding (MOU) with the City of Glendale reviewed at the request of the California Association of Professional Scientists (CAPS). (A copy of the Executive Officer's decision is attached hereto as Attachment 1.)

BACKGROUND

The Regional Board provides regulatory oversight and direction for the investigation, monitoring and remediation of soil and/or groundwater contamination within the San Fernando Valley Superfund Program. During the period of late 2003 – early 2004, the Regional Board determined that it needed additional staff support to perform this work. At the time, the Regional Board was faced with the state's hiring freeze and budget reductions that prevented it from hiring any more staff. On February 11, 2004, the Regional Board entered into a MOU with the City of Glendale, on behalf of the Cities of Burbank, Glendale and Los Angeles (Cities), in which the Cities agreed to provide an employee of a private contractor, CH2MHill, to perform technical and administrative support to the Regional Board for the identification and evaluation of suspected hexavelent chromium sites in the area. Under the terms of the MOU, the services of the CH2MHill employee were to be provided by the Cities at no charge to the Regional Board.

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PROCEDURAL HISTORY

By letter dated July 14, 2004, CAPS asked SPB to review the MOU for compliance with Government Code § 19130.

On September 8, 2004, the Regional Board submitted its response to CAPS's review request.

On September 17, 2004, CAPS submitted its reply.

On October 27, 2004, the Executive Officer issued his decision disapproving the MOU. (Attachment 1)

APPEAL BRIEFS

On December 1, 2004, the Regional Board appealed to the Board from the Executive Officer's decision.

The Regional Board filed its opening brief dated January 14, 2005. (Attachment 2)

CAPS filed its response dated January 31, 2005. (Attachment 3)

The Regional Board filed its reply dated February 7, 2005. (Attachment 4)

ISSUE

This matter presents the following issues for the Board's review:

1. Does the Board have jurisdiction to review a memorandum of understanding between three cities and a state agency for the provision of services by a private entity at no cost to the state?

2. If so, is the MOU is justified under Government Code section 19130(a), 19130(b), or any other statute.

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SUMMARY OF POSITIONS

The parties' full arguments on these issues are contained in the Attachments and the Board's file. Set forth below is a summary of their arguments.

SPB's Jurisdiction

Government Code section 19132 provides:

> The State Personnel Board, at the request of an employee organization that represents state employees, shall review the adequacy of any proposed or executed contract which is of a type enumerated in subdivision (b) of Section 19130. The review shall be conducted in accordance with subdivision (c) of Section 10337 of the Public Contract Code.

Government Code section 19130(a) authorizes a state agency to enter into personal services contracts to achieve cost savings when all of the statutorily-specified conditions are met. Government Code section 19131 requires a state agency proposing to enter into a cost-savings contract under section 19130(a) to notify the Board of its intention to do so, and requires the Board to give employee organizations a reasonable opportunity to comment on the proposed contract.

Government Code section 19130(b)(2) authorizes a state agency to enter into a personal services contract with a private contractor when:

> The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

Government Code section 19130(b)(8) authorizes a state agency to enter into a personal services contract with a private contractor when:

> The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

Government Code section 19130(b)(10) authorizes a state agency to enter into a personal services contract with a private contractor when:

> The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

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The Regional Board's Position

The Regional Board asserts that decision of the Executive Officer should be reversed for the following reasons:

1. The constitutional prohibition against contracting out does not apply where the state agency is essentially a third-party beneficiary to a contract between the Cities and a private firm. The MOU simply confirms a commitment by three cities to provide technical/administrative staff support services to the Regional Board, without payment of any state funds, in an attempt to forestall impending contamination of their domestic drinking water systems and resultant adverse health effects on their residents. Thus, the constitutional prohibition against contracting out does not apply.

2. Water Code section 13304(b)(2) and (4) (exempting specified contracts from Department of General Services approval) and Public Contract Code section 10335(a) (exempting contracts between the state and a local agency from the provisions of the Public Contract Code) exempt the MOU from the Board's scrutiny.

