

INITIAL STATEMENT OF REASONS

HEARING DATE(S):

March 22, 2017, at 10:00 a.m.
Room 150, 801 Capitol Mall, Sacramento,
California.

SUBJECT MATTER OF THE PROPOSED REGULATIONS:

Limited Term Appointments and Limited Examination and Appointment Program.

SECTIONS AFFECTED:

Title 2, Chapter 1, California Code of Regulations, sections 280 et seq. and sections 547.50 et seq.

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

Background:

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 promulgates rules to govern limited term appointments and the Limited Examination and Appointment Program (LEAP). (Gov. Code, §§ 18502, subd. (b), 19080.3, 19083, 19240, & 19241.) 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.)

Discussion of Each Adoption, Amendment, and Repeal, and Anticipated Benefits:

The following paragraphs set forth the problems with the current regulations; a summary of the proposed changes; the purpose and rationale of each adoption, amendment, or repeal; and the anticipated benefits of each adoption, amendment, or repeal.

I. Adopt and Amend Regulations Related to Limited Term Appointments.

Limited term appointments allow state agencies to employ persons for temporary staffing needs. (Gov. Code, § 19080.3.) The duration of a limited term appointment shall not individually or consecutively exceed one year; however, the Board may authorize limited term appointments for up to a total period of two years. (*Ibid.*) Limited term appointments may be extended within these time limits without making an additional appointment. (*Ibid.*) Limited-term employees are subject to conditions affecting appointment, status, tenure, and separation during and after employment as the Board by rule determines. (Gov. Code, § 19083.)

A. Adopt Section 280. Purpose of Limited Term Appointments.

The purpose for the adoption of section 280 involves the proposed regulatory changes to LEAP, as more fully discussed below. Existing law requires the California Department of Human Resources (CalHR)¹ to administer LEAP consistent with Board rules. (Gov. Code, § 19242.) LEAP provides an alternative to the traditional civil service examination and appointment process to facilitate hiring persons with disabilities into state civil service. (*Ibid.*) A LEAP candidate who successfully completes a job examination period (JEP) qualifies in the examination and may be appointed to a position in state civil service without further examination. (Gov. Code, § 19243.) Effective in June 2016, Government Code section 19243 was amended by eliminating the requirement that a candidate who is appointed by way of LEAP must also serve a probationary period. (Stats. 2016, c. 35 (S.B. 848), § 8, eff. June 27, 2016.)

Currently, LEAP candidates selected to serve a JEP are appointed to the JEP via a temporary appointment. The duration of temporary appointments is limited to nine months within twelve consecutive months. (Cal. Const., art. VII, § 5.) Because LEAP candidates selected for appointment into civil service are no longer required to serve a probationary period, the proposed regulatory changes to LEAP include changing the duration of the JEP to be equivalent to the probationary period of the classification the candidate is examining for. Probationary periods may be six months or one year. (Gov. Code, § 19170, subd. (a).) Where the probationary period is one year, an appointment to serve a JEP may not be made by way of a temporary appointment because those types of appointments are limited to nine months within twelve consecutive months.

Accordingly, proposed section 280 requires that limited term appointments shall be made only for temporary staffing needs and includes temporary staffing needs related to examination appointments of LEAP candidates. This change is necessary to update LEAP in light of S.B. 848. This change will also ensure consistency in the manner in which LEAP candidates are appointed to serve JEPs.

B. Amend Section 281. Acquisition of Permanent Status.

Section 281 provides that no time served in a limited-term appointment counts toward acquiring permanent status in any position. The proposed changes to section 281 adds reference to LEAP candidates and requires LEAP candidates to receive the same salary and benefits to which other state employees in temporary positions are entitled. These amendments are necessary to conform to the change in the way LEAP candidates are appointed to the JEP, i.e., by way of a limited term appointment rather than a temporary nine-month appointment. This change also conforms to Government Code section 19242.6, which provides that candidates serving in LEAP do not acquire permanent civil service status but shall receive the same salary and benefits to which other state employees in temporary positions are entitled.

