

**STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS
INCOMPATIBLE ACTIVITIES STATEMENT**

I. PURPOSE

Section 19990 of the Government Code requires all state agencies to adopt an Incompatible Activities Statement. The purpose of this Statement is to identify those activities which the State Water Resources Control Board (State Board) has determined to be inconsistent, incompatible or in conflict with the duties of officers or employees of the State Board and of the Regional Water Quality Control Boards (Regional Boards). This Statement, in its entirety, is applicable to all officers and employees¹ of the State Board and of those Regional Boards which adopt this Statement. State and Regional Board members, the Regional Board Executive Officers, and the State Board Executive Director, if holding a civil service-exempt position, are subject only to Section V. of this Statement.

II. APPLICABLE STATUTES

A. Government Code Section 19990:

"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 of Personnel Administration], those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees.

¹ See definition in Section III.5. of this Statement.

"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 thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority 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.
- "(g) 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.

"The department shall adopt rules governing the application of this section. The rules shall include provision for notice to employees prior to the determination of proscribed activities and for appeal by employees from such a determination and from its application to an employee. Until the department adopts rules governing the application of this section, as amended in the 1985-86 Regular Session of the Legislature, existing procedures shall remain in full force and effect.

"If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, 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."

B. Government Code Section 19572:

"Each of the following constitutes cause for discipline of an employee, or person whose name appears on any employment list:

- (a) Fraud in securing appointment.
- (b) Incompetency.
- (c) Inefficiency.
- (d) Inexcusable neglect of duty.
- (e) Insubordination.
- (f) Dishonesty.
- (g) Drunkenness on duty.
- (h) Intemperance.
- (i) Addiction to the use of controlled substances.
- (j) Inexcusable absence without leave.
- (k) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- (l) Immorality.
- (m) Discourteous treatment of the public or other employees.
- (n) Improper political activity.
- (o) Willful disobedience.
- (p) Misuse of state property.
- (q) Violation of this part or board rule.
- (r) Violation of the prohibitions set forth in accordance with Section 19990.
- (s) Refusal to take and subscribe any oath or affirmation which is required by law in connection with the employment.
- (t) Other failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person's employment.
- (u) Any negligence, recklessness, or intentional act which results in the death of a patient of a state hospital serving the mentally disabled or the developmentally disabled.

- (v) The use during duty hours, for training or target practice, of any material which is not authorized therefor by the appointing power.
- (w) Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age, against the public or other employees while acting in the capacity of a state employee.
- (x) Unlawful retaliation against any other state officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related thereto.

III. DEFINITIONS

1. "Employer" means the State Board for State Board officers and employees and the Regional Board for Regional Board officers and employees.
2. "Person" or "persons" includes individuals, firms, partnerships, corporations, associations and all other forms of organization for business or other purposes, and their agents.
3. "State time" refers to the employee's or officer's assigned hours of work. "State time" includes any time when the employee is working in the interests of or for the benefit of the state. "State time" generally excludes paid or unpaid leave time or holidays. "State time" also generally excludes breaks, the lunch period and time before or after work.
4. "Confidential information" includes information the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the California Evidence Code relating to privilege. "Trade secrets" and matters protected from disclosure by the attorney-client privilege, in accordance with the provisions of the Evidence Code, for example, are "confidential information". "Confidential information" does not include any matters which are subject to disclosure under the California Public Records Act, Government

Code §§ 6250 et seq.

5. "Officers and employees", for purposes of all portions of this Statement, except Section V, includes all officers and employees subject to the state civil service system. The term excludes appointive officers who are exempt from civil service, such as State and Regional Board members, Regional Board executive officers, and the State Board executive director, provided that the latter is holding a civil service-exempt position.
6. An "emergency" is defined as unexpected circumstances requiring immediate action by the State Board or Regional Boards to regulate the water resources of the state so as to protect the public health, welfare, or safety. It is not necessary that the emergency conditions be such that they could not have been anticipated or prepared for but only that in the normal course of events they would seldom be expected.

IV. INCOMPATIBLE ACTIVITIES

The State Board has determined that the following activities are inconsistent, incompatible, or in conflict with the duties of State or Regional Board officers or employees:

A. Improper Use or Disclosure of Information

1. Using confidential information acquired by virtue of state employment for the employee's or officer's private gain or advantage, or the private gain or advantage of another person.
2. Providing confidential information to persons to whom issuance of such information has not been authorized by the employer.
3. Submitting for publication information gained through employment

with the State or Regional Board unless the employee or officer requests the publisher to include in the publication a statement that the views expressed are those of the author, not the State of California.

