

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

**45-Day Public Comment Period**

**Proposed Regulatory Action  
Limited Term Appointments and LEAP**

## TABLE OF CONTENTS

I.....	1
Introduction .....	1
II.....	1
Summary of Oral and Written Comments from Fariba Shahmirzadi, Deputy Director, Administrative Services Division, Department of Rehabilitation (DOR). .....	1
Comment 1: .....	1
Response 1: .....	1
Comment 2: .....	2
Response 2: .....	2
Comment 3: .....	2
Response 3: .....	2
Comment 4: .....	3
Response 4: .....	3
Comment 5: .....	3
Response 5: .....	4
Comment 6: .....	4
Response 6: .....	4
Comment 7: .....	4
Response 7: .....	5
III.....	5
Summary of Written Comments from Becky Shelton, Staff Services Manager I, Selection Standards & Examinations Section, California Highway Patrol (CHP). .....	5
Comment 1: .....	5
Response 1: .....	5
Comment 2: .....	6
Response 2: .....	6
Comment 3: .....	6
Response 3: .....	7
Comment 4: .....	7
Response 4: .....	7
Comment 5: .....	7
Response 5: .....	8
Comment 6: .....	8
Response 6: .....	8
Comment 7: .....	8
Response 7: .....	8
Comment 8: .....	9
Comment 8: .....	9

Summary of Comments and Board Responses  
 45-Day Comment Period  
 Proposed Regulatory Action: LT and LEAP

Comment 9: .....	9
Response 9: .....	9
IV .....	9
Summary of Written Comments from Peter Brown, Staff Services Manager I, Classification and Performance Services Section, Department of Health Care Services (DHCS).....	9
Comment 1: .....	9
Response 1: .....	10
Comment 2: .....	10
Response 2: .....	10
Comment 3: .....	11
Response 3: .....	11
Comment 4: .....	11
Response 4: .....	11
Comment 5: .....	11
Comment 6: .....	12
Response 6: .....	12
V.....	12
Summary of Written Comments from Catherine Campisi, President, Association of California State Employees with Disabilities (ACSED).....	12
Comment 1: .....	12
Response 1: .....	13
Comment 2: .....	13
Response 2: .....	13
Response 3: .....	13
Comment 4: .....	14
Response 4: .....	14
Comment 5: .....	15
Response 5: .....	15
VI.....	16
Summary of Written Comments from York Chang, Chief Counsel, Service Employees International Union, Local 1000 (SEIU).....	16
Response 1: .....	16
Comment 2: .....	16
Response 2: .....	16
Comment 3: .....	17
Response 3: .....	17
Comment 4: .....	17
Response 4: .....	17
Comment 5: .....	18
Response 5: .....	18
Comment 6: .....	18

Summary of Comments and Board Responses  
 45-Day Comment Period  
 Proposed Regulatory Action: LT and LEAP

Response 6: .....	18
Comment 7: .....	19
Response 7: .....	19
Comment 8: .....	19
Response 8: .....	20
Comment 9: .....	20
Response 9: .....	20
Comment 10: .....	20
Response 10: .....	20
Comment 11: .....	21
Response 11: .....	21
Comment 12: .....	21
Response 12: .....	21
Comment 13: .....	21
Response 13: .....	21
Comment 14: .....	21
Response 14: .....	22
Comment 15: .....	22
Response 15: .....	22
Comment 16: .....	22
Response 16: .....	22
Comment 17: .....	23
Response 17: .....	23
Comment 18: .....	23
Response 18: .....	23
Comment 19: .....	23
Response 19: .....	23
VII.....	24
Summary of Written Comments from Lois Vasquez, Staff Services Manager, Office of Equal Employment Opportunity, California Highway Patrol (CHP).....	24
Comment 1: .....	24
Response 1: .....	24
Comment 2: .....	24
Response 2: .....	25
VIII.....	25
Summary of Written Comments from Stephanie Varrelman, Chief, Office of Workforce Equality, Department of Water Resources (DWR). .....	25
Comment 1: .....	25
Comment 2: .....	26
Response 2: .....	26
Comment 3: .....	26
Response 3: .....	26
Comment 4: .....	26

Summary of Comments and Board Responses  
45-Day Comment Period  
Proposed Regulatory Action: LT and LEAP

Response 4: .....	26
Comment 5: .....	27
Response 5: .....	28
IX.....	28
Conclusion .....	28

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

### **I.**

#### **Introduction**

The State Personnel Board (Board) proposes to adopt, amend, and repeal regulations related to limited term appointments and the Limited Examination and Appointment Program (LEAP), beginning with proposed regulatory section 280 of Title 2, Chapter 1, of the Code of Regulations (CCR). As amended, a 45-day public comment period on these regulations was held from February 9, 2017, through March 27, 2017. A public hearing was held on March 30, 2017. The comments received by the Board have been taken under submission and considered. A summary of those comments and the Board's responses are below.

