

**SUMMARY OF PUBLIC COMMENTS  
AND  
THE BOARD'S RESPONSES**

**Classifications, Examinations, and Selection Regulatory Package**

**Second 15-Day Written Comment Period January 25, 2017, through February 10,  
2017.**

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# SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

## I.

### Introduction

The State Personnel Board (Board) proposes to adopt, amend, and repeal numerous regulatory sections of Title 2, Chapter 1, of the Code of Regulations (CCR), which concern classifications, examinations, and selection (the CES Regulatory Package). A second 15-written public comment period on these regulations was held from January 26, 2017, through February 10, 2017. The Board received both written and oral comments. All comments were taken under submission and considered. A summary of those comments and the Board's responses are below.

## II.

### **Summary of Written Comments from York Chang, Chief Counsel, Service Employees International Union, Local 1000 (SEIU).**

#### Comment 1:

Proposed Section 86 (Appointments Shall Be Based On Merit and Fitness).

(A) Under the merit principle, the ranking of job applicants is an important step in the hiring process and in all state employment processes. It is unclear, then, why the term "ranks" was deleted from proposed section 86. The term was retained in proposed section 193.1(Scoring and Ratings for Examinations), but removed from proposed section 193.2 (Exam Rating Considerations for Education and Experience). It is also unclear whether a "comparative evaluation" will fulfill the goals of the merit selection system, if the ranking of applicants is not included. SEIU Local 1000 sees no need for removal of the requirement of ranking, and the reasons behind its removal have not been provided by the Board. Therefore, the ranking of candidates should remain part of proposed section 86.

(B) SEIU Local 1000 opposes replacing the phrase "meet the needs of" with the phrase "can be successful." A successful candidate needs to meet the needs of the appointing authority, and this should be the primary consideration. The proposed language change would relegate "the needs of" the appointing authority to secondary importance.

#### Response 1:

(A) Proposed section 86 requires that appointments to positions in state civil service shall be made on the basis of the selected candidate's merit and fitness for the position. The proposed regulation also requires that determining a candidate's merit and fitness

for appointment may include, but is not limited to, the candidate's performance and ranking on the examination and "any other procedure" that involves an "assessment and comparative evaluation" of the job-related qualifications of candidates and is designed and administered to hire candidates who can be successful in the position to be filled.

For the second 15-day written comment period, the phrase "assesses, compares, and ranks" was deleted after "any other procedure" and replaced with an "assessment and comparative evaluation," because the ranking of candidates in the examination process (see Gov. Code, § 18937) is a more structured and rigid phase of the selection process than the hiring process. Proposed section 250 requires that the hiring process must also be competitive and involve an assessment of the candidates. At the hiring phase of selection, however, the hiring manager does not necessarily need to rank candidates in a sequential order, as is done in the examination process, to ensure the merit principle. The hiring manager can certainly do that, since a sequential ranking (i.e., 1, 2, 3, and so forth) would be a "comparative evaluation" of the candidates; however, he or she may choose other ways to assess the relative merits of candidates like category-based evaluations (e.g., "best qualified," "well qualified" or "qualified") or grading scales like "A, B, or C."

Those types of alternative comparative evaluations ensure competition between the candidates based upon job-related criteria and also provide hiring managers the flexibility to determine which type of comparative evaluation may be best for the particular position or positions being filled. It should also be noted that the California Department of Human Resources (CalHR) is currently working on an HR manual that will include best practices related to the hiring phase of the selection process.

(B) The use of the term "success" rather than "needs" does not relegate the needs of the appointing authority to secondary importance, since a successful candidate will meet the appointing authority's needs. "Needs" was changed to "success" because it is an accurate descriptor and consistent with the Board's policy summary, as stated in The State's Civil Service Selection Process (Oct. 2003), section 1200.2, "A selection process used for hiring and promoting employees in the civil service shall be designed to assess the knowledge, skills, abilities, and other characteristics required for successful performance in the job classification for which the selection process is conducted."

#### Comment 2:

Proposed Section 89 (Review of the Classification Plan).

(A) This proposed section should specifically reference the MOU process and include an obligation for CalHR to meet and confer with SEIU Local 1000 and other unions that are parties to MOUs with the State before any classification changes are proposed to the Board.

