

DATE: June 26, 2020

TO: ALL INTERESTED PARTIES

/s/ **SUZANNE M. AMBROSE**

FROM: Suzanne M. Ambrose
Executive Officer

SUBJECT: NOTICE OF PROPOSED REGULATIONS

Notice is hereby given that the State Personnel Board (Board) proposes to adopt Section 547.60.2 to clarify that contracting state agencies must notify all organizations representing employees who perform or could perform the type of contracted work of all personal services contracts not expressly exempted from the requirements of Government Code section 19132, subdivision (b)(1). Additionally, Section 547.60.2 specifies that it is the contracting agency's responsibility to identify and notify the appropriate employee organization or, when the contracting agency is unable to determine the appropriate employee organization, to notify all employee organizations. Contracting agencies cannot conclude that no union represented employees perform or could perform the type of work to be contracted.

PUBLIC HEARING:

A public hearing regarding the proposed regulatory action will be held at State Personnel Board on August 12, 2020, at 10:00 a.m. via teleconference. In order to participate in the public hearing, you may call 1 (877) 848-7030 and dial participant code # 1223758. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing. The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN COMMENT PERIOD:

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Lori Gillihan, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Email: lori.gillihan@spb.ca.gov

The written comment period closes on August 10, 2020. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

AUTHORITY AND REFERENCE:

The Board proposes to adopt Section 547.60.2 of Title 2, Chapter 1 of the CCR pursuant to the authority vested in it by the California Constitution, article 7, section 3, and Government Code section 18701 and Public Contract Code section 10337, subdivision (a). The proposed regulations will implement, interpret, and make specific the provisions of Government Code sections 18661 and 19132, subdivision (b)(1).

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, §§ 1, subd. (b) & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*) Regarding personal services contracts entered into between state agencies and private contractors, the Board is empowered to establish such standards and controls over DGS's approval of these contracts as are necessary to assure that the approval is consistent with merit employment principles and Article VII of the California Constitution. (Pub. Contract Code, § 10337, subd. (a).) The Board is also empowered to audit a state agency's personal services contracts to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.) Regulations concerning contracting out are not exempt from the APA. (Gov. Code, §18216.)

The purpose of this regulatory action is to update the Board's regulations to clarify that, when state agencies enter into personal services contracts under Government Code section 19130, subdivision (b), they must notify all organizations representing employees who perform or could perform the type of contracted work of all personal services contracts not expressly exempted from the requirements of Government Code section 19132, subdivision (b)(1). Additionally, section 547.60.2 clarifies the contracting agency's responsibility to identify and notify the appropriate employee organization pursuant to Government Code section 19132, subdivision (b)(1).

The benefits of this regulatory change include: (1) enabling the Board to conduct thorough and effective compliance reviews of Government Code section 19130, subdivision (b), contracts; (2) increasing openness and transparency in state government related to personal services contracting; and (3) providing organizations representing state employees the opportunity to review and evaluate the appropriateness of personal services contracts to deter potential waste in state contract spending.

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ON PUBLIC AGENCIES:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: None, since State agencies are currently required to record and maintain certain documents and files related to personal services contracts.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

ECONOMIC IMPACT ON BUSINESS:

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.

- Effect on small business: The proposed regulations set a standard only related to the recordkeeping and transmittal procedures state agencies must follow when entering into personal services contracts under Government Code section 19130, subdivision (b). Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts recordkeeping requirement for state agencies and transmittal procedures state agencies must follow when entering into personal services contracts under Government Code section 19130, subdivision (b).

RESULTS OF ECONOMIC IMPACT ASESMENT:

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the health and welfare of California residents in that the benefits of this regulatory action, as mentioned under the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW, include openness and transparency in state government and improved efficiency in the Board's compliance reviews of personal services contracts.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative it considered or that is otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS:

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Lori Gillihan, Chief
Policy Division
State Personnel Board
801 Capitol Mall

Sacramento, CA 95814
Phone: (916) 651-1043
Email: lori.gillihan@spb.ca.gov

The backup contact person for these inquiries is:

Carlos Gomez, Analyst
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-8350
Email: carlos.gomez@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Policy Division Chief, Lori Gillihan, at the above address.

AVAILABILITY OF RULEMAKING FILE:

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address

indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed on the Board's website at www.spb.ca.gov under "What's New?"