

# **NOTICE OF MODIFICATION OF TEXT AND UPDATED INITIAL STATEMENT OF REASONS**

**Date: November 17, 1997**

**TO: ALL STATE AGENCIES AND EMPLOYEE ORGANIZATIONS**

**SUBJECT: Adoption of Regulations for Establishing Equal Employment Goals for  
Minorities and Women**

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of the California Code of Regulations, the State Personnel Board is providing notice of changes made to the initial statement of reasons and changes to the proposed regulation sections 547.60 and 547.61. Attachment 1 is the original proposed text, and Attachment 2 is the new proposed text.

## **NOTICE IS HEREBY GIVEN**

The State Personnel Board (Board) will adopt, subject to consideration of the input received on this proposed regulatory action, Article 29, Sections 547.60 and 547.61 of the California Code of Regulations as shown in Attachment 2, at its scheduled meeting on December 2, 1997 at the San Francisco War Memorial and Performing Arts Center, Legislative Chamber, Room 404, 401 Van Ness Ave, San Francisco, CA 94102.

## **PUBLIC HEARING**

A public hearing will be held to receive input on the proposed regulations at 10:30 AM, December 2, 1997 at the above address.

## **DEADLINE FOR WRITTEN COMMENTS**

Interested parties are invited to submit written comments no later than December 1, 1997, to Jose Perez, State Personnel Board, Personnel Resources and Innovations Division, MS 55, PO Box 944201, Sacramento, CA 94244-2010.

## **AUTHORITY**

The Board proposes to take this regulatory action under the authority granted by Government Code Section 18701 to implement, interpret or make specific Government Code Section 19790 Et. Seq.

## **REFERENCE**

Sections 11092.5, 19702.1, 19790 Et. Seq., of the Government Code; Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e-2; *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986); *Johnson v. Santa Clara Transportation Agency*, 480 U.S. 616 (1987); and *Wards Cove Packing Co. v. Atonio*, 490 U.S. 622 (1989).

## **INFORMATIVE DIGEST**

**Government Code Section 18701 authorizes the Board to prescribe, amend and repeal regulations for the administration and enforcement of the Civil Service Act.**

**Government Code Sections 19790 Et. Seq. enumerate the requirements of the State Civil Service Affirmative Action Program, including the requirements that State agencies establish goals and timetables to eliminate identified under utilization in employment.**

**Government Code Section 19702.1 requires that hiring and promotions in the civil service conform to the Federal Civil Rights Act of 1964. Title VII of the Act prohibits practices, procedures or policies that have an adverse impact on employees or applicants for employment unless they are justified by business necessity. It also prescribes practices which "tend to deprive" persons of equal employment opportunity, such as preferential treatment for one group of persons over another.**

**The U.S. Supreme Court has held in a number of decisions affecting affirmative action programs that availability (for employment goal-setting purposes) must be determined using Relevant Labor Force (RLF) comparisons as opposed to comparisons with the general population or other sociological measures.**

**Executive Order W-124-95, issued by Governor Pete Wilson on June 1, 1995, requires all State agencies to draft state employment goals and timetables required by the Government Code so as to be based on the employment pool possessing the necessary qualifications for the particular job classification at issue, rather than on general work force parity.**

**The Board is required under Government Code Section 19792(b) to develop, implement, and maintain affirmative action and equal employment opportunity guidelines. Currently, these guidelines on goal setting policies and procedures have not been promulgated as regulations in accordance with requirements of the Administrative Procedures Act (APA). This proposed regulatory action responds to the necessity to develop and promulgate regulations to provide guidelines to State agencies for establishing annual affirmative action goals and timetables.**

**In preparation for the change in methodology and to assure a smooth transition, the Board staff implemented a pilot project to develop affirmative action goal- setting regulations in 1994. The pilot project concluded with a recommended process for establishing equal employment opportunity goals for minorities and women. This process was determined after analyses were conducted on the results of the pilot departments and the legal requirements were carefully considered. The latter included an opinion from the Attorney General and recent Supreme Court decisions that provided specific direction on the final process. In March 1997 the Board published Recommended Procedures For Establishing Equal Employment Opportunity Goals and Timetables. This publication was used to develop the language of the proposed regulations.**

#### **FISCAL IMPACT**

**This proposed regulatory action imposes: (1) no cost or savings on any state agency; (2) no cost on any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; (3) no other non-discretionary cost or savings on local agencies; and, (4) no costs or savings in federal**

**funding to the State.**

#### **COSTS TO LOCAL AGENCIES AND SCHOOL DISTRICTS AND EFFECT ON HOUSING COSTS**

**This proposed regulatory action does not impose a mandate on local agencies school districts and has no effect on housing costs.**

#### **EFFECT ON BUSINESS**

**This proposed regulatory action does not have any impact on small business or other businesses, including the ability of California businesses to compete with businesses in other states.**

#### **BUSINESS ASSESSMENT**

**This proposed regulatory action does neither create nor eliminate jobs or businesses in the State of California, nor result in the elimination of existing businesses, nor create or expand businesses in the State of California.**

#### **POTENTIAL COST IMPACT ON DIRECTLY AFFECTED PRIVATE PERSONS OR BUSINESSES**

**This proposed regulatory action will have no cost impact on directly affected private persons. There are no directly affected businesses.**

#### **ALTERNATIVE CONSIDERED**

**The Board must determine that no alternative considered by the Board 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 that the proposed action.**

#### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

**The Board has prepared a Statement of Reasons for and the Text of the proposed regulations. Both of these documents and all information on which the proposal is based are available to the public upon request. The rulemaking file will be available for public inspection at Room 555 of the State Personnel Board, 801 Capitol Mall, Sacramento, CA.**

#### **AVAILABILITY OF MODIFIED TEXT**

**Following the written comment period and the public hearing, the Board may take the proposed regulatory action substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the Board adopts the resulting regulatory action. Requests for copies of any modified regulations should be addressed to the contact person identified in this notice. Written comments on the modified regulations will be accepted for 15 days after the date on which they are first made available to the public.**

**CONTACT PERSON**

**Questions regarding this regulatory action should be directed to Jose Perez, (916) 654-5283.**

**LAURA M. AGUILERA, Chief  
Personnel Resources and Innovations Division**

**Attachment: Modified Text of Proposed Regulations**