

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



F9

MEMORANDUM

September 23, 1999

TO: Commissioners and Interested Persons

FROM: Pat Beck, Personnel Manager *PB*
Dorothy Dickey, Deputy Chief Counsel *DD*

SUBJECT: **Proposed Revisions to the Commission's
Incompatible Activities Statement**

INTRODUCTION

The staff proposed that the Commission revise its Incompatible Activities Statement. The Commission is required pursuant to Government Code § 19990 to have an Incompatible Activities Statement that describes the activities that are inconsistent with the duties of Commission officers and employees. The law itself sets forth general categories of activities that are prohibited. Since the Commission last amended its Incompatible Activities Statement in 1986, the law has been amended and the Department of Personnel Administration (DPA) has adopted a regulation to implement the law. (Calif. Code of Regs., Title 2, § 599.870.) The revisions are proposed because the Commission's Statement is inconsistent with the amended statute.

The attached memo includes proposed modifications to bring the Commission's Incompatible Activities Statement into conformity with the amended statute and new regulation. The Commission staff has taken the necessary procedural steps to enable the Commission to consider whether to adopt the changes at the October meeting. The proposed revisions have been provided to all employees for comment as required by the Department of Personnel Administration. (Calif. Code of Regs., Title 2, § 899.870(a)(1).) Furthermore, the proposed changes have been provided to the employees' unions for comment. The required 30-day comment period will end on Wednesday, October 13.

The Commission is required to respond to any concerns raised by employees or their representatives by either adopting modifications that address the concerns or responding in writing to the comments. (Calif. Code of Regs., Title 2, § 599.870(a)(2).) All comments will be summarized in an addendum that will be distributed at the meeting. The staff will analyze the comments in the addendum and may propose additional changes in the addendum in response to the comments. If significant changes are proposed either in response to employees' comments or

by the Commission based on any concerns that it may have, the Commission may wish to consider continuing this item to a future meeting to allow all employees and their representatives to comment on those additional revisions.

If the Commission amends the Incompatible Activities Statement, the staff will file the revised Statement with the Department of Personnel Administration as required by section 599.870(a)(3) of Title 2 of the California Code of Regulations. Once the Department has approved the changes, they will become legally effective.

OPTIONS FOR COMMISSION ACTION:

1. Adopt revisions as proposed.
2. Reject revisions as proposed.
3. Adopt revisions with minor changes.
4. Continue proposed revisions with a future meeting in order to consider significant changes.

The law and regulation do not expressly require that the Commission recirculate the Statement to employees in the event that the Commission proposes to incorporate significant changes to address individual employees' concerns. Nevertheless, such recirculation would be appropriate in that case and may be required in the event that the Commission wishes to consider modifications to address its own concerns.

STAFF RECOMMENDATION

The staff recommends that the Commission follow the first option identified and vote to adopt the changes as proposed.¹ The staff recommends that the Commission adopt the following resolution.

Resolution:

The Commission hereby adopts the proposed amendments to the Commission's Incompatible Activities Statement.

MOTION

The appropriate motion for adoption is "*I move that the Commission adopt the proposed amendments to the Commission's Incompatible Activities Statement.*"

Staff recommends a YES vote. A majority of the Commissioners present is required to pass the motion. Approval of the motion means the amendments have been adopted as proposed.

¹ The staff recommendation may change after the staff has reviewed and analyzed the comments to be submitted by employees and employee organizations.

