

SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES

I.

Introduction

The State Personnel Board (Board) proposes to repeal Sections 202 and 203.5 and amend Sections 66.1, 186, 190, 213.4, and 548.49 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 45-day public comment period on this rulemaking action was held from December 16, 2023, through January 23, 2023. A public hearing was held on January 24, 2023. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board’s responses are below.

II.

Summary of Written Comments from Thuanhai (Hai) Vo, Assistant HR Chief, Office of Human Resources (DCA).

Comment I:

DCA would like clarification regarding the term “keyed copy of the questions” in the context of section 186, subdivision (a). DCA questions if subdivision (a) is referring to only the competitors’ responses to the questions or the scored copy of their questions which would reveal the confidential scoring of the exam.

Response I:

The Board appreciates DCA for its feedback to this regulatory package. “Keyed copy of the questions” is intended to refer to the applicant’s keyed answers to the exam questions. Exam questions shall not be made available for inspection because this may compromise the integrity and security of the exam and would be in direct conflict with Government Code section 18934. As such, the Board finds that DCA’s concerns are valid and will amend section 186 to incorporate DCA’s suggested term of “keyed copy of their answers” to the text.

Comment II:

DCA would like further clarification on the term “it” used in section 190, subdivision (d)(1)(C). What does “it” refer to?

Response II:

The term “it” refers to the misrepresentation or material omission that must be established

to enable a cause of action for fraud. For clarity, the Board will change “made for the purposes of inducing the competitor to rely upon it” to state “made for the purposes of inducing the competitor to rely upon the misrepresentation or material omission.”

Comment III:

Similar to section 190 above, DCA would like further clarification on the term “it” used in section 548.49, subdivision (a)(1)(C). What does “it” refer to?

Response III:

Please see II., Written Comments, Response (ante, at p. 2).

Summary of Written Comments from Samantha Blackwood, Talent Management Division of Human Resources, California Department of Water Resources (DWR)

Comment IV:

DWR recommends amending “may to “shall” in section 186 subdivisions (a) and (b) to make clear that inspection of examination papers is a right versus a privilege. Additionally, DWR suggests reformatting the entirety of section 186 to simplify language for when exceptions are allowed.

DWR recommends the following language:

Examination papers shall be open to inspection only as provided by these regulations.

Competitors shall, upon request, be allowed to inspect a copy of their answers to the questions for the express purpose of ensuring their answers were correctly and properly recorded. Such inspection shall occur during regular office hours in the seven calendar days beginning on the first working day after a written examination has been held and at any of the offices of the Department or such other places as may be designated by the Department. Exceptions to these regulations include that:

(a) candidates shall not be allowed to review examination papers which are standardized or subject to copyright.

(b) candidates may not be allowed to review examination papers when the examination was given to fill urgent and immediate vacancies in state service.

Response IV:

The Board appreciates DWR’s feedback to this regulatory package. The Board agrees that amending “may” to “shall” will ensure that appointing powers and applicants understand the applicant’s right to inspect their answers to a written examination under certain circumstances outlined in section 186. Additionally, for clarity, the Board has further amended proposed section 186 to closely align with DWR’s proposed language.

Section 186 will now read as:

“Examination papers shall be open to inspection only as provided by these regulations.

Upon request to the Department and/or designated appointing power, competitors shall be allowed to inspect a keyed copy of their answers to the examination for the express purpose of ensuring their answers were correctly keyed. Such inspection shall occur during regular office hours in the seven calendar days beginning on the first working day after a written examination has been held and at any of the offices of the Department or such other places as may be designated by the Department. The following are exceptions to this regulation:

(a) Keyed copies of copyrighted or standardized examinations will not be available for review

(b) For examinations given to fill urgent and immediate vacancies in the state service, the Department may provide that there will be no key inspection privileges. Notice of the suspension of this privilege shall be made a part of the written examination instructions given to each competitor at the time of the written examination.”

Summary of Written/Oral Comments from Kris Octabiano, Legal Counsel California Association of Professional Scientists

Comment V:

CAPS respectfully requests inclusion of language related to extensions. Specifically, CAPS seeks to include language that would extend the deadline outlined in section 66.1, subdivision (e), by the same amount of time a department requests an employee or employee’s representative to provide a response.

Response V:

After careful consideration, the Board disagrees with CAPS’ recommendation to extend the timeframe for an employee to file an appeal with the Board beyond the current 90-day deadline. Allowing extensions would overly complicate and prolong the merit issue complaint process which would place undue burden on the employee and the department. Furthermore, the current process allows for the department and employee to continue working together to resolve merit issue complaints after the employee has submitted an appeal with the Board. As such, it would be in the best interest of all parties to retain the 90-day deadline to file an appeal with the Board.

Summary of Written Comments from Mark Sheahan, President, Professional Engineers in California Government Resources (PECG).

Comment VI:

PECG respectfully requests inclusion of language related to extensions. Specifically, PECG seeks to include language that would extend the deadline outlined in CCR section 66.1, subdivision (e), by the same amount of time a department requests an employee or employee's representative to provide a response.

Response VI:

Please see V., Written Comments, Response (ante, at p. 3).

III.

Conclusion:

The Board appreciates the comments and feedback it received regarding this proposed amendment. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.