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

C. Amend Section 282. Termination of a Limited-Term Appointment.

Section 282 provides that a limited-term employee may be separated at any time prior to the expiration of his or her term of employment by advising the employee, either orally or in writing. The regulation provides the caveat that limited-term employees may not be separated if emergency or temporary employees in limited-term positions remain employed in the same class and same layoff subdivision. If the employee is separated for cause, written notice is required with a copy sent to CalHR, as specified. In such a circumstance, the regulation limits the employee's appeal rights only to the claim that temporary or emergency employees remain employed. In addition, where a limit-term employee has been terminated for cause, CalHR is prohibited from certifying that person for limited-term employment in the same class, unless, after investigation, CalHR determines that the reason for separation should not bar the person from such further employment. As used in section 282, "cause" includes the failure to demonstrate merit, efficiency, fitness, and moral responsibility.

The requirement that limited-term employees may not be separated if emergency or temporary employees in limited-term positions remain employed in the same class is no longer a necessary or essential condition. During the limited-term employment, there may be changes in circumstances, such as fiscal changes or changes in the direction and goals of a project or program, that result in the agency no longer needing the services of a limited-term employee. Under such circumstances, to require an agency to keep the limited-term employee where other emergency or temporary employees in limited-term positions remain employed in the same class and same layoff subdivision, is a restriction that results in inefficiency, ineffective use of resources, and unnecessary costs to the state. Likewise, allowing an appeal only on the grounds that other emergency or temporary employees in limited-term positions remain employed in the same class and same layoff subdivision does not, in itself, serve the merit system or promote the proper use of limited-term appointments. The restriction on certifying the name of a person who was separated for cause is also no longer necessary given that CalHR has this authority in statute. (Gov. Code, § 18935; S.B. 1309, Stats. 2012, Ch. 360, eff. Sept. 17, 2012.)

The proposed changes to section 282 include striking the above criteria and adding that except for LEAP candidates competing in an examination appointment by way of a limited-term appointment, an appointing power may terminate a limited-term employee at any time prior to the expiration of the term to which the employee was appointed. Either oral or written notice of the termination is required. The proposal also provides that a limited-term employee whose term of employment has been terminated has no right of appeal with the Board. In addition, the proposal adds that the termination of a LEAP candidate's limited-term appointment shall be in accordance with Article 28, section 547.58.8, discussed in more detail below.

This proposal will update the limited-term regulations to be consistent with the proposals impacting the LEAP regulations. The proposal will also eliminate unnecessary procedures when a limited-term appointment is terminated prior to the term of the employment, reduce unnecessary expenses, and promote effective use of temporary staffing and resources.

II. Repeal and Adopt Regulations Related to LEAP.

A. Repeal Section 547.50 (Scope) and Adopt New Section 547.50 (Definitions).

Section 547.50 currently sets the scope of the regulations related to LEAP. The proposed changes to section 547.50 repeal this section in its entirety, since the instant proposal reorganizes the LEAP regulations and addresses similar topics in separate sections, rather than in one section.

The substantive changes in this proposed regulatory action require that certain frequently used terms be defined. These terms either have a special meaning or do not have a commonly understood meaning. Accordingly, the proposed new section 547.50 defines terms “disability,” “developmental disability,” “LEAP,” “person with a developmental,” “LEAP-certified class or classification,” “LEAP referral list,” “examination appointment,” “job examination period,” “proof of disability documentation,” “parallel classification,” “DOR,” and “DDS.” All the proposed definitions are terms that are used elsewhere in the regulations related to LEAP. The proposed definitions promote clarity, ease of understanding, and consistency with definitions used in the Civil Service Act.

B. Repeal Section 547.51 (LEAP Eligibility Criteria) and Adopt New Section 547.51 (Use of the LEAP Process).

Current section 547.51 requires that LEAP applicants have a written verification from the Department of Rehabilitation (DOR) certifying that the applicant meets the definition of an individual with a disability contained in section 10 of the Board’s regulations and meets the education and experience requirements established by the Board. In addition, if there is a disagreement concerning the applicant’s medical qualifications, the Executive Officer is required to determine the appropriateness of the certification based on the medical evidence submitted.