DESCRIPTION OF PROPOSED CHANGES

1. The Commission's current Statement of Incompatible Activities would be reformatted. New subsection (A) would be revised to delete the prohibition on engaging in "employment activity or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical ... with the duties, functions or responsibilities of the Coastal Commission." The deleted language was based on a statutory prohibition that has been repealed. The Government Code no longer prohibits an officer or employee from engaging in activities that are inconsistent with the responsibilities of his or her appointing power. Instead, the law has been revised to prohibit only those activities that are inconsistent with the officer's or employee's own duties. (Government Code § 19990.)
2. Subsection (A)(1) would be modified to conform to the statute which prohibits using the prestige or influence of "the state or the appointing authority" for private gain or advantage rather than "one's office or employment." (Government Code § 19990(a).)
3. Subsection (A)(1)(a) would be modified to add language to conform to the statutory prohibition which provides in relevant part that an officer or employee is prohibited from "providing confidential information to persons to whom the issuance of this information has not been authorized...." (Government Code § 19990(c).)
4. Subsection (A)(1)(b) would be modified to provide a method for disclosure of officers' financial interests. The statute applies to officers and employees but the Commission's Statement only provides a procedure for disclosure of employees' financial interests.
5. Subsection (A)(2) would be modified to conform to the statutory prohibition on receipt of money or other consideration for the performance of one's duties as an officer or employee. (Government Code § 19990(d).)
6. Subsection (A)(2)(a) would be modified to conform to the statutory prohibition in Government Code § 19990(d). The statute applies to officers as well as employees, whereas the Statement currently only applies to employees.
7. Subsection (A)(3) would be modified to conform to the prohibition in Government Code § 19990(e). The statute generally prohibits an officer or employee from performing an act outside his or her capacity as an employee, if he or she knows that the act will be controlled, inspected, reviewed, audited or enforced (hereafter "reviewed") by himself or herself. Two changes are proposed. First, the Statement would be modified to add the criterion that the officer or employee must know that the outside act will later be reviewed by him or herself. Second, the Statement would be modified to delete the prohibition on officers' or employees' outside actions that will later be reviewed by the Commission. The Government Code previously prohibited such outside actions but that law has been repealed. The law now prohibits outside actions that will be reviewed by the officer or employee himself or herself rather than those that will be reviewed by the agency.

8. Subsection (A)(3)(a) would be modified to conform to Government Code § 19990(e). As described in #7 above the law has been limited to prohibit officers and employees from acting on outside matters that will be reviewed by them and no longer prohibits them from acting on matters that will be reviewed by the Commission generally.
9. Subsection (A)(3)(b) would be modified to conform to Government Code § 19990(e) which provides that an officer or employee may not act on outside matters if he or she knows that he or she will review them as an officer or employee. The Statement does not reflect the fact that the officer or employee must know about his or her future review.
10. Subsection 4(a) would be modified to delete the reference to "review and approval by the Commission" of outside activities which would involve time demands that would render performance of one's duties as a state officer or employee less efficient. Government Code § 19990 does not address review and approval by the Commission of an officers' or employees' outside activities that would involve time demands that would have such an effect on employees' time. As modified, the Statement would conform to the statutory prohibition.
11. Subsection 5 is proposed to reflect an amendment to Government Code § 19990. The proposed revision restates the added statutory change thereby putting officers and employees on notice that receipt of gifts as specified in the statute is prohibited. (Government Code § 19990(f).)
12. Subsection 6 is proposed to reflect a provision of Government Code § 19990 that was previously omitted from the Statement. The proposed revision would put officers and employees on notice that they are required by section 19990 to devote their "full time, attention and efforts to his or her state office or employment during his or her hours of duty...." (Government Code § 19990(g).)
13. Subsection B is proposed to add an appeal process as required under section 599.870(e) of Title 2 of the California Code of Regulations.
14. The last paragraph would be modified to correct the statutory citation and to add references to officers, as required under the statute.

- Attachments: 1) Memo from Pat Beck/Dorothy Dickey to All Commissioners & Employees
2) Government Code § 19990
3) Calif. Code of Regulations, Title 2, § 599.870
4) Repealed Government Code § 19251

CALIFORNIA COASTAL COMMISSION45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200**MEMORANDUM**

September 13, 1999

TO: All Commissioners
Commission Employees

FROM: Pat Beck, Personnel Manager *PB*
Dorothy Dickey, Deputy Chief Counsel *DD*

SUBJECT: **Proposed Revisions to the Commission's
Incompatible Activities Statement**

The Coastal Commission has a policy that is called the Incompatible Activities Statement that describes the activities that are inconsistent with the duties of Commission officers and employees. The Commission is required to have such a statement under Government Code § 19990 (formerly Government Code § 19251). The law sets forth general categories of activities that are prohibited for state officers and employees. It also requires that each agency adopt its own list of activities that "are inconsistent, incompatible or in conflict with ... [the] duties ... [of] state officers or employees" Since the Commission last revised its Incompatible Activities Statement in 1986, the law has been amended and the Department of Personnel Administration (DPA) has adopted a regulation to implement the law. (Calif. Code of Regs., Title 2, § 599.870.) The Commission proposes to modify the Statement to conform it to the revised statute and the DPA regulation.