### **II.**

#### **Summary of Oral and Written Comments from Fariba Shahmirzadi, Deputy Director, Administrative Services Division, Department of Rehabilitation (DOR).**

DOR welcomes the opportunity to provide comment on the proposed regulations for LEAP. DOR believes in the talent of persons with disabilities and that innovations to LEAP will increase the number of opportunities for Californians with disabilities to obtain high-quality careers in state service and enhance our workforce. DOR looks forward to continued collaboration with the Board, California Department of Human Resources (CalHR), and other departments as we further invest in and expand opportunities for individuals with disabilities.

#### Comment 1:

#### **Proposed § 547.50. Definitions.**

To further clarify the roles and responsibilities for appointing powers and the interested public, DOR recommends adding a definition for "Department" to proposed section 547.50

#### Response 1:

The definition of "Department" is found in section 4.5 of the Board regulations ("Department" means the California Department of Human Resources).

Comment 2:

**Proposed § 547.54. Applicants with a Developmental Disability.**

It appears that the sunset clause in proposed section 547.54 is intended to align with the January 1, 2021, sunset clause in current Government Code section 19242. DOR believes that the version of Government Code section 19242 that will become operable on January 1, 2021, provides the legal authority to continue providing these opportunities to applicants with developmental disabilities. DOR, therefore, supports the removal of the sunset clause.

Response 2:

Current Government Code section 19242 expressly provides for an internship for persons with a developmental disability and includes a sunset provision that serves to repeal Government Code section 19242 as of January 1, 2021, by its own provisions. The version of Government Code section 19242 that shall become operative on January 1, 2021, does not include any reference to LEAP internships; instead, the statute only concerns LEAP examinations. Other Government Code sections related to LEAP internships and persons with developmental disabilities also have sunset provisions, e.g., 19240, 19241, and 19242.05. Of particular note, section 19242.05, subdivision (c) provides that the LEAP internship may be accessed as an unpaid or paid internship, if the state agency providing the internship has available funding authority within its personnel budget.

As DOR states, the sunset clause in proposed regulation section 547.54 is intended to mirror the sunset clause in current Government Code section 19242. Ignoring that sunset clause, even for the best of intentions, raises legal, practical, and budgetary issues related to such internships. Therefore, at this point in time, the Board declines to ignore the express language of Government Code section 19242.

Comment 3:

**Proposed § 547.55(a)(4). Eligibility Criteria for Placement on a LEAP-Referral List.**

DOR recommends adding language reinforcing that the employment application and method of submittal shall be consistent with reasonable accommodation laws.

Response 3:

There are other laws, like laws related to reasonable accommodation, that may apply to civil service employment regardless of whether those laws are expressly stated in the Board's regulations. As a general rule, those laws are not repeated in the Board's regulations so as to avoid unnecessary duplication.

Nonetheless, in this instance, for purposes of clarity and to avoid any misinterpretation that reasonable accommodation laws apply only to the LEAP employment application process, rather than the entire program, the following language is added to proposed section 547.51: “In addition to any other laws that may be applicable, the LEAP examination and appointment process as provided for herein shall comply with applicable laws related to reasonable accommodation.” The title of section 547.51 is also changed to add reference to reasonable accommodation: “Use of the LEAP Process and Reasonable Accommodation.”

Comment 4:

**Proposed § 547.57. Length of Eligibility For a LEAP-Referral List.**

DOR recommends adding language to clarify that there is no limitation as to how early a LEAP candidate, who has not been selected for a full-time appointment, may retake the LEAP readiness evaluation, written examination, or start a new internship to ensure that he or she continues to be included on a new LEAP-referral list and not miss an employment opportunity because of the expiration of a LEAP-referral list.