Section 547.51 requires updating, in part, because it incorporates section 10 of the Board’s regulations, which is outdated. Section 10 provides that a physical or mental disability must *substantially* limit one or more major life activities; however, Government Code sections 12926 and 12926.1 require that a disability need only limit a major life activity, not *substantially* limit. In order to ensure that the Board’s regulatory definition of “individual with a disability” is consistent with Government Code sections 19702, 12926, and 12926.1, the Board, in a separate regulatory action, proposes to define “individual with a disability” as an individual who has a mental or physical disability, as those terms are defined in Government Code section 12926.² The procedural component of section 547.51, which has the Executive Officer determine the appropriateness of the certification based on medical evidence, is better handled through the Board’s Merit and Appeals Unit because the unit routinely handles appeals is empowered to hold hearing and seek additional information where appropriate.

² See the Board’s website at <http://spb.ca.gov/> under “What’s New” with the link to Notice of Proposed Rulemaking Action: 2016 PROCEDURAL REGULATIONS.

Thus, the Board proposes to repeal section 547.51 and, as discussed below, adopt sections 547.55 (Eligibility Criteria for Placement on a LEAP-Referral List) and 547.56 (Failure to Satisfy Eligibility Criteria).

Proposed new section 547.51 encourages appointing powers to use the LEAP examination and appointment process to fill vacancies and makes clear that prior approval of the Board or CalHR is not required. The purpose of this proposed regulation is to encourage appointing powers to use LEAP when filling vacancies and not hinder the use of LEAP by requiring an unnecessary pre-approval process.

C. Repeal Section 547.52 (LEAP Readiness Evaluations) and Adopt New Section 547.52 (LEAP-Certified Classes).

Section 547.52 requires that the education, experience, and personal qualifications of LEAP applicants who meet the eligibility requirements of section 547.51 shall be evaluated by competitive examination to determine readiness for appointment; if ready, the applicant is placed on a referral list. In addition, the regulation requires that referral lists comply with sections 155 and 156. Given the reorganization and substantive changes to the Board's regulations related to these topics, section 547.52 is outdated and unnecessary. The Board, therefore, proposes to repeal section 547.52.

Proposed new section 547.52 allows, but does not require, that any job classification may be designated by CalHR or its designee as a LEAP-certified class. The proposed regulation also mandates that LEAP-certified classes shall have the same qualifications, including minimum qualifications, as the parallel classification. The purpose of this regulation is to allow for the broadening of LEAP-certified classes and ensure that the minimum qualifications are the same as the parallel classification. This will assist agencies in meeting affirmative action goals for persons with disabilities (Gov. Code, § 19232) and promote qualified pools of LEAP candidates.

D. Repeal Section 547.53 (Appointment to a LEAP Classification) and Adopt New Section 547.53 (LEAP Readiness Evaluations or Written Examinations).

Section 547.53 provides that appointment to a LEAP classification shall be restricted to those who meet certain criteria, as specified, and are selected from a referral list, as described in Government Code section 19242.2. Given the reorganization and substantive changes to the Board's regulations related to this topic, section 547.53 is outdated and unnecessary. The Board, therefore, proposes to repeal section 547.53.

Proposed new section 547.53 provides that LEAP readiness evaluations or written examinations shall be on a form designated by CalHR and designed to determine if the applicant satisfies the minimum qualifications of the class to which he or she seeks an examination appointment. If a candidate satisfies the minimum qualifications and the other LEAP criteria (see proposed § 547.55), the applicant is placed on the appropriate LEAP-referral list.

This proposed regulation is intended to clarify that the purpose of readiness evaluations and written examinations is to determine if the LEAP applicant satisfies the applicable minimum qualifications. The benefits include streamlining the front-end process for LEAP applicants and eliminating unnecessary questions on readiness evaluations or written examinations.

E. Repeal Section 547.54 (LEAP Job Examination Period) and Adopt New Section 547.54 (Applicants with a Developmental Disability).

Section 547.54 sets the length of the job examination period. The regulation also requires notice to the candidate of the knowledge, skills, and abilities that will be assessed during the examination period and provides that CalHR shall determine the appropriate test of fitness for each LEAP classification. In addition, the regulation mandates that during the JEP the appointing power shall evaluate the candidate's performance. Given the reorganization and substantive changes to the Board's regulations related to this topic, section 547.54 is outdated and unnecessary. The Board, therefore, proposes to repeal section 547.54.