The Commission is making the proposed revisions available for comment for 30 days, as required by the Department of Personnel Administration. (Calif. Code of Regs., Title 2, § 899.870(a)(1).) Comments can be submitted by Wednesday, October 13 to Dorothy Dickey via e-mail or in hard copy addressed "Attention: Jeff Staben". If you have specific questions about the proposed changes, please call Dorothy Dickey at (415) 904-5224. The Commission will consider whether to adopt the proposed changes after the close of the comment period during its October 12-15 meeting. Commenters are encouraged but not required to submit their comments by noon on Friday, October 8.

If it adopts the changes, the Commission will file the revised statement with the Department of Personnel Administration. Once the Department has approved the changes, the Commission will provide all Commissioners and staff with a copy of the Incompatible Activities Statement that reflects those revisions. It will provide new Commissioners and employees with a copy of the Statement when they assume office or begin employment.

The proposed changes are attached. Proposed additions are shown in underline format. Proposed deletions are shown in ~~strikeout~~.

Attachment

STATEMENT OF ACTIVITIES WHICH ARE INCOMPATIBLE WITH DUTIES AS AN OFFICER OR EMPLOYEE OF THE CALIFORNIA COASTAL COMMISSION
(Government Code Section 19251990)

As required by the Department of Personnel Administration, the Coastal Commission has adopted the following Statement of Incompatible Activities.

- A. No officer or employee of the Coastal Commission shall engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as an officer or employee ~~or with the duties, functions or responsibilities of the Coastal Commission.~~ The following employment, activities or enterprises by officers and employees of the Coastal Commission are considered to be inconsistent, incompatible, or in conflict with their duties:
1. The use for private gain or advantage of state time, facilities, equipment, supplies or the prestige or influence of ~~one's office or employment~~ the state or the Commission. Examples include, but are not limited to:
 - a. The use of confidential information acquired by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
 - b. An undisclosed financial interest in any organization, firm, corporation or person ~~who~~ that is subject to Commission regulation. Any such financial interest must be disclosed to the Employee's division manager, or in the case of officers to the Executive Director or his or her designee, who must then determine that said interest is not incompatible with the officer's or employee's duties at the Commission.
 2. The receipt or acceptance of any money or other consideration from anyone (other than the state) for the performance of ~~an act which the officer or employee would be required or expected to render in the regular course of his or her employment or as part of his or her duties as a state officer or employee.~~
 - a. This provision shall include accepting any gift or gratuity from any person who is subject to the Commission's review, or whose interests may be affected by the performance of the officer or employee, under circumstances for which it could be reasonable inferred that the gift was intended to influence his or her official duties. This shall not apply to items so nominal that they could not influence an officer or employee, such as coffee or sandwiches provided at working lunches, offered as an integral part of ~~the~~ an employee's job.
 3. The performance of an act in other than one's capacity as an officer or employee, knowing that the act ~~which~~ may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such officer or employee ~~or by the Commission.~~ The following activities are therefore deemed incompatible:

- a. Working for ~~interested~~ parties known by the officer or employee to be interested in Commission decisions, (including local governments, developers, neighborhood organizations, aggrieved persons, etc.) while employed by the Commission, to work on knowing that the projects, or plans or other matters on which the officer or employee is working are being reviewed or will be reviewed directly or indirectly by the officer or employee ~~Commission~~. This shall not prevent an officer or employee from giving information, without consideration, regarding Commission policies and activities, to groups or individuals who may appear before the Commission.
 - b. Entering into, engaging in any partnership, profit sharing, employment or other business arrangement, with any person who has or may be reasonably expected to sell equipment or supplies to the Commission, knowing that such sale would be subject to the inspection, review or audit of the employee or officer, or serving on the board of directors or as an adviser, officer, consultant or employee of any corporation, association, partnership or other public or private agency which does, or may be reasonably expected to do business with the Commission, knowing that such entity would be subject to the inspection, review or audit of the officer or employee.
4. Activities which involves such time demands as would render performance of one's duties as a state officer or employee less efficient.
 - a. Such activities would be incompatible if they would involve outside employment which uses Commission time or facilities, ~~or are subject to review and approval by the Commission.~~
 5. Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the Commission or whose activities are regulated or controlled by the Commission under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.
 6. Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.
- B. In the event that an officer or employee wishes to appeal the application of this Incompatible Activities Statement to himself or herself, he or she shall file an appeal with the Commission's Executive Director or his or her designee. The Executive Director or his or her designee shall decide an appeal within 30 days from the date that it is filed.