Response 4:

DOR’s recommendation would avoid any confusion that may occur for an applicant whose name is removed because of the 24-month rule in proposed section 547.57, subdivision (a). However, to be placed on a LEAP-referral list again, the applicant would be required to follow the criteria set forth in proposed section 547.55 (Eligibility Criteria for Placement on a LEAP-Referral List). Presumably, the applicant would already have the documentation described in proposed section 547.55, subdivision (a)(1), but he or she would also need to satisfy subdivision (a)(2), (3) and (4).

Accordingly, for purposes of clarity, proposed section 547.57 is amended to add subdivision (c), which states: “Where an applicant’s name is removed from a LEAP-referral list because of the 24-month rule provided for in subdivision (a), the applicant may immediately seek to satisfy section 547.55, so that his or her name can be placed on the appropriate LEAP-referral list without unnecessary delay.”

Comment 5:

**Proposed § 547.58.3. Evaluations During the Job Examination Period.**

Currently, the Board provides form 273, revised in 2005, and CalHR has provided interim guidance as to the tools that should be used to evaluate performance, e.g., duty statements, classification specifications, and probationary reports (form 636). To ensure criteria or standards are consistently employed statewide for evaluations and assessments of LEAP candidates during the job examination period, DOR recommends that the Board and CalHR collaborate, as appropriate, to adopt current criteria or



standards for appointing powers to use for the required evaluations, which are readily available to supervisors and candidates.

Response 5:

The current criteria or standards appointing powers must use to evaluate candidates is set forth in proposed section 547.58.2. While CalHR is responsible for administering LEAP pursuant to the Board's regulations, there will be continued collaboration, as appropriate.

Comment 6:

**Proposed § 547.58.7. Successful Completion of the Job Examination Period.**

Subdivision (c), which provides the additional 30-day period after the end of the job examination period, creates uncertainty as to the candidate's status not only for the candidate but the appointing power as well. Consequently, qualified individuals may not report to work or be paid during this period of uncertainty. DOR recommends revisions to this proposed section to provide that the candidate shall be presumed to have satisfied the evaluation standards of the job examination, unless the appointing power has terminated the appointment prior to the end of the job examination period. DOR also recommends consideration of an approach consistent with that provided for probationary periods, i.e., permitting the extension for a maximum of five working days in order to comply with notice requirements.

Response 6:

Proposed section 547.58.7 is based upon Government Code sections 19242.9 and 19243. Of relevance, section 19242.9 states, "Upon failure of the appointing power to terminate the appointment of the candidate within 30 days following the end of the job examination period, it shall be presumed that the candidate has qualified in the examination." Given the prescriptive language of this section, the Board is without authority to eliminate the 30-day period as proposed by DOR. Additionally, this 30-day period should not cause confusion as to whether the candidate continues to report to work or be paid, since proposed section 19242.9 concerns a situation where the appointing power has not terminated the LEAP candidate's appointment. Therefore, the candidate would still report to work and be paid.

Comment 7:

**General Comment Regarding Internships.**

DOR recommends adding regulatory language clarifying and even encouraging appointing powers to collaborate to develop internship opportunities that meet the state's business needs, as well as, providing candidates with work experience at and exposure to different departments. Some smaller departments may find it particularly

helpful to partner with their larger counterparts and some departments may have specific workload cycles that would provide meaningful but limited internship experiences.

Response 7:

Proposed section 547.51 expressly states that appointing powers are encouraged to use the LEAP examination and appointment process to fill vacancies. The creation of a LEAP internship program for persons with developmental disabilities in coordination with DOR and the State Department of Developmental Services (DDS) is part of that process. (Gov. Code, § 19241.) Proposed section 547.55.1 specifies that CalHR is responsible for creating LEAP Internships for applicants with developmental disabilities in coordination with DOR and DDS, and sets minimum standards for the LEAP Internship. DOR's recommendations concern ways in which the LEAP Internship may be effectively operationalized by state agencies. These suggestions, therefore, would best be raised with CalHR and perhaps included in the LEAP policy guidelines, as potential ways to implement the LEAP Internship.

**III.**

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

Comment 1:

**Proposed § 281. Acquisition of Permanent Status.**

Our concern is that this regulation seems to disadvantage employees appointed as LEAP. Currently, an employee appointed as LEAP loses two to four months of civil service status due to the job examination period (JEP). With this regulation, an employee appointed as LEAP will now lose six to twelve months of civil service status.