(B) The requirement for a “periodic review” is vague. A specific time period, e.g., one or two years, should be included instead. Due to the number of classifications that are outdated, it seems that the goal of fully updating classifications will be quite difficult to achieve, if it is possible at all.

(C) There should be scheduled meetings between CalHR and appropriate union representatives every one or two years to discuss any changes to the classifications, examinations, or selection process that are being considered. The way to avoid disputes is by discussing them early on with appropriate parties.

#### Response 2:

(A) Collective bargaining of terms and conditions of employment between the state and its employees is contained in the Ralph C. Dills Act (Government Code, §§ 3512 et seq.). CalHR’s labor-related obligations are thus already set in law and are distinct from the Board’s constitutional and statutory authority over classifications. To include labor-related laws in proposed section 89 would therefore be unnecessarily duplicative and incorporate an area of law not within the Board’s jurisdiction.

(B) SEIU Local 1000’s comment is beyond the scope of the second 15-day written comment period, since that language remains unchanged for this comment period. However, please see Summary Of Public Comments and The Board’s Responses, 45-Day Public Comment Period, XI, Summary of Written Comments SEIU, Comment and Response 1, pages 43 through 44, and Summary of Written Comments CalPERS, Comment and Response 2, page 48.

(C) This comment relates to CalHR’s labor-relations obligations and procedures, which is separate from the Board’s constitutional and statutory authority over classifications.

#### Comment 3:

Proposed Section 171.1 (Calculating the Amount of Time to Satisfy Minimum Qualifications for Experience).

(A) SEIU Local 1000 would like to note first that it is currently very difficult for state employees to gain equivalent experience credit. The second sentence in subdivision (d) undercuts the first sentence.

(B) The difference between “routine” and “occasional” is vague and unclear.

(C) In out-of-class assignments, the voice of management should not be the only voice that is heard. The voice of the employee should be heard as well. It has been our experience that management consistently and unreasonably refuses to authorize credit under section 212. Further, 212 credit cannot be awarded in arbitration. As it exists now, 212 credit is given solely at the department's discretion and is almost never provided. We agree that out-of-class time should be counted toward experience, but the decision

whether to provide 212 credit should not be exclusively the department's decision. Very often, employees are awarded out-of-class compensation, but have no way to gain equivalent experience credit.

Response 3:

(A) Whether it is difficult for state employees to gain equivalent experience credit is distinct from the scope of this proposed regulation, which is how to calculate the amount of time to satisfy minimum qualifications for experience. SEIU Local 1000, however, is always welcome, as are other recognized unions representing state employees, to attend Board meetings and present matters that impact the civil service selection process.

The second sentence in the proposed regulation provides that if the applicant is “a state employee and the experience in question was gained in an out-of-class assignment, section 212 of the Board’s regulations shall apply.” This standard avoids uncertainty and potential conflict between proposed section 171.1 and section 212.

(B) SEIU Local 1000’s comment is beyond the scope of the second 15-day written comment period, since the cited language remains unchanged for this comment period. Nonetheless, the Board exercises its discretion to respond.

The proposed regulation states that “the applicant’s job responsibilities or duties must be performed on a routine basis, either daily, weekly, monthly, or certain times of the year.” A routine basis is thus further clarified as daily, weekly, monthly, or certain times of the year. The terms “occasional or incidental” should be given ordinary meanings and in context mean not “daily, weekly, monthly, or certain times of the year.” These definitions and parameters are thus sufficiently clear to avoid vagueness.

(C) Section 212 is not included substantively in the instant rulemaking action. Therefore, SEIU Local 1000’s comments about section 212 are outside the span of this action. Nonetheless, the Board appreciates SEIU 1000 raising this potential issue, since all Board regulations are currently being reviewed.

Comment 4:

Proposed Section 193.1 (Scoring and Ratings for Examinations).

As noted above, it is unclear why "rankings" are retained when assessing candidate's examination results in this section, but is removed when considering education and experience in section 193.2. Ranking candidates seems to be an essential part of the merit principle for state employees.

Response 4:

Please see Response 1(A), *ante* at pp. 1-2.

Comment 5:

Proposed Section 194 (Limited Three Rank Examinations).