The activities, employments or enterprises stated above do not attempt to specify every possible limitation on an officer or employee activity that might be determined and prescribed under the authority of Section 19251990 of the Government Code, or which may otherwise be prohibited by statute, or administrative rule or regulation governing the conduct of state officers or employees. It is not the desire of the Commission to inquire into the private affairs of its officers or employees, or to interfere with the exercise of First Amendment rights. We do ask the cooperation of all officers and employees in avoiding any activity, employment, or enterprise which conceivably might be inconsistent or incompatible or interfere in any way, with his or her duties as a State officer or employee. Anyone employee planning such activities, employment or enterprise, is asked to consult with the manager of his or her division, with the personnel officer, or with the legal staff. Any officer planning such activities, employment or enterprise is asked to consult with the Executive Director or his or her designee or with the legal staff.

PERSONNEL ADMINISTRATION

§ 19990

Div. 5

employees and memoranda of understanding reached pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) for represented employees.

(Added by Stats.1992, c. 103 (S.B.465), § 6, eff. June 30, 1992.)

Article 10
ACTIVITIES

Section

19990. Conflicting employment, activities or enterprises; rules; conflict of section with memorandum of understanding.

19990.5. Rendering services to nonprofit corporation formed to aid and assist state museum during office hours.

Article 10 was added by Stats.1981, c. 230, p. 1168, § 55.

§ 19990. Conflicting employment, activities or enterprises; rules; conflict of section with memorandum of understanding

A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

(a) Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.

(b) Using state time, facilities, equipment, or supplies for private gain or advantage.

(c) Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.

(d) Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.

(e) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.

(f) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other

HISTORY

1. New Article 21.1 (Sections 599.866-599.868) filed 6-28-84; designated effective 7-1-84 pursuant to Government Code Section 11346.2(d) (Registar 84, No. 26).

2. Editorial correction of Reference cite (Registar 95, No. 5).

§ 599.867. Registration of Bona Fide Associations.

Each bona fide association shall submit an annual registration statement on or about July 1 of each calendar year in a form prescribed by the Department of Personnel Administration. The registration statement shall include the following information: name of bona fide association, headquarters' address, telephone number, list of principal officers and their mailing addresses.

The statement shall also include a written certification that the bona fide association is observing the following practices before submitting a request for registration:

- (a) The purpose of the association is not to represent State employees on matters within the scope of representation; and
- (b) The association does not have an affiliation with an employee organization or a recognized employee organization; and
- (c) The association is not acting as an employee organization by filing unfair labor practice charges or competing to be an exclusive bargaining agent in unit certification elections; and

The statement shall be accompanied by a copy of the association's by-laws.

Note: Authority cited: Sections 3520.7 and 19815.4(d), Government Code. Reference: Sections 1150(d) and 3520.7, Government Code.

§ 599.868. Removal of Bona Fide Association

Registration.

The registration of a bona fide association may be removed by the Department of Personnel Administration for the following reasons:

(a) Substantiation by the Department of Personnel Administration that the bona fide association has represented an employee in his or her employer-employee relations with the State, or is affiliated with an employee organization.

(b) Failure of the bona fide association to provide the annual registration statement.

(c) Substantiation by the State Controller that the bona fide association has interfered or failed to cooperate in an employee's request to decline membership or payroll dues deduction.

Note: Authority cited: Sections 3520.7 and 19815.4(d), Government Code. Reference: Sections 1153(a) and 3520.7, Government Code.

HISTORY

1. Editorial correction of subsection (c) (Registar 95, No. 40).

Article 21.5. Employee Activities

§ 599.870. Incompatible Activities Statements.

(a) To develop or revise an incompatible activities statement the appointing power shall:

(1) Publish the proposed statement or revision and a supporting statement of rationale for review and written comment by affected employees for at least 30 calendar days. The appointing power shall use a manner of publication which reasonably and likely assures the opportunity for affected employees to be informed of the proposed statement or revision. The published notice shall indicate how and by when comments are to be submitted.

(2) Respond in writing to concerns expressed by affected employees and their representatives about the statement during the review period by either making changes to the statement that are responsive to their concerns or informing them why such changes are not being made.

(3) File with the Department of Personnel Administration for approval a copy of the statement, the statement of rationale, a summary of the process followed in developing or revising the statement, a summary of the

written comments received from employees and their representatives and the appointing power's response to the comments.

(b) The statement shall describe as specifically as possible the kinds of activities that are deemed incompatible.

(c) Except as provided by section (d) below, the statement shall be effective on the day it is approved by the Department.

