

**BOARD RESOLUTION ADOPTING THE COMPLIANCE REVIEW REPORT AND  
FINDINGS BY THE SPB COMPLIANCE REVIEW DIVISION OF  
THE CALIFORNIA TRANSPORTATION COMMISSION**

**WHEREAS**, the State Personnel Board (SPB or Board) at its duly noticed meeting of December 5, 2013, carefully reviewed and considered the attached Compliance Review Report of the California Transportation Commission submitted by SPB's Compliance Review Division.

**WHEREAS**, the Report was prepared following a baseline review of the California Transportation Commission's personnel practices. It details the background, scope, and methodology of the review, and the findings and recommendations.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board hereby adopts the Report, including all findings and recommendations contained therein. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.



SUZANNE M. AMBROSE  
Executive Officer



## COMPLIANCE REVIEW REPORT CALIFORNIA TRANSPORTATION COMMISSION FINDINGS AND RECOMMENDATIONS NOVEMBER 26, 2013

### Appointments

During the compliance review period, California Transportation Commission (CATC) made 14 appointments. The SPB reviewed all of those appointments, which are listed below:

Classification	Appointment Type	Number
Assistant Chief Counsel	Intermittent	1
Senior Transportation Engineer	Intermittent	1
Assistant Executive Director, CATC	List	1
Associate Governmental Program Analyst	List	2
Administrative Assistant	Mandatory Reinstatement	2
Associate Transportation Planner	Transfer	1
Staff Services Analyst	Transfer	4
Staff Services Manager I	Transfer	1
Supervising Transportation Planner	Transfer	1

### **FINDING NO. 1 – CATC Properly Complied With Civil Service Laws And Board Rules For All Appointments Made During The Compliance Review Period**

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).)

"A transfer of an employee from a position under one appointing power to a position under another appointing power may be made, if the transfer is to a position in the same class or in another class with substantially the same salary range and designated as appropriate by the executive officer." (Cal. Code Reg., tit. 2, § 425.)

A state agency or department is required to reinstate an employee to his or her former position if the employee is (1) terminated from a temporary or limited-term appointment by either the employee or the appointing power; (2) rejected during probation; or (3) demoted from a managerial position. (Gov. Code, § 19140.5.) The following conditions, however, must apply: the employee accepted the appointment without a break in continuity of service and the reinstatement is requested within 10 working days after the effective date of the termination. (*Ibid.*)

For the list appointments pertaining to the Assistant Executive Director, CATC, and the Associate Governmental Program Analyst utilized screening criteria, verified each applicant was reachable on a hiring certification list, conducted hiring interviews, and selected the best candidate for the positions. As to the seven transfer appointments pertaining to Associate Transportation Planner, Staff Services Analyst, Staff Services Manager I and Supervising Transportation Planner, CATC utilized screening criteria, conducted hiring interviews, and selected the best candidate for each position.

The Intermittent and Mandatory reinstatement appointments to Assistant Chief Counsel, Senior Transportation Engineer, and Administrative Assistant also followed all Board rules and civil service laws.

Accordingly, CATC complied with civil service laws and Board rules as to all the appointments made during the compliance review period.

#### Equal Employment Opportunity

The SPB reviewed CATC's EEO program that was in effect during the compliance review period.

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 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.)

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).)

CATC's EEO program that was in effect during the compliance review period provided employees with information and guidance on the EEO process, including instructions on how to file such claims. In addition, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers.

#### **FINDING NO. 2 – CATC Does Not Have a Discrimination Complaint Process**

Each state agency is responsible for monitoring the effectiveness of its EEO programs, which includes issuing procedures for filing, processing, and resolving discrimination complaints within the agency, and for filing appeals from agency decisions on these complaints. (Gov. Code § 19794.) In addition, each agency is required to establish in writing its own internal discrimination complaint process. (Cal. Code Reg., tit. 2, § 64.3.)

CATC did not provide verification of an internal discrimination complaint process. CATC must establish an internal discrimination complaint process within 60 days of the Board's Resolution adopting these findings and recommendations, and submit to the SPB a written report of compliance.

#### **FINDING NO. 3 – CATC's EEO Officer Does Not Directly Report to the Director**

The Equal Employment Opportunity Officer must report directly to, and be under the supervision of, the director of the department. (Gov. Code § 19795(a).) 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 commission. The EEO officer at CATC reports to a CEA III under the director

instead of directly to the director. No separate, direct reporting relationship with the Executive Director has been created for the EEO responsibilities.

CATC must establish a direct reporting relationship between the Executive Director and the EEO Officer with regard to the position's EEO responsibilities. CATC must implement these organizational changes within 60 days of the Board's Resolution adopting these findings and recommendations, and submit to the SPB a written report of compliance.

### **DEPARTMENTAL RESPONSE**

The CATC is working on an internal discrimination complaint process and has implemented organizational changes in regards to the EEO officer having a direct reporting relationship with the Executive Director. (Attachment 1)

### **SPB REPLY**

The SPB thanks the CATC for their cooperation and assistance during the compliance review. After carefully reviewing CATC's response, it is still recommended that they comply with the corrective action plan recommended to the Board herein.

JAMES C. GHIEMMETTI, Chair  
CARL GUARDINO, Vice Chair  
BOB ALVARADO  
DARIUS ASSEMI  
YVONNE B. BURKE  
LUCETTA DUNN  
JAMES EARP  
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FRAN INMAN  
JOSEPH TAVAGLIONE

STATE OF CALIFORNIA

EDMUND G. BROWN Jr., Governor



SENATOR MARK DESAULNIER, Ex Officio  
ASSEMBLY MEMBER BONNIE LOWENTHAL, Ex Officio

Andre Boutros, Executive Director

## CALIFORNIA TRANSPORTATION COMMISSION

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November 21, 2013

Attachment 1

State Personnel Board  
Compliance Review Board  
Attn: Michael Brunette  
801 Capitol Mall  
Sacramento, Ca 95814

Mr. Brunette:

Thank you for the opportunity to provide comments on your Compliance Review Report for the California Transportation Commission (Commission) findings and recommendations. We have reviewed your findings and have the following response:

**Finding No. 2 – CTC Does Not Have A Discrimination Complaint Process.**

The Commission is working on an internal discrimination complaint process for filing, processing, and resolving discrimination complaints with the Commission.

**Finding No. 3 – CTC's EEO Officer Does Not Directly Report to the Director.**

The Commission has corrected this finding by implementing organizational changes in regards to the EEO Officer having a direct reporting relationship with the the Executive Director.

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

Sincerely,

A handwritten signature in black ink that reads "Andre Boutros".

Andre Boutros  
Executive Director