SEIU Local 1000 agrees with including LEAP candidates in the first rank of candidates as provided in proposed section 249.7 and feels that reference to that section should be included here so it is clear that all LEAP candidates are to be placed in the first rank. Otherwise, "scores of the candidates in the first rank" may not reflect "scores higher than the candidates in the second or third rank," as this section currently provides.

Response 5:

Proposed section 194 concerns scoring for a limited three-rank examination at the examination phase of the selection process, which results in an employment list that is separate from any applicable LEAP-referral list. Therefore, the scoring of the limited three-rank examination is not impacted by any applicable LEAP-referral list at this phase. Proposed section 249.7 concerns non-disclosure of a candidate's list eligibility during the hiring phase, which is separate and distinct from how the limited three-rank examination itself is scored and ranked. Thus, to include reference to proposed section 249.7 in proposed section 194 would cause administrative confusion over the method of establishing employment lists resulting from a limited three-rank examination.

Comment 6:

Proposed Section 195.2 (Ratings for QAP Examinations).

SEIU Local 1000 suggests changing the title of this section to "Ratings for QAP Examination Interviews" to make it consistent with the first sentence of subsection (a) and to avoid confusion with the use of the word "Examinations." It seems inconsistent that this section uses the phrase "ratings" but references section 193.1 which uses the word "rank[ings]." As stated elsewhere, utilizing the word "rankings" throughout would add internal consistency and help support the merit principle.

Response 6:

Proposed section 193.1 requires that each candidate shall be scored and rated by assessing his or her qualifications, responses, and/or performance with the pre-established, job-related scoring criteria of the examination. The proposed regulation further requires that based upon this assessment, each candidate shall be compared and ranked against all other candidates. Thus, proposed section 193.1 concerns both ratings, which is the percentage score obtained by the candidate, and the ultimate ranking of the candidates, which involves placing a candidate in a rank based upon his or her rating on the examination. Therefore, reference to proposed section 193.1 in proposed section 195.2 is proper as is the title of proposed section 195.2.

Comment 7:

Proposed Section 242 (Promotions in Place).

Subsection (b) of this section is vague. SEIU Local 1000 supports informing employees who were eligible for the promotion but did not receive it in person and in writing of the reasons for the decision. However, the phrase "those employees not selected" does not make it clear which employees are to be so informed and could be interpreted as applying to the whole unit (or department). We suggest adding the word "eligible" so that it is clear that only "those eligible employees not selected" need be contacted. In the alternative, it could be amended to reference those employees in the classification from where promoted employee(s) are leaving.

Response 7:

Subdivision (b) is amended to add "eligible."

Comment 8:

SEIU Local 1000 strongly supports placing LEAP candidates in the first rank as a way to promote the merit principle and state hiring of people with disabilities. We also recommend having appointing powers provide regular training for managers on best practices for employing individuals with disabilities. In our experience, LEAP candidates are often unsuccessful due to managers being unaware of their obligations under the law or unwilling to provide necessary reasonable accommodations. Reasonable accommodations are a cost effective way to increase employee productivity, a benefit for the employee and the appointing power.

Response 8:

Training for managers and supervisors is not within the scope of the instant rulemaking action. It is worth noting, however, that the 80-hour supervisory training required by Government Code section 19995.4 upon initial appointment includes training on equal employment opportunity principles and affirmative action for persons with disabilities.

Comment 9:

Proposed Section 250 (Determining Merit Fitness During the Hiring Process).

As noted in the comments for proposed changes to section 86, SEIU Local 1000 opposes replacing the phrase, "meet the needs of" with the phrase "can be successful," as the change relegates the appointing power's needs to secondary importance.

Response 9:

Please see Response 1(B), *ante*, at page 2.

### III.

#### **Summary of Written Comments from Kathy J. Aldana, Chief, Human Resources, California Department of Water Resources (DWR).**

##### Comment 1:

Proposed Section 195.3 (Alternate Rating for a QAP Examination).

(A) The way this proposed regulation reads, agencies would “MQ” applications but still allow the rejected candidate to compete. So then an agency would end up withholding the applicant from the list for not meeting MQs?

