



**NOTICE OF PROPOSED REVISION OF REGULATIONS
AND STATEMENT OF REASONS**

**California Code of Regulations
Title 2. Administration
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Article 7. Appointments
And
Article 9. Promotion**

DATE: February 22, 2010

TO: ALL INTERESTED PARTIES

FROM: SUZANNE M. AMBROSE
Executive Officer

SUBJECT: PROPOSED AMENDMENT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, SECTIONS 548.70 AND 234 – ELIGIBILITY
FOR PROMOTIONAL EXAMINATIONS AND CEA APPOINTMENTS

AUTHORITY:

Under the authority established in Government Code (GC) sections 18701, 18546, 18990, 18991, 18992, 19889, 19889.2, and 19889.3, the State Personnel Board (SPB or Board) proposes to amend sections 578.70 and 234 to Title 2 of the California Code of Regulations (2 CCR) relating to eligibility for promotional examinations and appointments. Pursuant to GC sections 18211 and 18213, the proposed regulations are exempt from the Administrative Procedures Act (Chapter 3.5, commencing with Section 11340, of Part 1 of Division 3).

REFERENCE:

The regulations implement, interpret, and/or make specific GC sections 18546, 18990, 18991, 18992, and 19889.3.

PUBLIC HEARING:

Date and Time: Thursday, April 8, 2010
10:15 a.m. – 11:15 a.m.

PROPOSED AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2,
SECTIONS 548.70 and 234
February 22, 2010
Page 2

Place: 801 Capitol Mall, Auditorium, Room 150
Sacramento, CA 95814

Purpose: To receive oral comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The written public comment period will close Monday, March 25, 2010, at 5:00 p.m. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:

CHIAN HE
State Personnel Board
801 Capitol Mall, MS 53
Sacramento, CA 95814

or to: che@spb.ca.gov

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

Copies of the proposed action, Statement of Reasons, and all of the information upon which the proposal is based are available for review upon request to Chian He. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Chian He, as specified above.

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

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.spb.ca.gov.

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 regulations available for at least 15 days before the date the regulations are permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

GC section 18211 specifies that regulations promulgated by the SPB are exempt from the Administrative Procedures Act (GC section 11340 et seq.), except as provided in GC sections 18215 and 18216. The exceptions in GC sections 18215 and 18216 do not apply to civil service selection, examination, or classification procedures.

GC section 18213 specifies that regulations concerning civil service selection, examination, and classification procedures may be adopted by the SPB without public notice or comment.

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

The purpose of the proposed regulations is to implement statutory changes on eligibility for CEA appointments and promotional examinations.

IMPACT ON SMALL BUSINESSES:

It is anticipated that the proposed amendments will have no impact on small businesses.

LOCAL MANDATE:

SPB has determined that the proposed action imposes no additional mandate on local agencies or school districts and, therefore, requires no reimbursement pursuant to GC section 17561.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed regulation will involve no additional costs to any state agency.

Impact on Housing Costs:

No impact.

Costs or Savings in Federal Funding to the State:

No impact.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

No impact.

Cost Impact on Private Persons or Businesses

No impact.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESSES:

No impact.

ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:

The adoption of the proposed action should neither create nor eliminate jobs in the state, nor result in the elimination or expansion of existing businesses in the state, nor create or expand businesses in the state.

ALTERNATIVES STATEMENT:

SPB has determined that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed, or would be as effective as and less burdensome to affected persons than the proposed action.

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 for the amendments. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

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

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons can be viewed at www.spb.ca.gov.

INITIAL STATEMENT OF REASONS:

The purpose of the proposed regulations is to implement changes mandated by

PROPOSED AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2,
SECTIONS 548.70 and 234

February 22, 2010

Page 5

Government Code sections 18546, 18990, 18992, and 19889.3 regarding eligibility for CEA appointments and promotional examinations.

The main elements of the proposed regulations are:

- (1) Those who previously had permanent status in the state civil service are made eligible for CEA promotional examinations and appointments;
- (2) Persons who have been employed by the Legislature as defined in Government Code section 18990 are made eligible for CEA appointments and all promotional examinations;
- (3) Persons who have held nonelected exempt positions in the executive branch of government as defined in Government Code section 18992 are made eligible for CEA appointments and all promotional examinations; and
- (4) Persons retired from the United States military, honorably discharged from active military duty with a service-connected disability, or honorably discharged from active duty as defined in Government Code section 18991 are made eligible for CEA appointments and all promotional examinations.

Note: Government Code sections 18546, 18990, 18992, and 19889.3 have sunset provisions of January 1, 2013 pursuant to SB 1472, Chapter 353, Statutes of 2008, unless statutes are enacted before January 1, 2013, extending or making the provisions permanent. If these statutes sunset, the proposed regulations will revert back to existing regulations.

Attachment: Text of Proposed Regulations

Title 2. ADMINISTRATION
Division 1. Administrative Personnel
Chapter 1. State Personnel Board
Subchapter 2. Career Executive Assignment Rules
Article 7. Appointments

§ 548.70. Eligibility for Appointments.