Response 1:

Historically, LEAP has generally involved a three-fold process in which a qualified candidate must first be placed on a LEAP-referral list, be chosen for and serve a JEP, and then serve a probationary period. (Current § 547.54.) While the JEP can be reduced or extended up to nine months, as specified in current section 547.55, the JEP was usually two months plus a six-month probationary period or four months plus a 12-month probationary period. Thus, before the LEAP candidate could be appointed into civil service, he or she would serve a total combined JEP/probationary time of eight months or sixteen months, depending upon the classification to which he or she sought civil service appointment.

The downside for an employee serving a probationary period is that should they be rejected they bear the burden to prove there was no substantial evidence to support the reason or reasons for the rejection or that the rejection was made in fraud or bad faith. (Gov. Code, § 19175.) In addition, the probationary period, like the JEP, involves review and written performance evaluations, which translates into more time, effort, and paperwork for supervisors and managers.

Thus, while a candidate may not initially receive the same amount of civil service time, there are benefits to this proposed rulemaking action. The instant proposal updates and conforms LEAP to the statutory change eliminating the probation period for LEAP candidates (Gov. Code, § 19243); streamlines the process so that candidates must serve only the JEP, resulting in less overall time they must serve before being appointed into civil service; eliminates the risks associated with a rejection on probation; ensures that candidates, while serving the JEP, receive the same salary and benefits as employees serving in temporary positions; and promotes the use of LEAP by making the process easier for supervisors and managers.

Comment 2:

**Proposed § 547.51. Use of the LEAP Process.**

In the initial statement of reasons, proposed section 547.51 changed the determination of the appropriateness of the certification from the Executive Officer to the Board's Merit and Appeals Unit. Should regulations include who determines the appropriateness of the certification list?

Response 2:

Where there is disagreement concerning an applicant's medical qualifications to be LEAP certified, having the Executive Officer determine the appropriateness of the certification based on the medical evidence submitted is an unnecessary step in the appeal process. Therefore, to streamline and make the process more efficient, the proposed regulations eliminate that rung and provide that the applicant may file an appeal with the Board. (See § 52.4, subd. (e)(2); Gov. Code, § 19244, subd. (a) [a refusal to certify eligibility to participate in the program.]) In addition, to clarify the appeal process, proposed section 547.58.9 has been added to this regulatory action. Proposed section 547.58.9 sets forth the appeal rights of applicants for and candidates in LEAP.

Comment 3:

**Proposed § 547.54. Applicants with a Developmental Disability.**

What will happen with this proposed section when it is repealed?

Response 3:

When the proposed section is repealed, it will no longer be in effect or enforceable. The reason for this is that the statutes implementing this law will only remain in effect until January 1, 2021. Please also see Part II., Response 2, *ante*, at page 2.

Comment 4:

**Proposed § 547.55.1. LEAP Internships for Applicants with Developmental Disabilities.**

Part (a) states, “the Department shall be responsible for creating LEAP Internships for applicants . . . .”

- (1) Is this at the request of each agency or will CalHR be requiring agencies to employ interns?
- (2) Proposed section 547.55.2 states CalHR shall establish processes and procedures, however, clear details are not provided.
- (3) Part (d) states the agency shall certify an applicant’s successful completion of the LEAP internship. Will CalHR be adding this person onto the referral list?

Response 4:

- (1) CalHR will be responsible for creating the internships in coordination with DOR and DDS. Neither statutory law nor Board regulations require agencies to employ interns. Successful interns, however, would be placed on the appropriate LEAP-referral list.
- (2) The regulations are not detailed in this regard in order to provide CalHR with the administrative discretion to establish an effective process and procedure.
- (3) Yes. Successful completion of the LEAP Internship qualifies the applicant to satisfy the minimum qualifications of the classification to which they seek an examination appointment. (See Gov. Code, § 19242.05.)

Comment 5:

**Proposed § 547.55.2. Referral of Applicants for the LEAP Internship Program.**

- (1) How will these processes and procedures be distributed?
- (2) If agencies don’t employ interns, will they be required to create internship opportunities for this purpose?

Response 5:

(1) CalHR will determine how best to distribute the process and procedure for referring the names of qualified applicants with developmental disabilities to appointing powers for selection and participation in a LEAP Internship.

(2) No.

Comment 6:

**Proposed § 547.58. Examination Appointments.**

This section appears to disadvantage the applicant. Instead of losing two to four months of civil service status due to the JEP, an employee appointed as LEAP will now lose six to twelve months of civil service status.

