



COMPLIANCE REVIEW REPORT

CALIFORNIA HIGH SPEED RAIL AUTHORITY

Compliance Review Unit
State Personnel Board
October 7, 2016

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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 five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training 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 High Speed Rail Authority (HSRA) personnel practices in the areas of examinations, appointments, EEO, and PSC's from June 1, 2015, through February 29, 2016, and mandated training from April 1, 2014, through April 1, 2016. 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 Program Complied with Civil Service Laws and Board Rules	In Compliance

Area	Finding	Severity
Personal Services Contracts	Personal Services Contracts Complied with Procedural Requirements	In Compliance
Mandated Training	Mandated Training Complied with Statutory Requirements	In Compliance

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 HSRA is responsible for planning, designing, building, and operation of the first high-speed rail system in the nation. California high-speed rail will connect the mega-regions of the state, contribute to economic development and a cleaner environment, create jobs, and preserve agricultural and protected lands. By 2029, the system will run from San Francisco to the Los Angeles basin in under three hours at speeds capable of over 200 miles per hour. The system will eventually extend to Sacramento and San Diego, totaling 800 miles with up to 24 stations. In addition, the HSRA is working with regional partners to implement a statewide rail modernization plan that will invest billions of dollars in local and regional rail lines to meet the state's 21st century transportation needs. The HSRA currently has 219 authorized positions and four offices that are located in Sacramento, San Jose, Fresno, and Los Angeles.

SCOPE AND METHODOLOGY

The scope of the compliance review was limited to reviewing HSRA examinations, appointments, EEO program, and PSC's from June 1, 2015, through February 29, 2016, and mandated training from April 1, 2014, through April 1, 2016. The primary objective of the review was to determine if HSRA personnel practices, policies, and procedures complied with state civil service laws and board regulations, and to recommend corrective action for those deficiencies identified.

A cross-section of the HSRA examinations and appointments were selected to ensure that samples of various examinations and appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the HSRA provided, which

included examination bulletins, 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 HSRA 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 HSRA's PSC's were also reviewed.¹ It was beyond the scope of the compliance review to make conclusions as to whether HSRA justifications for the contracts were legally sufficient. The review was limited to whether HSRA practices, policies, and procedures relative to PSC's complied with procedural requirements.

In addition, the HSRA's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, and that all supervisors were provided basic supervisory and sexual harassment prevention training within statutory timelines.

On September 2, 2016, an exit conference was held with the HSRA to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed HSRA's written response on September 28, 2016, 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

¹ If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

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 HSRA conducted 18 examinations, 15 of which were administered through California Department of Human Resources (CalHR). The CRU reviewed the remaining three examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Applications
CEA B, Assistant Chief Financial Officer	Career Executive Assignment (CEA)	State of Qualifications (SOQ) ²	Until Filled	10
CEA B, Chief Auditor	CEA	SOQ	9/11/2015	13
CEA B, Chief Information Officer	CEA	SOQ	Until Filled	25

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

The HSRA administered three CEA examinations in order to create eligible and information lists from which to make appointments, respectively. For the three CEA examinations, the HSRA published and distributed examination bulletins containing required information. Applications and SOQ's were received by the HSRA and were thereafter properly assessed to determine applicant ranks from one to six.

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.

The CRU found no deficiencies in the examinations that the HSRA conducted during the compliance review period. Accordingly, the HSRA fulfilled its responsibilities to administer those 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.) Except as provided by law, appointments to vacant positions shall be made from employment lists. (*Ibid.*) 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 HSRA made 69 appointments. The CRU reviewed 24 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Accountant Trainee	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	4
Associate Personnel Analyst	Certification List	Permanent	Full Time	1
Attorney III	Certification List	Permanent	Full Time	1
Attorney IV	Certification List	Permanent	Full Time	1
Executive Assistant	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	1
Senior Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appointments
Senior Personnel Specialist	Certification List	Permanent	Full Time	1
Senior Transportation Engineer, CalTrans	Certification List	Permanent	Full Time	2
Staff Services Analyst	Certification List	Permanent	Full Time	1
System Software Specialist III	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Permissive Reinstatement	Permanent	Full Time	1
Associate Management Auditor	Retired Annuitant	Temporary	Intermittent	1
Accounting Officer (Specialist)	Transfer	Permanent	Full Time	1
Administrative Assistant II	Transfer	Permanent	Full Time	1
Office Technician (Typing)	Transfer	Permanent	Full Time	1
Senior Transportation Engineer, Caltrans	Transfer	Permanent	Full Time	3

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

Summary: Out of 24 appointments reviewed, six appointment files included applications where EEO questionnaires were not separated from the STD 678 employment application. Specifically, fifteen of the 894 applications reviewed included EEO questionnaires that 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 HRSA states that the error rate was a result of human error, and not a procedural issue.

Action: The HRSA has submitted a corrective action plan for ensuring EEO questionnaires are separated from the STD 678 employment applications; therefore, no further action is required at this time.

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 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.)

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. In a state agency with less than 500 employees, like the HRSA, the EEO Officer may be the Personnel Officer.

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 HSRA's EEO program that was in effect during the compliance review period.