(d) The statement or revision may take effect immediately for a period not to exceed 90 days, when the appointing power establishes and the director concurs that delaying adoption of the proposed statement or revision until the process outlined in subsection (a) is completed could significantly impact agency operations. Such statements or changes shall not remain in effect for longer than 90 calendar days unless they are approved by the Department after being publicized and substantiated as specified in subsection (a).

(e) Each appointing power shall describe within the statement the process for employees to appeal the application of an incompatible activities statement to them. The final review level in the process shall be the appointing power or his or her designee.

(f) Each appointing power shall ensure that its incompatible activities statement is kept current and that employees are aware of and have access to it. New employees shall be given a copy of the statement upon appointment. The statement shall also be available for public review upon request.

Note: Authority cited: Sections 19815.4(d), 19816 and 19820, Government Code. Reference: Section 19990, Government Code.

HISTORY

1. New section filed 11-4-87; operative 12-4-87 (Registar 87, No. 49).

Article 22. Duration Service

§ 599.873. Conditions of Employment

Unless otherwise provided in this Article, the regulations governing the conditions of employment of employees in regular appointments shall govern the conditions of employment of duration employees. Such conditions of employment shall include the counting of service under duration appointment as regular service in the computation of seniority points and in determining eligibility for salary adjustment, sick leave, and vacation.

Note: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Sections 19200 and 19815.4(d), Government Code.

HISTORY

1. New section filed 2-9-84; effective third day thereafter (Registar 84, No. 8). For history of Article 22, see Registar 83, No. 37.

2. New section refiled 2-27-84 to correct inadvertent omission of text from 2-9-84 order, designated effective 3-10-84 (Registar 84, No. 8).

3. Editorial correction of HISTORY NOTE No. 2 filed 3-9-84 (Registar 84, No. 12).

§ 599.874. Reports of Performance.

Probationary and annual reports of performance shall be filed for duration employees in the same manner and at the same time as is required for regular employees.

Note: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19172, Government Code.

HISTORY

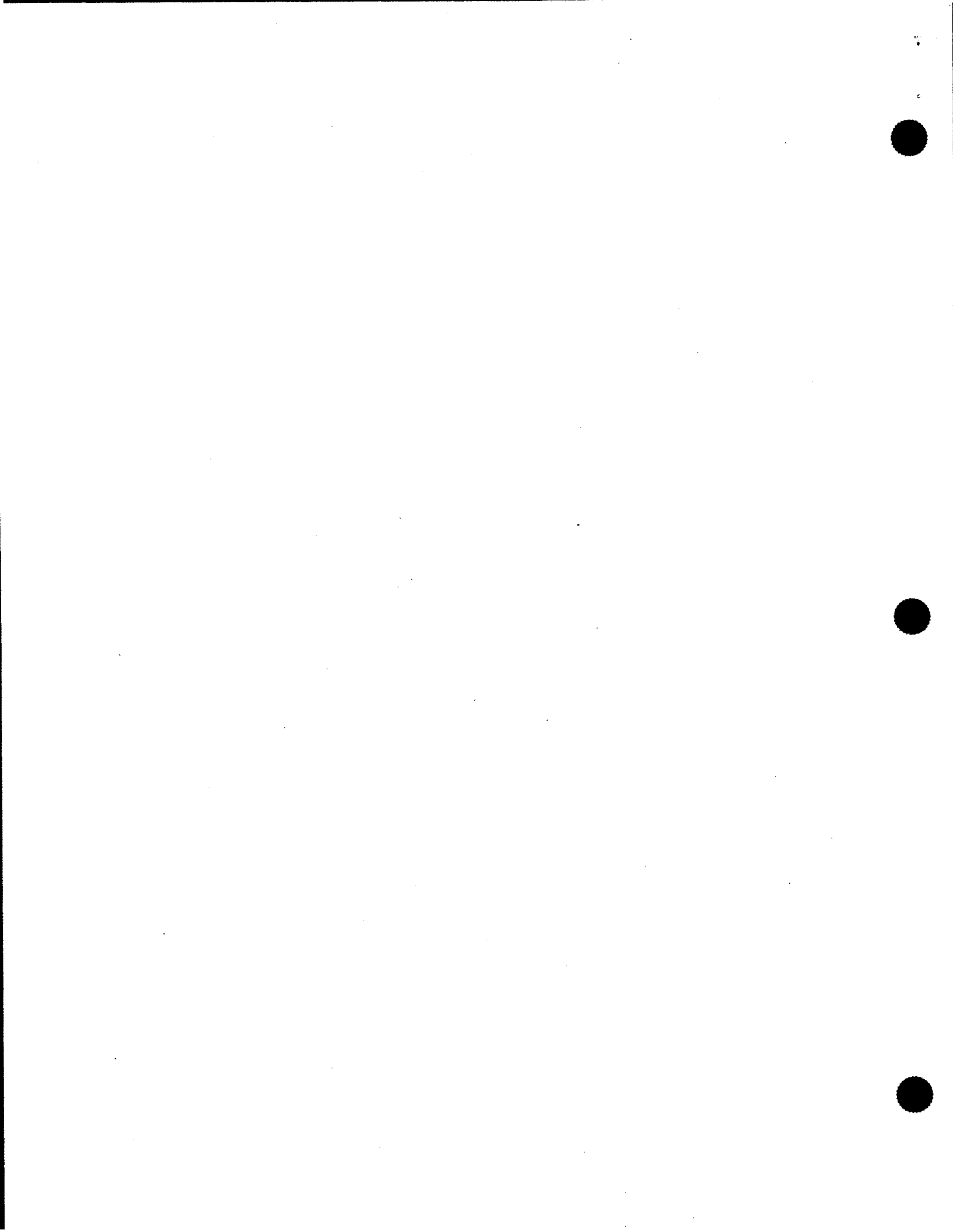
1. New Article 22 (Sections 599.874-599.877, not consecutive) filed 9-6-83; effective third day thereafter (Registar 83, No. 37).