(B) The Board stated in their response to our comments that this section is enacted in order to “provide a means to appeal” being rejected from an examination. Rejected candidates already have an appeal process. Once a candidate is rejected they have seven days to respond with additional information. If at the end of the seven days, an agency determines that the information is still not enough to qualify the applicant, he or she has 30 days to appeal to SPB. Would this process nullify the current appeal processes?

(C) Because alternate ratings only pertain to QAP examinations, what is to stop agencies from adding supplemental applications to all QAP exam plans so that the agency could argue that the exam is multiple phase and not a QAP examination. Or what is to stop agencies from adding a pass/fail supplemental application where the ratings are based on meeting the minimum qualifications, thereby eliminating candidates from the examination by not passing the supplemental application portion.

(D) But we would not be allowed to fail any rejected candidates. This means that rejected candidates may receive special privileges over accepted candidates.

(E) Why would an applicant appeal if we are required to pass them?

(F) The alternate rating would be the regular rating we would be required to assign them based on the language in proposed section 195.3(a)?

##### Response 1:

DWR’s comment is beyond the scope of the second 15-day written comment period, since proposed section 195.3 remains unchanged for this comment period. The Board, however, exercises its discretion to respond.

(A) The intent of proposed section 195.3 is to provide for an appeal process should it be determined during the exam process that a candidate does not satisfy the minimum qualifications. Evidently, the current practice is for applications to be screened for whether the candidate satisfies the minimum qualifications prior to the QAP

examination. This process avoids having a candidate take the examination only to later discover that the candidate does not satisfy the MQs. Certainly, this practice makes logical sense; however, practices may change or unforeseen situations may arise where it is believed during the examination process that a candidate does not meet the MQs. That determination may be correct or wrong. If it is found to be wrong, the candidate is at a disadvantage because he or she will need to wait for another QAP examination. This outcome disadvantages not just the candidate but also the appointing power, given the time and expense of QAP exams and given that the candidate pool was unnecessarily reduced.

Proposed section 195.3 is in place for such a contingency. That is, should a circumstance arise where the only reason for eliminating a competitor from the QAP examination is based upon a failure to satisfy the minimum qualifications, proposed section 195.3 allows for the candidate to receive an alternate rating. If the candidate appeals and it is determined on appeal that the candidate satisfies the minimum qualifications, the alternate rating shall become the candidate's rating on the examination. That way, the candidate will not be required to take another QAP examination.

To avoid confusion, however, proposed section 195.3 has been clarified to add, "If during the course of a QAP examination interview, it is determined that a candidate does not satisfy the minimum qualifications of the classification that is the subject of the examination . . . ."

(B) No. As explained in Response (A), the intent of proposed section 195.3 is to provide an effective appeal process in instances in which information is discovered during the QAP interview that reveals the candidate does not meet MQs. Rather than discontinuing the QAP interview, the candidate is allowed to complete the examination and is given an alternate rating in the event the candidate appeals his or her elimination from the examination and the Board determines on appeal that the candidate satisfies the MQs.

(C) Current section 199.1 (Alternate Ratings) has been in effect since 1961 without being a problem or causing state agencies to act in ways that might be counter to civil service laws and rules. This rulemaking action renumbers section 199.1 to proposed section 195.3. Therefore, the concern that proposed section 195.3 will cause agencies to scheme in ways that will get around proposed section 195.3 seems unlikely. In addition, the Policy and Compliance Review Division of the Board conducts routine reviews of the personnel practices of State agencies, including practices related to civil service examinations. These reviews are intended to encourage compliance with civil service laws and rules and correct deficiencies.

(D) The proposal does not state that the agency shall pass the candidate; rather, proposed section 195.3 applies when a candidate will be eliminated for failing to meet MQs. Under that circumstance, the proposed regulation requires that the candidate be given an alternate rating in case the candidate appeals the appointing power's action.

(E) Because the candidate has been eliminated, he or she may appeal.

(F) Should proposed section 195.3 apply, the alternate rating is the only rating given to the candidate. There is no regular rating.

Comment 2:

Please also see the attached listing of current candidates on LEAP lists.<sup>1</sup> Our concern is that for some of the lists that contain thousands of LEAP candidates, rank 1 will block anyone else from being reachable and lists will expire before those outside of rank 1 are reachable. Unless, however, that all classifications with LEAP lists will become three rank eligible lists. Is this the plan?