FINDING NO. 3 – Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the HSRA EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Chief Executive Officer of the HSRA. In addition, the HSRA has an established DAC that reports to the Chief Executive Officer on issues affecting persons with a disability. The HSRA also provided evidence of its efforts to promote EEO in its hiring and employment practices, to increase its hiring of persons with a disability, and to offer upward mobility opportunities for its entry-level staff.

Personal Services Contracts

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the State. (Cal. Code Reg., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state's authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC's achieve cost savings for the state. PSC's that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC's, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the compliance review period, the HSRA had 63 PSC's that were in effect and subject to the Department of General Services (DGS) approval, and thus the CRU procedural review. The CRU reviewed eight of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified
Baker and Miller, PLLC	Legal Services	9/28/15 - 7/31/17	\$2,000,000	Yes
Mayer Brown, LLP	Legal Services	11/17/15 - 11/14/17	\$3,000,000	Yes
Peninsula Corridor Joint Powers Board	Operate Commuter Rail	1/7/16 - 6/30/18	\$1,000,000	Yes
Project Finance Advisory Limited	Reporting for CA Streets & Hwy Code	12/18/15 - 10/10/17	\$4,000,000	Yes
Rutan & Tucker, LLP	Legal Services	8/13/15 - 7/31/17	\$3,000,000	Yes
San Joaquin Valley Railroad Co.	Railroad Design Drawing Review	8/28/15 - 6/30/20	\$5,000,000	Yes
SJ Valley Unified Air Pollution Control District	Offset Air Pollution – Environmental	1/13/16 - 7/31/28	\$10,806,923	Yes
U.S. Fish & Wildlife Services	Environmental Services	10/1/15 - 9/30/17	\$1,291,383	Yes

FINDING NO. 4 – Personal Services Contracts Complied with Procedural Requirements

When a state agency requests approval from the DGS for a subdivision (b) contract, the agency must include with its contract transmittal a written justification that includes specific and detailed factual information that demonstrates how the contract meets one or more conditions specified in Government Code section 19131, subdivision (b). (Cal. Code Reg., tit. 2, § 547.60.)

The total dollar amount of all the PSC's reviewed was \$30,098,306. It was beyond the scope of the review to make conclusions as to whether HSRA justifications for the

contracts were legally sufficient. The HSRA provided specific and detailed factual information in the written justifications as to how the contracts met at least one condition set forth in Government Code section 19131, subdivision (b). Accordingly, the HSRA PSC's complied with procedural requirements.

Mandated Training

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as "filers") because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§ 11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a), (b), & (c), & 19995.4, subd. (b).) The training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

Within 12 months of the initial appointment of an employee to a management or CEA position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, §§ 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biannual basis. (*Ibid.*)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters

as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the HSRA's mandated training program that was in effect during the compliance review period.

FINDING NO. 5 – Mandated Training Complied with Statutory Requirements

The HSRA provided ethics training to its 72 new filers within six months of appointment and semiannual ethics training to its 47 existing filers during the two-year calendar year period commencing in 2014. The HSRA also provided supervisory training to its 18 new supervisors within 12 months of appointment. In addition, the HSRA provided sexual harassment prevention training its 36 new supervisors within 6 months of appointment and semiannual sexual harassment prevention training to its existing 21 supervisors. Thus, the HSRA complied with mandated training requirements within statutory timelines.

DEPARTMENTAL RESPONSE

The HSRA's response is attached as Attachment 1.

SPB REPLY

Based upon the HSRA's written response, the HSRA will comply with the CRU recommendations and findings. The HSRA submitted a corrective action plan for the one departmental finding that was out of compliance.

It is further recommended that the HSRA 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.



September 29, 2016

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Suzanne Ambrose
Executive Officer
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814

Dear Ms. Ambrose:

The High-Speed Rail Authority (Authority) appreciates the opportunity to review and provide a response to the Compliance Review Report. The Authority is fully committed to complying with all statutory and regulatory requirements. We provide the following response to the one finding, including the cause of the noted deficiency and the actions taken to address the issue.

Finding #2: Equal Employment Opportunity (EEO) questionnaires were not separated from applications:

Response: The Authority acknowledges and understands the importance of separating the EEO questionnaires from the STD 678s before distributing the STD 678s to hiring managers. In fact, the Authority's Human Resources Procedural Manual requires that very action. We believe the error rate was the result of human error and not a procedural issue.

On August 23, 2016, a reminder was sent to the two employees who are responsible for separating the EEO questionnaires from the STD 678s, stressing the importance of this responsibility. These employees have been instructed to check each application twice before providing them to the hiring managers to ensure that this has been completed. In addition, the Human Resources Manager has been tasked with monitoring this process more closely. Our Hiring Manual is also being revised to instruct hiring managers that if they receive any EEO questionnaires with the STD 678s, to immediately remove and return them to the Human Resources Branch.

Please note that responses were not required for findings 1, 3, 4 and 5, since the Authority was determined to be in compliance with those areas.

If you have any questions, please feel free to contact me at deborah.harper@hsr.ca.gov or (916) 669-6555.

Sincerely,


Deborah Harper
Chief Administrative Officer

EDMUND G. BROWN JR.
GOVERNOR