CROSS REFERENCE: See Title 2, Division 1, Chapter 1, Subchapter 1, Sections 501-510.

§ 599.876. Layoff.

The order and procedure of layoff of duration employees shall be the same as is prescribed for regular employees, except that no regular limited-term employee, regular probationer, or regular permanent employee in the class in the layoff unit shall be laid off while a duration employee is retained in the same class and layoff unit. Only the names of duration employees shall be placed on duration re-employment lists.

Note: Authority cited: Sections 19815.4(d) and 19816, Government Code. Reference: Section 19200, Government Code.



It is the responsibility of the employee to inform the State Personnel Board Department of Personnel Administration in writing that the provisions of this section apply to his or her service credit calculations. The employee must certify under what conditions he or she is eligible to receive this portion of the service credit. The board department shall verify the adequacy of the employee's certification and calculate the seniority credits accordingly.

The provisions of this section shall apply only to seniority scores computed after the effective date of the bill that amended this section during the second year of the 1979-80 Regular Session.

SEC. 38. Section 19172 of the Government Code is amended to read:

19172. During the probationary period the appointing power or his or her officially delegated representative shall evaluate the work and efficiency of a probationer in the manner and at such periods as the board Department of Personnel Administration rules may require.

SEC. 39. Article 8 (commencing with Section 19220) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code is repealed.

SEC. 40. Section 19251 of the Government Code is repealed.

~~19251. A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his duties as a state officer or employee or with the duties, functions or responsibilities of his appointing power or the agency by which he is employed.~~

~~Each appointing power shall determine, subject to approval of the board, those activities which, for employees under his jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Consideration shall be given to employment, activity or enterprise which (a) involves the use for private gain or advantage of state time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of one's state office or employment or, (b) involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than the state for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his state employment or as a part of his duties as a state officer or employee or, (c) involves the~~

performance of an act in other than his capacity as a state officer or employee which not any later be subject directly or indirectly to the control, inspection, review audit or enforcement by such officer or employee or the agency by which he is employed or (d) involves such time demands as would render performance of his duties as a state officer or employee less efficient.

Each state officer and employee shall during his hours of duty as a state officer or employee and subject to such other laws, rules or regulations as pertain thereto, devote his full time, attention and efforts to his state office or employment.

The board may adopt rules governing the application of this section. Such rules may include provision for notice to employees prior to the determination of prescribed activities and for appeal by employees from such a determination and from its application to an employee.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 5517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the legislature in the annual budget act. SEC. 41. Section 19252 of the Government Code is repealed.

19252. (4) Upon giving two days notice to his immediate superior, any state employee otherwise qualified shall be permitted to take any state civil service examination during working hours, if the examination is scheduled during such period, or to attend a meeting of the board at which is scheduled for consideration a matter specifically affecting his position concerning which he has requested to be heard, without deduction of pay or other penalty. Employer's interviews for eligible or employment lists shall be considered part of the examination process under this part.

(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 5517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the legislature in the annual budget act.