Response 2:

It is not the plan to make LEAP-referral lists three-rank eligible lists. LEAP candidates, however, will not block other eligible candidates, since all candidates who are eligible (e.g., by way of an employment list or transfer) may be hired. If the appointing power is trying to hire based on a certified list that has been combined with a LEAP-referral list, the appointing power is not required to clear the first rank before considering candidates in the second and third ranks. All candidates in the top three ranks are eligible for hire.

**IV.**

**Summary of Written Comments from Becky Shelton, Staff Services Manager I, Selection Standards & Examinations Section, California Department of Highway Patrol (CHP).**

Comment 1:

Proposed section 171.1 (Calculating the Amount of Time Required to Satisfy Minimum Qualification for Experience).

(A) As to subdivision (e), overtime may be worked assisting others of lower classifications and should not be counted as time in the current class. How do we verify these hours?

(B) In the Board's response to the Department of Water Resources during the first written comment period, it was indicated it was not burdensome to determine this information. Start and end dates can be easily verified during appointment checks with other agencies; however, overtime information will be harder to verify and other agencies may not be willing to release this information. Also, the individual releasing the

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<sup>1</sup> The attachment, which is an email dated, February 10, 2017, is attached hereto as Exhibit A. It should be noted that 10 of the 18 LEAP-referral lists in the email have list dates that are 15 or more years old. It is unclear from the email if some candidates have been on the referral list for that amount of time, since the lists are labeled as merged.

information cannot verify if the overtime worked was actually performed on those dates within the scope of their current classification.

(C) Wouldn't subdivision (e) disadvantage management staff who don't receive overtime compensation? Many other classes in state service can meet minimum qualifications more quickly by using overtime hours, but managers will not be afforded that same opportunity because they are workweek group "E" and do not earn overtime.

Response 1:

CHP's comment is beyond the scope of the second 15-day written comment period, since proposed section 171.1 was unchanged for this comment period. The Board, however, exercises its discretion to respond.

(A) This question relates to the operational implementation of the regulation. It should also be noted that this example is unclear as to the classification and circumstance for this type of overtime work. If in the example the employee is working out-of-class, section 212 applies. (Proposed § 171.1, subd. (d).) Civil service employees, however, should be working within the scope of their classification, which means employees working overtime gain additional time performing their assigned tasks and duties; thus, it is reasonable to conclude that this additional time serves to enhance and reinforce for them whatever competencies are required for those tasks and duties.

(B) To clarify, the Board's response was not that it was not burdensome to determine this information. Rather, the response was that while "a new method of requesting information from applicants about their experience or assessing the experience component of MQs may be required, nothing has been raised to suggest that such changes will be overly burdensome or result in significant new or unnecessary costs." (Please see Summary Of Public Comments and The Board's Responses, 15-Day Public Comment Period, IV, Summary of Written Comments DWR, Comment and Response 2, p. 5.) The Board appreciates the verification issues CHP raises; however, these concerns appear more speculative than established. This appears particularly so because generally employers, including the State, require pre-approval for overtime, usually by the responsible supervisor or manager, or in emergency situations, approval within a specified time after the work is performed. In addition, records related to overtime (e.g., timesheets or separate overtime certification forms) are required to be maintained for such reasons as pay and compensation, taxes, potential federal or state audits, or regulatory mandates. (See e.g., Calif. Code Regs., tit. 2, § 599.702.)

(C) Please see Summary Of Public Comments and The Board's Responses, 15-Day Public Comment Period, IV, Summary of Written Comments DWR, Comment and Response 2, pages 4 through 5.

## Comment 2:

Proposed section 249.6 (Redaction of Confidential Information on Candidate Documentation).

After reviewing this regulation, our concern is proposed section 157, which is being eliminated, allowed for LEAP applicants to voluntarily self-identify. This new regulation is stating the appointing power shall ensure that all confidential information is redacted. This isn't an issue for applicants who apply with hardcopy applications. When applicants apply electronically, appointing powers have no way to comply with this regulation utilizing the Examination and Certification Online System (ECOS). The CHP has tried working within ECOS by printing out a hard copy application, redacting the information, and uploading the redacted application to the system; however, there is no way to remove the original un-redacted application from ECOS.