3. The MOU is covered by the exemptions set forth in Government Code sections 19130(a) in that the services provided at no cost to the state qualify as cost savings under section 19130(a).

4. The services provided under the MOU constitute a new state function within the meaning of Government Code section 19130(b)(2) in that the MOU is a demonstration project by the Regional Board with three cities whose domestic drinking water systems are under assault by potentially deadly contaminants.

5. The MOU is justified under Government Code section 19130(b)(8) because that the contractor is providing services that cannot feasibly be provided by the Regional Board due to hiring freeze and budget restraints.

6. The MOU is justified under Government Code section 19130(b)(10) because, given the impending threat of contamination of the cities' drinking water, the services are of an urgent nature.

In its briefing before Executive Officer, the Regional Board asserted only that the contract was justified under Government Code sections 19130(a)(3) and 19130(b)(8).

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CAPS's Position

CAPS asserts that the decision of the Executive Officer should be sustained for the following reasons:

1. The Regional Board does not dispute that the regulatory and oversight work called for in the MOU is routine work that can be adequately and competently performed by state Environmental Scientists, but entered into the MOU only because of an apparent staffing shortage. The Regional Board took no steps to justify the contract under either Government Code section 19130(a) or (b).

2. The Executive Officer correctly determined that the MOU is not justified under Government Code section 19130(a) because the Regional Board did not enter into the contract as a cost-savings contract. The Regional Board did not comply with the provisions for a cost-savings contract, including notification of the Board pursuant to Government Code section 19131.

3. The Executive Officer correctly determined that the fact that the Regional Board may not currently employ enough civil service employees to perform all the necessary work does not justify contracting out under Government Code section 19130(b)(8).

4. The contract under which an employee of a private contractor is assigned to perform work on identification and evaluation of suspected hexavelent chromium sites within the jurisdiction of the Regional Board is a personal services contract covered by article VII.

5. The contract is not for a new state function, but for work that is the same as that performed by Environmental Scientists employed by the state. Thus, it is not authorized under Government Code section 19130(b)(2).

6. The fact that the state may not currently have enough personnel is insufficient to justify the contract under Government Code section 19130(b)(8).

7. The record does not support the Regional Board’s contention that the services are of such an urgent, temporary or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose. The Regional Board has provided no analysis of whether it could perform the work utilizing civil service employees. Thus, the contract is not authorized under Government Code section 19130(b)(10).

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Executive Officer's Decision

In his October 27, 2004 decision, the Executive Officer determined that the MOU should be disapproved for the following reasons:

1. The Board has jurisdiction to review the MOU only to determine whether it is authorized under Government Code section 19130, and has no jurisdiction to determine whether it may also be independently authorized under the California Water Code.

2. Because the Regional Board did not enter into the MOU as a cost-savings contract, Government Code section 19130, subdivision (a)(3), is not applicable.

3. The state's hiring freeze and the fact that the Regional Board may not currently have the authority to hire additional staff does not provide sufficient justification to authorize the MOU under Government Code section 19130, subdivision (b)(8). The personal services of a CH2MHill employee that have been contracted in this matter are the typical regulatory and oversight functions that state employees of the Regional Board have historically and customarily performed and can perform adequately and competently. The fact that the Cities, instead of the Regional Board, are contracting directly with CH2MHill and are paying for CH2MHill's services as part of their remediation obligations does not change the fact that the regulatory and oversight functions ordinarily performed by the Regional Board's civil service employees are being contracted to a private contractor without adequate justification. The Regional Board cannot use the unique contracting arrangements it has entered into to circumvent the requirements of Government Code section 19130 and the state's civil service mandate.

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[PSC 04-06 Board Item]

ATTACHMENTS FOR THE HEARING ITEMS ARE AVAILABLE UPON REQUEST BY CONTACTING THE SECRETARIAT OFFICE AT: (916) 653-0429 OR TDD (916) 654-2360