

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

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DIRECTOR PHYLLIS W. CHENG

May 27, 2011

Mr. Stuart Drown, Executive Director
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Re: Governor's Reorganization Plan regarding the State Personnel System

Dear Mr. Drown:

Thank you for inviting me to testify at the Little Hoover Commission's June 2, 2011 public hearing on the Governor's reorganization plan to unify and streamline the California state personnel system (Governor's Plan).

The Department of Fair Employment and Housing (DFEH or Department) fully supports the Governor's Plan to transfer and consolidate several functions of the Department of Personnel Administration (DPA) and State Personnel Board (SPB) into a new California Department of Human Resources (CalHR). I am pleased to provide the below answers to the questions posed by the Little Hoover Commission.

1. Question: Does the DFEH support the reorganization proposal?

Answer: The DFEH supports the Governor's Plan. The proposed reorganization will unify and streamline the State's personnel system by consolidating SPB and DPA. The Governor's Plan will save taxpayer money by eliminating certain duplicative functions and increase efficiency in providing personnel services to departments such as the DFEH.

2. Question: How will moving non-merit discrimination complaints from the SPB to the DFEH affect the workload of the Department?

Answer: Moving non-merit discrimination complaints from the SPB to the DFEH will not impact my department's workload, because the DFEH already performs this function.

The jurisdiction of the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), California's civil rights law enforced by the DFEH, reaches employers with five or more employees (and employers with even one employee for harassment claims) in the private sector and all state and local employers in the public sector, including "the state or any political or civil subdivision of the state." (Gov. Code, §§ 12926, subd. (d), 12940, subd. (j)(4)(A).) Under the FEHA, it is unlawful for "an employer, because of the race, religious

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creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.” (Gov. Code, § 12940, subd. (a).) The DFEH is empowered to receive, investigate, and conciliate complaints, and to prosecute unlawful discrimination in the administrative setting and in civil court. (Gov. Code, § 12930.)

Currently, in addition to filing their complaints with the DFEH, aggrieved State employees can also file their employment discrimination complaints before the SPB. However, these constitute only a subset of complaints handled by the DFEH. To file a FEHA civil action for employment discrimination against any employer, including a State employer, aggrieved applicants or employees must still exhaust their administrative remedy by obtaining a right-to-sue notice from the DFEH or in the alternative, if jointly filed with the U.S. Equal Employment Opportunity Commission (EEOC), from the EEOC. (Gov. Code, § 12965, subds. (b) & (d)(1).) Thus, the forum available to aggrieved State employees at the SPB is duplicative to and less comprehensive than that offered by the DFEH.

3. **Question: Will additional resources be needed to meet this change?**

Answer: No additional resources to the DFEH will be needed to meet the change proposed in the Governor’s Plan. As discussed above, the DFEH already handles employment discrimination complaints in the public and private sectors.

4. **Question: Are there other benefits or risks associated with the plan for the DFEH?**

Answer: The Governor’s Plans will benefit the State by saving taxpayer money, eliminating certain duplicative functions, and increasing efficiency in the provision of personnel services to departments such as the DFEH. There are no risks that the Department can identify.

Thank you for requesting the DFEH’s testimony on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phyllis', with a long horizontal flourish extending to the right.

Phyllis W. Cheng
Director