B. Misuse of Position

1. Using the prestige or influence of a state office or employment for the employee's or officer's private gain or advantage, or the private gain or advantage of another person.
2. Using state time, facilities, equipment, or supplies for the employee or officer's private gain or advantage, or the gain or advantage of another person.
3. Using state automotive equipment for any use other than the official business of the State of California or in violation of the rules of the Board of Control.
4. Soliciting or accepting personal loans of money or property from any person or entity, other than a bank or other financial institution, with knowledge or having reason to know that the person or entity does or is seeking to do business with or performs or is seeking to perform services for the employer. Exemptions from this rule may be granted by the employer or the employer's designee, in accordance with the procedures outlined in Section VI.B. of these rules, in special cases where it is clearly evident, from the nature of the particular officer or employee's state work, that the officer or employee cannot influence the amount of business done by such person with the employer.

C. Outside Work and Business Relationships

1. Performance of an act, in other than his or her capacity as a state officer or employee, knowing or having reason to know that such act will later be subject to the control, inspection, review, audit or enforcement of such officer or employee.
2. Receiving or accepting money or any other consideration from any person, other than the State, for the performance of his or her duties as a state employee or officer.
3. Entering into or engaging in, any partnership, profit-sharing, employment or other business arrangement, including consulting services, with a person, knowing or having reason to know that such person (1) has, or may reasonably be expected to thereafter attempt to obtain, a contract or contracts with the employer or (2) sells, or may reasonably be expected to sell, equipment, services, or supplies to the employer, or (3) holds or is seeking a license, permit, or other entitlement use from the employer. Exemptions from this rule may be granted by the employer or the employer's designee, in accordance with the procedures outlined in Section VI.B. of these rules, in special cases where it is clearly evident, from the nature of the particular officer or employee's state work, that the officer or employee cannot influence the amount of business done by such person with the employer.
4. Subject to any other applicable laws, rules, or regulations, not devoting 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.

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his or

D. Acceptance of Gifts

1. Receiving or accepting, any gift, including money, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from any person, who is or is seeking to contract with or perform services for the employer, or who holds or is seeking a grant, loan, permit or other entitlement from the

duties

employer, or whose activities are regulated by the employer, under circumstances from which it reasonably could be substantiated that the gift was intended to influence the employee or officer in his or her official or was intended as a reward for any official action performed by the employee or officer.

E. Judicial Proceedings

1. Providing written or oral evidentiary statements contrary to adopted findings or decisions of the State Board or a Regional Board in any lawsuit or adjudicatory proceeding in which the State Board or a Regional Board:
 - a. Is a party;
 - b. Is a referee pursuant to Water Code Section 2000 et seq. (Court Reference); or
 - c. Has adopted an order determining the rights to the water of a stream system pursuant to Water Code Section 2700 (Statutory Adjudication);except that such statements may be provided if: (1) the employee or officer is responding to a subpoena and is under oath or the employee or officer is, otherwise legally obligated to provide testimony or written statements or other documents; or (2) the employee or officer is pursuing administrative or legal action against his or her employer.

F. Improper Political Activities

1. Soliciting or receiving or attempting to solicit or receive any assessment, subscription, contribution or political service from any person for any political purpose, during working hours or on the premises of the employer's facilities.

2. Furthering, promoting, or advocating for or against the nomination or appointment of the employee or any other person to any political office, during working hours or on the premises of the employer's facilities, or by the use of state equipment, materials, or staff resources. "Furthering, promoting, or advocating for or against" does not include the expression of personal political opinions on candidates or issues. Permissible activities include, but are not limited to, wearing political buttons or hanging political posters within the employee's or officer's working space, i.e., office or cubicle.

V. ADDITIONAL RESTRICTIONS ON POLITICAL ACTIVITY

A. Hatch Act

1. Authority

Federal law prohibits certain political activities by state employees. The general provisions are found in the Hatch Act, 5 U.S.C. Section 1501 et seq. and the regulations implementing the Act, 5 C.F.R. Sections 151.101 et seq.

2. Coverage

The Hatch Act applies only to officers and employees of the State Board and Regional Boards whose employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency. It is not required that a substantial percentage of the officer's or employee's work be concerned with federally financed activities for that employee to be affected by the Act. Officers or employees who supervise and review the work of employees whose work is financed by federal funds are within the scope of the Act. The Act may not be applied to an employee or officer whose work in connection with federally financed activities is considered negligible.

system, "Officers and employees", for purposes of the Hatch Act, includes not only officers and employees covered by the state civil service system, i.e., "officers and employees" as defined in Section III.5. of this Statement, but also appointive officers who are exempt from civil service. Therefore, State and Regional Board members, Regional Board executive officers and the State Board executive director are covered by the Act.