S.B. 644 amended Government Code section 19242 to allow persons with developmental disabilities to compete for civil service jobs by choosing to complete a written examination, internships in the applicant's desired position. Those changes sunset on January 1, 2021. (S.B. 644, Stats. 2015, Ch. 356, § 8, eff. 1/01/16.) Proposed new section 547.54 provides that an applicant with a developmental disability shall be permitted to choose to complete a LEAP readiness evaluation, written examination, or a LEAP internship, if an internship exists for the LEAP-certified classification to which he or she seeks an examination appointment. This proposed section shall remain in effect until January 1, 2021, and as of that date is repealed. Proposed new section 547.54 is necessary to conform to the changes made by S.B. 644.

F. Repeal Section 547.55 (Extension or Reduction in Job Examination Period) and Adopt New Section 547.55 (Eligibility Criteria for Placement on a LEAP-Referral List).

The eligibility criteria of proposed section 547.55 requires proof of disability documentation; a verification from DOR certifying that the applicant qualifies as a person with a disability for purposes of LEAP, although a verification is not required if the applicant has received a Department of Developmental Services (DDS) Regional Center referral; satisfaction of the minimum qualifications of the LEAP-certified classification, as ascertained through a LEAP evaluation, internship, or written examination; and proper completion and submittal of an employment application and/or any other documentation that may be required. The purpose of this proposed regulation is to ensure that the steps necessary to qualify for a LEAP-referral list are clear and easily understood. This regulation also ensures that the LEAP-readiness evaluation, internship, or written examination are related to the minimum qualifications of the LEAP-certified classification, and not the preferred or desirable qualifications of the classification. This distinction is

critical so as not to disqualify applicants from being placed on the LEAP-referral list who satisfy the minimum qualifications of the LEAP-certified classification.

G. Adopt Sections 547.55.1 (LEAP Internships for Applicants with Developmental Disabilities) and 547.55.2 (Referral of Applicants for the LEAP Internship program).

S.B. 644 amended Government Code section 19242.05 to allow persons with developmental disabilities to compete for civil service jobs by completing an internship in the applicant's desired position. (S.B. 644, Stats. 2015, Ch. 356, § 8, eff. 1/01/16.) The law requires that the internship be designed to allow persons with developmental disabilities to meet the minimum qualifications of the LEAP-certified class to which he or she seeks an examination appointment. The internship shall be for a minimum period of 512 working hours. Successful completion of the internship upon certification by the appointing power shall be considered as meeting the referral requirements necessary to be eligible for an examination appointment, without the necessity of a written examination or readiness evaluation. The internship may be an unpaid or paid internship, if the appointing power has available funding authority within its personnel budget. These changes sunset on January 1, 2021.

S.B. 644 also amended section 19242.2 by requiring that CalHR or its designee refer the names of persons with developmental disabilities to appointing powers for participation in a LEAP internship.

Proposed section 547.55.1 requires that CalHR, in coordination with DDS and DOR, create internships for applicants with developmental disabilities. The proposal also requires that the applicant satisfy section 547.55, subdivisions (a)(1), (2), and (4). Satisfying the requirement of subdivision (a)(2) [DOR verification of LEAP qualification], if the applicant has received a referral to LEAP from a DDS Regional Center. In addition, the proposed regulation requires that, at a minimum, the internship shall be designed to allow applicants to meet the minimum qualifications of the LEAP classification to which he or she seeks an examination appointment; be at least 512 working hours in duration; and comply with Government Code section 19242.3, subdivision (b)(1) through (2), inclusive. The proposed regulation further provides that upon certification the applicant shall be deemed to satisfy the minimum qualifications of the applicable classification. The determination of whether the internship is paid or unpaid shall be made in accordance with Government Code sections 19242.05 and 19242.3. The regulation remains in effect until January 1, 2021, and as of that date is repealed.

Proposed section 547.55.2 provides that CalHR or its designee shall establish a process and procedure for referring names of qualified applicants for selection and participation in the internship. The section remains in effect until January 1, 2021, and as of that date is repealed.

Proposed new sections 547.55.1 and 547.55.2 are necessary to conform to the changes made by S.B. 644.

H. Repeal Section 547.56 (Transition from LEAP Position to Regular Civil Service Position) and Adopt New Section 547.56 (Failure to Satisfy Eligibility Criteria).

Section 547.56 sets forth criteria for a LEAP candidate who has successfully served a JEP to transition into a regular civil service position. Given the reorganization and substantive changes to the Board's regulations related to this topic, section 547.56 is outdated and unnecessary. The Board, therefore, proposes to repeal section 547.56.

