

INITIAL STATEMENT OF REASONS

<u>HEARING DATE(S):</u>	April 9, 2024
	WebEx/Teleconference
<u>SUBJECT MATTER OF THE PROPOSED REGULATIONS</u>	Unlawful Appointments
<u>SECTIONS AFFECTED:</u>	Title 2, Chapter 1, California Code of Regulations, Amend Sections 52.4, 58.4, 243.2, 243.5, and 243.6

In this rulemaking action, the State Personnel Board (Board) proposes to amend sections 52.4, 58.4, 243.2, 243.5, and 243.6 of Title 2, Chapter 1, of the California Code of Regulations.

PURPOSE, NECESSITY, RATIONALE, AND BENEFITS OF REGULATORY ACTION:

Introduction:

The jurisdiction and authority of the State Personnel Board (Board) to enforce civil service statutes and promulgate regulations is rooted in the California Constitution, article VII, section 3. Relative to this regulatory action, the Board prescribes rules to govern appointments, classifications, examinations and probationary periods. (Gov. Code, §§ 18502, subd. (b).) The Board's rulemaking authority is also found in certain statutory provisions related to civil service and the merit principle. (See e.g., Gov. Code, §§ 18701 & 18660.)

Purpose Statement:

The purpose of this regulatory action is to clarify existing rules and streamline current personnel practices. These changes reflect the Board's continuing efforts to simplify, update, and modernize Board regulations.

Anticipated Benefits of the Regulatory Action:

The proposed regulations provide a number of significant benefits to the state civil service system. The anticipated benefits of this regulatory action include: 1.) clarifying existing ambiguous Board Rules; 2) conforming existing rules with recent amendments to statute, and 3.) addressing deficiencies in the unlawful appointment process.

Discussion of Amendments:

Amend § 52.4: Requirements and Method of Delivery for Filing Appeals and Complaints with the Board.

Existing rule provides that the appeal timeframe for challenging a voided appointment commences when the affected employee receives notice of the unlawful appointment. This aspect of the unlawful appointment process has caused confusion for appointing powers and affected employees as to when the employee's right to appeal commences. This has served as an unnecessary obstacle to properly processing unlawful appointments.

The proposed amendment provides much needed clarity by setting the effective date of the voided appointment, rather than the notice date, as the standard for commencing the 30-day appeal timeframe to challenge a voided appointment. In addition, the proposed amendment now includes a one-year timeframe to challenge the amount of reimbursement ordered for appointments deemed to have been made in bad faith by the employee. The expanded timeframe provides affected employees and appointing powers additional time to prepare for an appeal specific to the amount of reimbursement ordered, especially in cases where the amount of reimbursement is in dispute.

Amend § 58.4 Hearings are Public:

The proposed amendments update section 58.4 to conform with Government Code section 11425.20, subdivision (b)(2) amended on January 1, 2023, which codified the best practices and procedures to conduct remote administrative hearings.

Amend § 243.2 Voiding of Unlawful Appointments

Where an appointment has been made and accepted in good faith but would not have been made but for some mistake of law or fact that renders the appointment unlawful, the civil service statutory scheme provides the California Department of Human Resources (CalHR)¹ with limited authority to declare the appointment void from the beginning if the action is taken within one year after the appointment. (Gov. Code, § 19257.5.)

For purposes of clarity, the proposed amendments make explicit that CalHR shall request the Board or the Executive Officer to take appropriate action, up to voiding an unlawful appointment, in cases where CalHR determines that the appointment was not made in in good faith and has been in effect for longer than one year². This is congruous with the Board's authority to enforce civil service statutes and the merit

¹ In Board regulations, CalHR is referred to as the "Department." (Cal. Code Regs., tit. 2, § 4.5.)

² This is consistent with the civil service statutory scheme which limits CalHR's authority to declare an appointment void only if the action is taken within one year after the appointment.

system, which includes ensuring lawful appointments and is rooted in the California Constitution, article VII, sections 1 and 3. (See also Gov. Code, §§ 18502, subd. (b), 18701, 18660, & 19889.)

Amend § 243.5 Right to Respond; Right to Appeal

The proposed amendments simplify and streamline an unclear and inefficient unlawful appointment process. Currently, the regulatory process dictating how and when CalHR or delegated appointing powers notify affected employees regarding an unlawful appointment has caused significant confusion, including instances where employees retained their appointments due to missed deadlines or improper notice. Moreover, in cases where the Board has ordered the voiding of unlawful appointments, appointing powers have failed to void appointments in a timely manner consistent with Board rule.

The intent and purpose of this proposed regulation is to provide clear, concise, and consistent procedures for correcting unlawful appointments

Amend § 243.6 Right to Reimbursement Hearing; Petition for Reconsideration.

The proposed amendments are necessary to ensure consistency with the proposed amendments to sections 52.4, 243.2, and 243.5. Moreover, the proposed amendments clarify and make specific the appeal and hearing process in those cases where the amount of reimbursement is in dispute, which is not addressed in existing rule.

Proposed amendments concerning petitions for reconsideration are stylistic and without substantive impact.

ECONOMIC IMPACT ASSESSMENT:

The proposed regulations set standards related to the Board's unlawful appointment process. Therefore, the 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 general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service hiring process.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS:

None.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

EFFORTS TO AVOID CONFLICT WITH AND DUPLICATION OF FEDERAL REGULATIONS:

Not applicable. The Board is not a department, board, or commission within the Environmental Protection Agency, the Resources Agency, or the Office of the State Fire Marshall.

SIGNIFICANT ECONOMIC IMPACT ON BUSINESS:

The proposed regulations set a standard related to the Board's unlawful appointment process. Accordingly, it has been determined that the adoption of the proposed regulations would not have a significant, statewide adverse economic impact affecting California businesses, including the ability of California businesses to compete with businesses in other states.

CONSIDERATION OF ALTERNATIVES

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board would be more effective in carrying out the purposes for which the instant action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.