3. Penalties for Violation

the Substantial penalties may be imposed for violation of the Hatch Act. If the federal Merit Systems Protection Board determines that a state officer or employee has violated the Act and that the violation warrants removal from employment, the officer or employee must be removed from office or loan or grant funds to the State will be jeopardized. In view of the substantial penalties for violation, it is recommended that officers or employees who are in doubt as to their status under the Act seek further clarification from the Office of Chief Counsel.

4. Activities Prohibited by the Act

A state officer or employee who is covered under the Hatch Act may not:

- a. use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- b. directly or indirectly coerce, attempt to coerce, command, or advise a State or local officer or employee to pay, lend, or contribute anything of value to a political party, committee, organization, agency, or person for a political purpose;

- c. be a candidate for elective public office in a partisan election, provided

that this subsection does not apply to the governor or lieutenant governor or an individual authorized by law to act as governor, the mayor of a city, a duly elected head of an executive department of a State or municipality who is not classified under a State or municipal merit or civil service system, an individual holding elective office, activity in connection with a nonpartisan election, or candidacy for a position of officer of a political party convention, member of a national, State, or local committee of a political party, or any similar position.

5. Activities Permitted by the Act

A state officer or employee who is covered under the Hatch Act may:

- a. Register to vote and vote.
- b. Express their opinions on all political subjects and candidates. This is frequently done by employees wearing badges or a button, or displaying stickers or posters on their cars or houses.

or

- c. Become members and hold offices in political parties, organizations or clubs. Officers and employees may attend meetings, vote on candidates and issues, and take active parts in the management of the club, organization or a party.

or

- d. Attend political conventions and participate in the deliberations or proceedings of the convention of any of its committees. Officers and employees may be candidates for, or serve as delegates, alternates or proxies at such convention, so long as such candidacy does not involve a public partisan election (such as a primary election).

political

Volunteer work for a partisan candidate, campaign committee,

party or nominating convention of a political party is permitted.

- e. Campaign for a candidate in a partisan election by making speeches, writing on behalf of the candidate, or soliciting voters to support or oppose a candidate.
- f. Attend political meetings or rallies including committee meetings of political organizations, and may serve on committees that organize or direct activities at a partisan campaign meeting or rally.
- g. Sign nominating petitions for candidates in a partisan election for public office, and may originate or circulate such petitions. An officer or employee may drive voters to the polls as a convenience to them.

The items listed in this section are not all inclusive.

B. Activities Prohibited by California Government Code Section 3204

- 1. Directly or indirectly, using, promising, threatening or attempting to use, the officer or employee's² authority or influence (whether then possessed or merely anticipated) to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or consideration.

VI. PROCEDURE FOR CLARIFICATION

- A. It is not the desire of the State Board to inquire unreasonably into the private lives of State or Regional Board personnel. However, all officers and employees are obligated to avoid activities which are clearly inconsistent with the effective performance of their duties.

B. An officer or employee who plans to engage in any employment, activity, or enterprise which might violate these rules is encouraged, whenever possible, to submit a written request to the employer's executive director or officer, as appropriate, for a determination of whether the activity is permissible. The written request should include a description of the activity which is in sufficient detail for the executive director or officer

²"officer and employee" is not confined to "officers and employees" as defined in Section III.d. It includes, in addition to civil service officers and employees, appointive officers who are exempt from civil service.

to determine whether the activity is permissible. The executive director or officer, after consulting with the Office of Chief Counsel will issue a written ruling to the employee within two weeks of receipt of the written request. If the officer or employee disagrees with the ruling, he or she may file a grievance at the appropriate level in accordance with the terms of the applicable employee bargaining agreement.

VII. STATE EMPLOYER-EMPLOYEE RELATIONS ACT

The provisions of this Statement are superseded by any applicable terms in a memorandum of understanding between the State and an employee bargaining unit, pursuant to the State Employer-Employee Relations Act, Government Code Sections 3512 et seq., to the extent that the provisions of this Statement alter or are in conflict with the applicable terms of the memorandum of understanding.

Dated: July 16, 1987

7/16/87

Original signed by James L. Easton

James L. Easton
Executive Director