Proposed new section 547.56 (Failure to Satisfy Eligibility Criteria) requires a process where applicants who are found not to satisfy eligibility criteria for the LEAP-referral list are afforded the opportunity to answer and/or correct the deficiency without needing to file an appeal with the Board, which can be time consuming and costly. If CalHR or its designee determine that the applicant does not satisfy the eligibility criteria, the proposed regulation requires that the candidate be informed in writing of the finding and his or her appeal rights. The intent of this regulation is to allow for resolution of disputes in a more timely and cost effective way.

In addition, there may be reasons why a disqualified applicant fails to answer or correct a deficiency that are unrelated to the applicant's actual qualifications. For instance, the disqualified candidate may have found other employment or experience an unexpected personal or family illness. Therefore, the proposed regulation provides that an applicant's failure to satisfy eligibility criteria does not prevent the applicant from subsequently seeking to participate in LEAP or non-LEAP examinations. The purpose of this rule is to ensure that otherwise qualified persons with disabilities have future opportunities for employment in state civil service.

I. Repeal Section 547.57 (Termination During Job Examination Period) and Adopt New Section 547.57 (Length of Eligibility for a LEAP-Referral List); and Adopt Sections 547.57.1 (Removal of Names from a LEAP Referral List), 547.57.2 (Correction of a LEAP-Referral List), 547.57.3 (Abolishing a LEAP-Referral List) and 547.57.4 (Dual List Eligibility and Transfer of Eligibility).

Section 547.7 sets standards and notice requirements for when a LEAP candidate is terminated during the JEP. Given the reorganization and substantive changes to the Board's regulations that address these subject matters, section 547.57 is outdated and unnecessary. The Board, therefore, proposes to repeal section 547.57.

Proposed new section 547.57 sets the length of eligibility on a LEAP-referral list to be until the candidate is selected for a full-time appointment after successful completion of an examination appointment or for 24 months from the date the applicant's name is placed on the list, whichever occurs first. Proposed section 547.57.1 sets standards for the removal of names from a LEAP-referral list, and proposed section 547.57.2 requires correction of a LEAP-referral list when it becomes evident that an omission, error, or irregularity has occurred in the preparation of the list. However, the cancellation of a LEAP-referral list under proposed section 547.57.2 shall not invalidate any examination appointment made therefrom, if the reason for the cancellation of the list would not have impacted the

eligibility of the person appointed. Proposed section 547.57.3 allows CalHR or its designees to abolish a LEAP-referral list in the event three or fewer candidates remain on the list or when CalHR or its designees determines it is in the best interests of the state to abolish the list. Proposed section 547.57.4 allows a qualified candidate to simultaneously be on both a LEAP-referral list and a non-LEAP eligibility list; a transfer between these lists is not permitted.

The Board's regulations do not currently include rules related to LEAP-referral lists. Accordingly, the proposed rules are necessary to ensure that the process and procedures related to LEAP-referral lists are clear, transparent, and fairly and consistently applied. The proposed regulations are also intended to ensure that LEAP-referral lists are properly maintained, updated where appropriate, and contain names of qualified candidates who likely remain interested in and available for employment with the state. In addition, while LEAP is an important program in the state's hiring process, it is not the only avenue by which qualified candidates with a disability can seek employment with the state. (See Gov. Code, § 19241.5 [LEAP is a voluntary and additional method of applying for state employment].) Accordingly, proposed section 547.57.4 is intended to ensure that state job opportunities for candidates with a disability are inclusive of all available avenues and not limited to only one.

J. Adopt Section 547.58 (Examination Appointments).

The current statutory scheme for LEAP mandates that all examination appointments be made to allow candidates to demonstrate their ability to perform the duties of the position. (Gov. Code, § 19242.4.) Previous law pertaining to probationary periods for state employees required that LEAP candidates who successfully completed the JEP and received an appointment to a permanent position serve a standard probationary period for the classification to which he or she was appointed. Depending upon the classification, the probationary period would be six months or one year. S.B. 848 eliminated the requirement that LEAP candidates who successfully complete a JEP must also serve a probationary period. (See Gov. Code, § 19243; S.B. 848, Stats. 2016, Ch. 35, § 8, Eff. 6/27/16.)

