

**DATE:** August 14, 2020

**TO:** ALL INTERESTED PARTIES

/s/ **SUZANNE M. AMBROSE**

**FROM:** Suzanne M. Ambrose  
Executive Officer

**SUBJECT: NOTICE OF PROPOSED REGULATIONS**

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**Notice is hereby given** that the State Personnel Board (Board) proposes to amend Section 242 to clarify the Rules related to promotions in place related to status; movements between rank and file, supervisory, and managerial classifications; the meaning of eligibility; and communication to staff.

**PUBLIC HEARING:**

A public hearing regarding the proposed regulatory action will be on September 29, 2020, at 10:00 a.m. via WebEx. In order to participate in the public hearing, please see the following options:

- Via Video (Online)

You may click, or copy and paste into your web browser, the following link:

<https://spb-meetings.webex.com/webappng/sites/spb-meetings/meeting/download/f85c0d58b9c449b9bc7f3b0132e44f87?siteurl=spb-meetings&MTID=ma0c0fb26327f77830757075c4e151181>

Then enter the following information to gain access to the hearing:

Meeting Number: **126 054 6184**  
Meeting password: **AipWHR3Cy48**

- Via Telephone

You may also participate by dialing the phone number first and then the participant code listed below:

Phone Number: **1-844-992-4726**

Participant Code: **1260546184**

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

### **WRITTEN COMMENT PERIOD:**

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Lori Gillihan, Chief  
Policy Division  
State Personnel Board  
801 Capitol Mall

Email: [lori.gillihan@spb.ca.gov](mailto:lori.gillihan@spb.ca.gov)

The written comment period closes on September 28, 2020. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

### **AUTHORITY AND REFERENCE:**

The Board proposes to amend Section 242 of Title 2, Chapter 1 of the CCR pursuant to the authority vested in it by the California Constitution, article 7, section 3, and Government Code sections 18502, 18660, 18701, and 18804. The proposed regulations will implement, interpret, and make specific the provisions of Government Code sections 18500, 18951, and 19050.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, §§ 1, subd. (b) & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.)

The purpose of this regulatory action is to update the Board's regulations to clarify that it is not the Board's intent that an employee in a limited-term position promote in place. Additionally, the proposed regulation makes clear that it is inappropriate for an employee in a rank and file position to promote in place to a supervisory or managerial position or for an employee in a supervisory position to promote in place to a managerial position given the substantial difference in competencies required.

Also, given that exams, both open and promotional, are now generally provided on a continuous and online basis, those employees currently not on the employment list, but otherwise eligible to examine for promotional opportunities, must be informed verbally of the reasons the employee was not selected for promotion.

Additionally, appointing authorities must provide the reasons an employee is not selected for a promotion in place to the employee verbally, unless the employee requests the reasons to be provided in writing.

The benefits of this regulatory change include: the Board, CalHR, and each state agency and employee must encourage economy and efficiency in and devotion to state service by "encouraging promotional advancement of employees" who show "willingness and ability to perform efficiently services assigned" to them. (Gov. Code, § 18951.) "[E]very person in state service shall be permitted to advance according to merit and ability." (*Ibid.*)

Proposed section 242 allows an employee with permanent civil service status to be promoted in place, if certain conditions apply: (1) the position currently occupied by the employee is reallocated to the "to" class without a change of unit or location; (2) within the employee's agency, there are no position ratio allocation limits on the "to" class that would preclude other eligible employees from competing in the future for an appointment to the "to" class; and (3) the employee competed in and passed an examination for the "to" class and is currently placed on the employment list for that examination in one of the top three ranks.

This proposed regulatory action encourages promotional advancement of employees while also maintaining a competitive examination process. Section 242 also clarifies under what conditions an employee may receive a promotion in place. In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

### **FISCAL IMPACT ON PUBLIC AGENCIES:**

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: None, since State agencies are currently required to record and maintain certain documents and files related to personal services contracts.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

### **SIGNIFICANT EFFECT ON HOUSING COSTS:**

None.

### **ECONOMIC IMPACT ON BUSINESS:**

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: None.

### **COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:**

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts the hiring and selection process of state departments, agencies, boards, or commissions.

### **RESULTS OF ECONOMIC IMPACT ASESMENT:**

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

The adoption of these regulations, however, will have a positive impact on the health and welfare of California residents in that the benefits of this regulatory action, as mentioned under the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW, encourage economy and efficiency in and devotion to state service by “encouraging promotional advancement of employees” who show “willingness and ability to perform efficiently services assigned” to them. (Gov. Code, § 18951.)

**CONSIDERATION OF ALTERNATIVES:**

The Board must determine that no reasonable alternative it considered or that is otherwise identified and brought to its attention 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 than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

**CONTACT PERSONS:**

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Lori Gillihan, Chief  
Policy Division  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
Phone: (916) 651-1043  
Email: [lori.gillihan@spb.ca.gov](mailto:lori.gillihan@spb.ca.gov)

The backup contact person for these inquiries is:

Carlos Gomez, Analyst  
Policy Division  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814  
Phone: (916) 651-8350  
Email: [carlos.gomez@spb.ca.gov](mailto:carlos.gomez@spb.ca.gov)

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Policy Division Chief, Lori Gillihan, at the above address.

### **AVAILABILITY OF RULEMAKING FILE:**

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at [www.spb.ca.gov](http://www.spb.ca.gov) under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT:**

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS:**

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET:**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in ~~underline~~ and strikeout can be accessed on the Board's website at [www.spb.ca.gov](http://www.spb.ca.gov) under "What's New?"