## Response 2:

Proposed section 249.6 does not require that the information or documentation stored in ECOS is redacted. The proposed regulation requires that the appointing power ensure that all confidential information on candidate related documentation, including applications and resumes, is redacted or removed before copies are provided to any person who is not assigned to work in the appointing power's human resources or personnel unit. To the extent that uploading a redacted application into ECOS would be valuable for CHP or other appointing powers, communication and coordination with CalHR is necessary, since CalHR administers ECOS.

## **V.**

### **Changes to Section 258**

Upon further review of changes to section 258, it was found that original text in the regulation had been inadvertently not included. Therefore, the following text has been added: "It shall be the duty of every eligible candidate to respond within a reasonable time to an inquiry to ascertain his or her interest in appointment to a position. An eligible candidate does not need to respond when he or she is not interested in the position." Otherwise, section 258 is unchanged from the 45-day public comment period.

## **VI.**

### **Conclusion**

The Board appreciates the feedback it received regarding the regulations during the initial and extended public comment periods. No further public comment period will be held. However, the text of the regulations with the changes from the public comment periods clearly indicated are available to the public as stated in the Notice of

Modification to Text of Proposed Regulations. The text of the regulations with these changes will be placed on the Board's agenda for the March 9, 2017, meeting.

# EXHIBIT A

## Wolfe, Jeanne@SPB

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**From:** Blackwood, Samantha@DWR <Samantha.Blackwood@water.ca.gov>  
**Sent:** Friday, February 10, 2017 3:28 PM  
**To:** Aldana, Kathy@DWR  
**Subject:** LEAP Lists

Hi Kathy,

Here is a quick view of some Open Servicewide LEAP lists and the number of candidates on them. Lists like the Office Technician and Staff Services Analysts have over a thousand candidates. Please let me know if you need more information. Thank you!

List Code	List Type	Class Code	Class Title	List Status	Dept Code	Dept Name	Merged/Dated	List Date	Location	Active Eligibles
113	L3	00100762	ENVIRONMENTAL SCIENTIST	Active	0000	State of California	Merged	4/27/2001		0
115	L3	00101138	OFFICE TECHNICIAN (GENERAL)	Active	0000	State of California	Merged	12/27/2001		3015
116	L3	00101139	OFFICE TECHNICIAN(TYPING)	Active	0000	State of California	Merged	12/27/2001		2726
119	L3	00107884	LABORATORY ASSISTANT	Active	0000	State of California	Merged	4/25/2001		52
150	L3	00101479	ASSISTANT INFORMATION SYSTEMS ANALYST	Active	0000	State of California	Merged	9/12/2002		484
151	L3	00105157	STAFF SERVICES ANALYST (GENERAL)	Active	0000	State of California	Merged	4/15/2002		1260
703	L3	00102011	CUSTODIAN	Active	0000	State of California	Merged	9/12/1986		0
712	L3	00105157	STAFF SERVICES ANALYST (GENERAL)	Active	0000	State of California	Merged	4/15/2002		0
5652	L3	00101379	OFFICE ASSISTANT (TYPING)	Active	0000	State of California	Merged	6/14/1985		3156
5653	L3	00101441	OFFICE ASSISTANT (GENERAL)	Active	0000	State of California	Merged	6/14/1985		3169
5654	L3	00101733	ACCOUNT CLERK II	Active	0000	State of California	Merged	5/3/1985		83
5656	L3	00102011	CUSTODIAN	Active	0000	State of California	Merged	9/12/1986		848
5752	L3	00104179	ACCOUNTANT TRAINEE	Active	0000	State of California	Merged	7/5/1996		232
5754	L3	00105778	ATTORNEY	Active	0000	State of California	Merged	8/22/1996		0
5756	L3	00109927	PROGRAM TECHNICIAN	Active	0000	State of California	Merged	6/28/1996		1641
5851	L3	00100731	GROUNDKEEPER	Active	0000	State of California	Merged	3/1/1999		28
5852	L3	00106476	CARPENTER I	Inactive	0000	State of California	Merged	2/22/1999		0
11559	L3	00105778	ATTORNEY	Active	0000	State of California	Merged	9/19/2014		31

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