

# Memorandum

To : Honorable Judy Chu, Ph.D., Chair  
Honorable Betty T. Yee, Vice Chairwoman  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date : December 9, 2008

From : Ramon J. Hirsig  
Executive Director



Subject : **Item M – Other Chief Counsel Matters – December 17, 2008**  
**Clarification of Resolution Conferring Powers on the Executive Director**  
**Hiring Authority for CEA-Level Retired Annuitants**

The Chief Counsel's December 5, 2008 memo (copy attached) seeks clarification of the Executive Director's Resolution of Powers adopted April 13, 2004.

It is the Chief Counsel's opinion that the current powers delegate the hiring of managerial<sup>[1]</sup> retired annuitants to the Executive Director, but that the hiring of CEA level retired annuitants require Board approval in closed session.

If the Board adopts the staff recommendation to delegate the hiring of CEA Retired Annuitants to the Executive Director, I would recommend the inclusion of the following procedure:

1. The Executive Director will provide the members with two weeks or more advanced notice of the intent to hire, including:
  - The name of the candidate
  - Resume
  - Function to be performed
  - Job classification or title
  - Proposed starting date
2. The Executive Director will provide each Board Member with the opportunity to interview the candidate during this time period and if no objections are received, the individual will be hired.

The goal is to streamline the hiring process when it is considered appropriate to bring on retired annuitants.

If you have any questions, please call me at 916-327-4975.

RJH:rar

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<sup>[1]</sup> Managerial Classifications include: Accounting Administrator III, Assistant Chief Counsel; Business Taxes Administrator III; Data Processing Managers III & IV; Principal Property Appraiser; Staff Services Manager II & III; Tax Specialist.

cc: Mr. Steve Shea  
Mr. Alan LoFaso  
Ms. Barbara Alby  
Mr. Michael Richman  
Ms. Marcy Jo Mandel

**M e m o r a n d u m**

To : Honorable Judy Chu, Ph.D., Chair  
Honorable Betty T. Yee, Chairwoman  
Honorable Bill Leonard  
Honorable Michelle Steel  
Honorable John Chiang

Date: December 5, 2008

From : Kristine Cazadd  
Chief Counsel 

Subject : **Item M - Other Chief Counsel Matters – December 17, 2008 Board Meeting  
Clarification of Resolution Conferring Powers on the Executive Director -  
Hiring Authority for CEA-Level Retired Annuitants**

**Background and Analysis**

On May 2, 2000, the Board's Customer Services and Administrative Efficiency Committee minutes report the following action:

“The Board adopted the staff’s recommendation that staff obtain prior Board approval for the hiring of all retired annuitants at and above the managerial level.”

The Committee’s recommendation was formally adopted by the Board the same day and the policy was incorporated in the Board of Equalization Administrative Manual (BEAM).

On April 13, 2004, the Board approved the *Resolution Conferring Powers* for the new Executive Director, Ramon J. Hirsig, who was appointed with an effective date of April 1, 2004. This Resolution conferred full hiring authority on the Executive Director, except for the appointment of personnel at the CEA level, which required the Executive Director to obtain Board approval. The Resolution was silent regarding the action taken by the Board on May 2, 2000, with respect to retired annuitants. It is unclear whether the May 2, 2000 action described above was omitted from the 2004 Resolution due to an oversight, or was left out intentionally, for the purpose of returning that delegation for hiring retired annuitants to the Executive Director.

The Legal Department has determined that regardless of the reason, the 2004 Resolution takes precedence over and legally pre-empts the Board policy adopted in 2000. The express language adopted by the Board in the 2004 Resolution delegates to the Executive Director full authority to hire and sign documents appointing “all” personnel, except those specifically limited. The use of the word “all” necessarily involves all retired annuitants, including those at the management level previously restricted under the 2000 BEAM policy. If however, a retired annuitant serves at the CEA level, then it appears that Board approval would need to be obtained, based on the April 13, 2004 Resolution language set forth below:

Resolved, That the authority hereby granted to the Executive Director shall include, but shall not be limited to, the following:

(a) Execution of any and all personnel documents as the appointing power. Prior to the execution of such documents the Executive Director shall: (1) obtain Board approval for all appointments of personnel at the Career Executive Assignment (CEA) level; (2) obtain approval of the Board Member in whose District in which appointments are located for all District personnel appointments;

(3) notice at least monthly the Board of all other personnel appointments; and (4) obtain Board approval for all position upgrades which result in a change of classification at the CEA level and above before such requests are submitted to the Department of Personnel Administration; (emphasis added).

### **Recommendation**

The Legal Department recommends and respectfully requests that the Board clarify its intent regarding the Resolution, by determining that the requirement for the Executive Director to obtain Board approval for appointments at the CEA level, does not apply to retired annuitants. The reasons for this recommendation are (1) to streamline the hiring process for retired annuitants at the CEA level, (2) to administer BOE programs in the most economical and efficient manner, (3) to offer clarification where two guiding policies appear to be inconsistent. Government Code section 21224 (a) provides that retired annuitants "serve without re-instatement". On the practical level, ten management positions became vacant because of retirements in the past year. Many current managers have announced retirement in the coming year. Retired annuitants, including retired CEAs, offer many benefits to the Board including:

- experience
- immediate cost savings in periods of fiscal crisis
- quick appointment

Should the Board adopt staff's recommendation, the Board's action may be implemented in either of the following ways:

**Alternative 1:** The Board directs staff to leave unchanged, the Resolution Conferring Powers adopted on April 13, 2004, but to publish a "Statement of Intent" in BEAM section 0108, clarifying that the hiring of retired annuitants at the CEA managerial level falls within the authority granted to the Executive Director.

**Alternative 2:** The Board directs staff, for purposes of clarification, to amend the April 13, 2004 Resolution Conferring Powers, to state that Board approval is required "for all appointments of personnel at the Career Executive Assignment (CEA) level, unless the appointment is a retired annuitant."

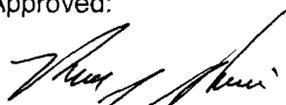
In an effort to take advantage of the opportunity to secure the benefits described above and streamline the hiring process, staff respectfully requests the Board consider a resolution empowering the Executive Director to hire retired annuitants at the CEA managerial level.

If you have any questions, please feel free to contact me at (916) 445-4380.

KC:pl

cc: Mr. Ramon Hirsig  
Ms. Liz Houser  
Ms. Lisa Fien  
Ms. Jean Ograd  
Ms. Deborah Cooke

Approved:



Ramon J. Hirsig  
Executive Director