This change in the law necessarily impacts the length of time the JEP should be in order for the appointing power to have sufficient time to evaluate a LEAP candidate's job performance and for the LEAP candidate to demonstrate he or she can successfully perform the duties and functions of the position. As discussed below, the Board proposes to extend the length of the JEP to be the same as the length of the probationary period of the parallel classification. (Proposed § 547.58.1.) This regulatory change impacts the manner in which LEAP candidates are appointed to a JEP. Currently, the method of appointment is by way of a temporary appointment. The duration of these types of appointments are restricted to nine months within 12 consecutive months. (Cal. Const., art. VII, § 5.) A temporary appointment provides sufficient time for a six-month JEP but not a one-year JEP. An appointment to a JEP by way of a limited term will provide sufficient time for the appointing power to evaluate the performance of the candidate during the JEP.

Proposed section 547.58 provides that a LEAP candidate who is selected for an examination appointment shall be appointed by way of a limited-term appointment for a period of time not to exceed one year, except as authorized under proposed section 547.58.5. The proposed section also requires that the selected candidate is given the duty statement of the position, so that he or she will know what duties and functions he or she will be expected to perform and what will be evaluated during the JEP. These proposed regulations are intended to conform with the changes of S.B. 848, and the law set forth in Government Code section 19242.4.

K. Adopt Section 547.58.1 (Length of the Job Examination Period).

Proposed section 547.58.1 sets the length of the JEP to be the same as the length of the probationary period of the parallel classification. The proposed regulation also requires that the duration of the JEP shall only be shortened or extended as provided in the Board's regulations, which are discussed below.

Proposed section 547.58.1 is intended to conform with the statutory changes implemented by S.B. 848. This proposal is also intended to provide the appointing power sufficient time to evaluate a LEAP candidate's job performance during the JEP. This proposal will also provide candidates sufficient time to prove their ability to successfully perform the duties and functions of the position.

L. Adopt Section 547.58.2 (The Evaluation Standards of the Job Examination Period).

Job duty statements should be consistent with and identify duties that are consistent with and appropriate for the classification to which a position in state service is allocated. (See Gov. Code, § 19051 [no person shall be appointed under a class not appropriate to the duties to be performed].) Proposed section 547.58.2 requires the evaluation standards of the job examination period to be based upon the job classification as set forth in the duty statement of the position to which the candidate has been appointed for examination and include: (1) Identification of the competencies necessary to successfully perform the duties of the position; (2) Provide the candidate with sufficient opportunity to demonstrate his or her competencies to successfully perform the duties of the position; (3) Provide guidelines for feedback; and (4) Set an evaluation schedule pursuant to proposed section 547.58.3.

Proposed section 547.58.2 is intended to simplify the development of the basis for JEP evaluation standards. The proposed regulation is also intended to reduce the time, effort, and expense associated with creating the basis of evaluation standards, given that job duty statements are consistent with and identify duties and functions that are appropriate for the classification to which a position in state service is allocated. In addition, proposed section 547.58.2 is intended to ensure that the JEP provides candidates the opportunity to succeed by requiring guidelines for feedback and an evaluation schedule.

M. Adopt Section 547.58.3 (Evaluations During the Job Examination Period).

Proposed section 547.58.3 provides that during the JEP the appointing power shall evaluate and assess the candidate's job performance. The appointing power shall provide a written evaluation to the candidate no less than once every four weeks. In addition, the final evaluation shall contain a recommendation as to whether to appoint the candidate to the parallel classification.

Proposed section 547.58.3 is intended to ensure that the JEP includes an evaluation process that is fair, equitable, and transparent. In addition, section 547.58.3 is intended to provide candidates the opportunity to succeed by requiring guidelines for written evaluations that are provided on a consistent basis.

N. Adopt Section 547.58.4 (Status of Candidate During the Job Examination Period).

Proposed section 547.58.4 provides that during the JEP the candidate shall not acquire permanent civil service status, but shall receive the same salary and benefits to which other state employees in limited term positions are entitled. This proposal is intended to conform to Government Code section 19242.6, which provides that candidates serving in positions under LEAP shall not acquire permanent civil service status but shall receive the same salary and benefits to which other state employees in temporary positions are entitled.

