



**NOTICE OF PROPOSED AMENDMENT OF REGULATION AND STATEMENT  
OF REASONS**

**California Code of Regulations  
Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board**

**DATE:** September 10, 2004

**TO:** ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND  
MEMBERS OF THE GOVERNOR'S CABINET

**SUBJECT:** Proposed Amendment to Title 2, California Code of Regulations  
§ 211 - Dismissed State Employees to Take Examinations

**AUTHORITY:**

Under the authority established in Government Code (GC) § 18701, the State Personnel Board (SPB) proposes to amend Title 2, § 211 of the California Code of Regulations (2CCR) relating to the eligibility of dismissed State employees to take examinations.

**REFERENCE:**

The regulation implements, interprets, and/or makes specific GC § 18941.

**PUBLIC HEARING:**

Date and Time: November 3, 2004  
9:30 a.m. to 10:00 a.m.

Place: 801 Capitol Mall, Auditorium  
Sacramento, CA 95814

Purpose: To receive written or oral public comments about this action.

**WRITTEN PUBLIC COMMENT PERIOD:**

The written public comment period will close Monday, October 25, 2004, at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any

written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed amendment. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the forty-five (45) day comment period.

Written comments may be submitted to Daphne Baldwin at the State Personnel Board, 801 Capitol Mall, MS 55, Sacramento, CA 95814, or to [dbaldwin@spb.ca.gov](mailto:dbaldwin@spb.ca.gov), or fax comments to her attention at (916) 653-1280.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/  
CONTACT PERSONS:**

Copies of the express terms of the proposed action, Statement of Reasons, and all of the information upon which the proposal is based are available upon request from SPB's contact person. The rulemaking file is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Daphne Baldwin as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Elizabeth Montoya, the backup contact person, at the State Personnel Board, (916) 654-0842 or TDD (916) 653-1498.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation available for at least fifteen (15) days before the date the regulation is permanently adopted.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

GC § 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC §§ 18500 et.seq.).

GC § 18935 permits the Board to refuse to examine or, after examination, refuse to declare as eligible or withhold or withdraw from certification, prior to appointment, anyone who comes under any of the specified categories.

GC § 18941 requires the Board to provide by rule, for the granting of a blanket waiver under § 211 that allows a dismissed employee to apply for any exams, without needing a separate waiver for each exam. It also requires SPB to prepare a written notice explaining the effect of dismissal from the State on eligibility to take exams.

Existing § 211 provides that a person who has been dismissed from State civil service cannot take any civil service examination, or be certified to any position, without the consent of the Executive Officer of SPB. It authorizes the Executive

Officer to grant a continuing waiver of this requirement to an employee who later attains permanent civil service status.

**IMPACT ON SMALL BUSINESSES:**

The proposed regulation will not impact small businesses.

**LOCAL MANDATE:**

The proposal has no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to GC § 17561.

**COST ESTIMATES OF PROPOSED ACTION:**

**Costs or Saving to State Agencies**

The proposed regulation will involve no additional costs or savings to any State agency.

**Impact on Housing Costs**

The proposal will not affect housing costs.

**Costs or Savings in Federal Funding to the State**

No impact.

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies**

The proposal does not impose nondiscretionary costs or savings on local agencies.

**Cost Impact on Representative Persons or Businesses**

SPB is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed actions.

**ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESSES:**

SPB has determined that the proposed action will have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:**

The proposed action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

**ALTERNATIVES STATEMENT:**

SPB must determine that no reasonable alternative it considered or that has otherwise been 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.

**FINAL STATEMENT OF REASONS:**

Upon completion, copies of the Final Statement of Reasons for the proposed action may be obtained from the contact person or the backup contact person.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEBSITE:**

The text of the amended regulation in underline and strikeout, as well as, the Notice of Proposed Amendment of Regulation, and Statement of Reasons and if prepared and when available for review, the Final Statement of Reasons, will be on SPB's Web site at [www.spb.ca.gov](http://www.spb.ca.gov).

**STATEMENT OF REASONS:**

Existing § 211 provides that a person who has been dismissed from State civil service cannot take any civil service examination, or be certified to a position, without the consent of the Executive Officer of SPB. It authorizes the Executive Officer to grant a continuing waiver of this requirement to an employee who later attains permanent civil service status.

The proposed amendment to this regulation is to make specific the requirements pursuant to GC § 18941. It allows a dismissed employee who meets standards, as determined by SPB, to apply for any civil service examination so that they would not need a separate waiver for each exam.

Joan Allison, Acting Chief,  
Policy Division

Attachment: Text of Proposed Regulation

Title 2. ADMINISTRATION  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board  
Subchapter 1. General Civil Service Regulations  
Article 8. Examinations

§ 211. Eligibility.

If an employee is dismissed from state employment by adverse action or as a result of disciplinary proceedings, that dismissed employee shall not thereafter be permitted to take any state civil service examination or be certified from an eligible list to any position in the state service without the prior consent of the Executive Officer. ~~If such an employee subsequently attains permanent status in the state civil service, the executive officer may grant a continuing waiver of this requirement which may apply to all subsequent examinations for which that employee applies or to those for specified occupations. In all other cases, the executive officer shall determine whether to refuse to examine, or after examination, to declare or certify as eligible anyone for any of the reasons set forth in section 18935 of the act.~~

~~Persons denied permission to compete or be certified under this section may appeal in writing to the Board within 30 days of notification.~~

Dismissed employees' requests to participate in state civil service examinations shall be subject to the following:

- (a) Requests must be filed with the Board at least five (5) working days prior to the final filing date of the examination(s) for which the dismissed employee wishes to apply.
- (b) All requests shall be in writing and accompanied by a completed state examination application.
- (c) Requests shall clearly identify the facts, circumstances, and reasons that support the dismissed employee's request to take the examination(s). The request, at a minimum, shall include the date of the dismissal, the reasons for the dismissal, and the reasons why the dismissed employee believes that he or she should be permitted to take the examination(s). The dismissed

employee may also submit substantiation of corrected behavior, letters of recommendation, employment evaluations, and other materials and/or declarations to support the request.

(d) Requests will be reviewed on a case-by-case basis, taking into consideration the following factors:

1. The type of examination/classification for which the dismissed employee wishes to apply.
2. The circumstances/causes surrounding the dismissal and any restrictions that impact the request.
3. Any pattern of successful employment after the dismissal.
4. Confirmation/assurance of corrected and/or sustained improved behavior.
5. Acceptance of responsibility for past wrongful actions.
6. Demonstration of readiness to re-enter state service.
7. Any other factors deemed relevant to the request, including those factors set forth in Government Code Section 18935.

After reviewing these factors, the Executive Officer shall determine whether to grant the dismissed employee permission to participate in the examination(s). If the Executive Officer determines that the information submitted by the dismissed employee so warrants, the Executive Officer may grant the dismissed employee a blanket waiver to apply for any examination for which the dismissed employee meets the minimum qualifications. The Executive Officer shall set forth his or her decision in writing. A dismissed employee may appeal to the Board from the Executive Officer's decision within 30 days after receipt of that decision.