(a) Except as provided in this chapter, eligibility for appointment to a Career Executive Assignment position shall be established as the result of competitive examination of persons with permanent status; or who previously had permanent status in the state civil service; or persons who have been employed by the Legislature as defined in Government Code section 18990; or have held nonelected exempt positions in the executive branch of government as defined in Government Code sections 18992 and 19889.3; or persons retired from the United States military, honorably discharged from active military duty with a service-connected disability, or honorably discharged from active duty as defined in Government Code section 18991; who are well qualified to perform high administrative and policy-influencing functions. The scope and nature of such examinations may be determined by the appointing power subject to these regulations and the approval of the executive officer.

(b) This section will remain in effect until January 1, 2013, unless statutes are enacted before January 1, 2013, extending the sunset date of January 1, 2013 or making permanent of Government Code sections 18546, 18990, 18992, and 19889.3.

If Government Code sections 18546, 18990, 18992, and 19889.3 sunset on January 1, 2013, this section is added to read:

§ 548.70. Eligibility for Appointments.

(a) Except as provided in this chapter, eligibility for appointment to a Career Executive Assignment position shall be established as the result of competitive examination of persons with permanent status in the state civil service or persons retired from the United States military, honorably discharged from active military duty with a service-connected disability, or honorably discharged from active duty as defined in Government Code section 18991, who are well qualified to perform high administrative and policy-influencing functions. The scope and nature of such examinations may be determined by the appointing power subject to these regulations and the approval of the executive officer.

(b) This section shall become operative on January 1, 2013.

NOTE: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 18990, 18991, 18992, 19889, 19889.2, and 19889.3, Government Code.

TITLE 2. ADMINISTRATION
DIVISION 1. Administrative Personnel
CHAPTER 1. State Personnel Board
SUBCHAPTER 1. General Civil Service Regulations
ARTICLE 9. Promotion

§ 234. Promotional Examination Eligibility.

(a) Except as otherwise provided by law or these regulations, or order of the executive officer, a current employee in an agency or subdivision designated as appropriate by the executive officer may compete in the promotional examination if the employee meets one of the following criteria:

(1) Has a permanent appointment.

(2) Has had a permanent appointment with no subsequent break in service by resignation, non-disability retirement, or removal for cause.

(3) Is on temporary assignment or loan under Section 426 and has permanent civil service status in another agency.

(b) Notwithstanding other provisions of law or rule, persons employed for two or more consecutive years by the Legislature who meet the provisions of Government Code Section 18990 or in nonelected exempt positions in the executive branch of government who meet the provisions of Government Code section 18992 may also compete in promotional examinations.

(c) Notwithstanding other provisions of law, persons retired from the United States military, honorably discharged from active military duty with a service-connected

disability, or honorably discharged from active duty as defined in Government Code section 18991, may compete in career executive assignment examinations.

(ed) Only persons with current permanent civil service status or who previously had permanent status in the state civil service; or persons who meet the provisions of Government Code sections 18990, 18991, or 18992 may compete in career executive assignment examinations.

(de) Those individuals who resigned while competing in a promotional examination and who reenter state service within six months with a permanent appointment may, with concurrence of the appointing power, resume competition in the examination in progress when it is possible to do so without requiring the rescheduling of an already completed part of the examination.

(f) This section will remain in effect until January 1, 2013, unless statutes are enacted before January 1, 2010, extending the sunset date of January 1, 2013 in Government Code sections 18546, 18990, 18992, and 19889.3.

If Government Code sections 18546, 18990, 18992, and 19889.3 sunset on January 1, 2013, this section is added to read:

§ 234. Promotional Examination Eligibility.

(a) Except as otherwise provided by law or these regulations, or order of the executive officer, a current employee in an agency or subdivision designated as appropriate by the executive officer may compete in the promotional examination if the employee meets one of the following criteria:

(1) Has a permanent appointment.

PROPOSED AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2,
SECTIONS 548.70 and 234

February 22, 2010

Page 10

(2) Has had a permanent appointment with no subsequent break in service by resignation, non-disability retirement, or removal for cause.

(3) Is on temporary assignment or loan under Section 426 and has permanent civil service status in another agency.

(b) Persons employed by the legislature who meet the provisions of Government Code section 18990 or in nonelected exempt positions in the executive branch of government who meet the provisions of Government Code section 18992 may also compete in promotional examinations.

(c) Notwithstanding other provisions of law, persons retired from the United States military, honorably discharged from active military duty with a service-connected disability, or honorably discharged from active duty as defined in Government Code section 18991, may compete in career executive assignment examinations.

(d) Only persons with current permanent civil service status or persons who meet the provisions of Government Code sections 18990, 18991, and 18992 may compete in career executive assignment examinations.

(e) Those individuals who resign while competing in a promotional examination and who reenter state service within six months with a permanent appointment may, with concurrence of the appointing power, resume competition in the examination in progress when it is possible to do so without requiring the rescheduling of an already completed part of the examination.

(e) This section shall become operative on January 1, 2013.

PROPOSED AMENDMENT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2,
SECTIONS 548.70 and 234
February 22, 2010
Page 11

NOTE: Authority cited: Section 18701, Government Code. Reference Sections 18950,
~~and 18990, 18991, and 18992,~~ Government Code.