O. Adopt Sections 547.58.5 (Absences During the Job Examination Period) and 547.58.6 (Shortening the Duration of the Job Examination Period).

Proposed section 547.58.5 requires that for purposes of paid and unpaid leave during the JEP, the LEAP candidate shall have the same leave benefits as other state employees in limited term positions. Where due to permissible absences the appointing power determines that further evaluation of the candidate is required, the appointing power may extend the duration of the JEP if approved by CalHR. If the extension would exceed the one-year limit, an additional examination appointment is not required. The term of the extension, however, shall be no more than a period of time needed to determine if the candidate can successfully perform the duties and functions of the position.

The intent of proposed section 547.58.5 is to ensure that LEAP candidates are provided the same leave benefits as other state employees in limited term positions. In addition, this proposed regulation is intended to provide candidates who have had permissible absences during the JEP sufficient time to demonstrate their ability to successfully perform the duties of the position to which he or she has been appointed for examination.

Proposed section 547.58.6 provides that with the approval of CalHR an appointing power may shorten the duration of the JEP only where the appointing power finds that the LEAP candidate has clearly demonstrated he or she can successfully perform all the duties and functions of the position to which he or she has examined. The appointing power shall

document the reasons for seeking to shorten the duration of the JEP. The proposed regulation also requires that in no event may a LEAP candidate serve less than three quarters of the JEP. This means for a sixth month JEP no less than 4.5 months and for a one-year JEP no less than nine months.

The intent of proposed section 547.58.6 is to conform to Government Code section 19243.2, which provides that with the approval of CalHR the appointing power may shorten or extend the duration of the JEP. Depending upon the scope, complexity, and level of duties of the position and the ability of the candidate to successfully perform those duties, a full-duration JEP may not be necessary. The three-quarters rule of proposed section 547.58.6 is intended to ensure that the JEP provides sufficient time for appointing powers to evaluate the performance of LEAP candidates and that LEAP candidates have sufficient time to prove their ability to successfully perform the duties and functions of the position, while allowing for a shortening of the examination period where a LEAP candidate successfully performs the duties and functions of the position without requiring the full duration of a JEP. Such a shortening of time will save appointing powers time and resources associated with conducting JEPs.

P. Adopt Section 547.58.7 (Successful Completion of the Job Examination Period).

Proposed section 547.58.7 provides the time periods for successful completion of the JEP. Upon successful completion, the candidate shall have qualified for appointment to the parallel class. With the approval of CalHR, the appointing power shall appoint the candidate to the parallel class. If the parallel class is in a permanent position, civil service status shall accumulate. Upon the failure of the appointing power to terminate the appointment of the candidate within 30 days after the end of the job examination period, it shall be presumed that the candidate satisfied the evaluation standards of the job examination. The appointing power shall appoint the candidate to the parallel classification effective the day following the JEP.

The intent of proposed section 547.58.7 is to provide clear, concise, and consistent procedures for appointing powers to follow when candidates successfully complete the JEP.

Q. Adopt Section 547.58.8 (Unsuccessful Completion of the Job Examination Period).

Proposed section 547.58.8 provides that if during or at the end of the job examination period the appointing power determines that the candidate fails to satisfy the evaluation standards of the examination the candidate's limited-term appointment shall be terminated. The appointing power shall give the candidate written notice of the proposed action at least five working days prior to the effective date of the termination. Such notice shall specify the reasons for the termination, the right to respond to the appointing power, and the right to appeal the action to the Board. The notice shall also include any applicable Board regulations related to appeals.

The intent of proposed section 547.58.8 is to provide clear, concise, and consistent procedures for appointing powers to follow when candidates do not successfully complete the JEP.

ECONOMIC IMPACT ASESMENT:

The proposed regulations set standards only related to state civil service appointments through LEAP. 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 include a more efficient, streamlined, and updated LEAP selection process geared toward hiring persons with disabilities into state civil service.

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

None.

ANTICIPATED BENEFITS OF THE REGULATORY ACTION:

The benefits of this regulatory action include promoting the hiring of qualified persons with disabilities into state civil service, which supports state policy (Gov. Code, § 19230), and conserving the fiscal interests of the state by promoting an efficient and streamlined process for hiring qualified persons with disabilities.

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 standards related to LEAP, which is a limited examination and appointment program in civil service for persons with disabilities. 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 have been identified that 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.