Response 6:

The JEP does not delay LEAP applicants from acquiring civil service employment status. To the contrary, the JEP is the civil service examination LEAP applicants must pass to be appointed to a civil service class/position. In relevant part, the proposed regulations restructure LEAP so that the examination and selection process is streamlined and conforms with the amendment to Government Code section 19243 (i.e., no probationary period). Please also see Part III., Response 1, *ante* at page 5.

Comment 7:

**Proposed § 547.58.2. The Evaluation Standards of the Job Examination Period.**

If the JEPs are completely replacing probationary periods, why would employees appointed from a LEAP list be allowed to have a shortened JEP when employees appointed off a regular certification list are not able to have their probationary period shortened, as Government Code section 19170 requires probationary periods be no less than six months.

Response 7:

LEAP is a program that “shall provide an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in the state civil service.” (Gov. Code, § 19240.) The Legislature determined that with “the approval of [CalHR], the appointing power may shorten or extend the duration of the job examination period.” (Gov. Code, § 19243.2.) Proposed section 547.58.6 reflects this determination, while proposed section 547.58.2 sets evaluation standards.

Comment 8:

**Proposed § 547.58.4. Status of Candidate During the Job Examination Period.**

This section appears to disadvantage the applicant. Instead of losing two to four months of civil service status due to the JEP, an employee appointed as LEAP will now lose six to twelve months of civil service status.

Comment 8:

Please see Part III., Response 6, *ante* at page 8.

Comment 9:

**Proposed § 547.58.5. Shortening the Duration of the Job Examination Period.**

If the JEPs are completely replacing probationary periods, why would employees appointed from a LEAP list be allowed to have a shortened JEP when employees appointed off a regular certification list are not able to have their probationary period shortened, as Government Code section 19170 requires probationary periods be no less than six months.

Response 9:

Please see Part III., Response 7, *ante*, at page 8.

**IV.**

**Summary of Written Comments from Peter Brown, Staff Services Manager I, Classification and Performance Services Section, Department of Health Care Services (DHCS).**

Comment 1:

**Proposed § 547.53. LEAP Readiness Evaluations or Written Examinations.**

1. There could be issues in assigning departments the responsibility for developing their own forms. Seems that this would be better regulated if developed through the controlling entity.
2. How is this tool used to evaluate MQ determinations? MQs are based on employment experience, typically articulated within the employment application. How will the “readiness evaluations” and “written examinations” evaluate MQs?

3. Is there a difference or are the evaluation tools meant to expand beyond regular MQ determinations (i.e., special job requirements, physical limitations, and etc.)

Response 1:

1. "Department" is defined in the Board's regulations as CalHR. (§ 4.5.) As such, the reference to "Department" in proposed section 547.53 is to CalHR not all departments or agencies.

2. Depending upon the classification, MQs may include not only experience but also, for example, educational and/or licensure requirements. CalHR is responsible for developing the readiness evaluations and/or written examinations in a way that determines if the applicant seeking a LEAP examination appointment satisfies the minimum qualifications of the applicable parallel classification.

3. Readiness evaluations and/or written examinations must be designed to determine if applicants satisfy the minimum qualifications of the classification to which they seek an examination appointment. Whether certain job requirements fall within the minimum qualifications or the preferred or desirable qualifications will depend upon the classification specification.

Comment 2:

**§ 547.55. Eligibility Criteria for Placement on a LEAP-Referral List.**

1. Please clarify how a LEAP readiness evaluation, internship, or written examination affect interpretation of the MQs.

2. Are LEAP candidates required to meet the MQs as are non-LEAP employees?

Response 2:

1. What experience, education, licensure or combination of those that is required to meet the MQs is not impacted. The readiness evaluation or written examination must be designed in a way to determine if the applicant satisfies the MQs of the parallel classification to which the candidate seeks civil service appointment. (Proposed § 547.53.) So, for instance, a readiness evaluation or written examination must ask questions of the applicant that are related to MQs, thus allowing the appointing power to determine if the applicant satisfies the MQs. The LEAP internship must be designed to allow the participate to satisfy the MQs. (Proposed § 547.55.1.)

2. Yes.

Comment 3:

**Proposed § 547.55.1. LEAP Internships for Applicants with Developmental Disabilities.**

1. I would suggest changing the language above to suggest “Be designed to provide experience towards meeting the minimum qualifications . . . .”
2. Five-hundred and twelve working hours is approximately sixty-four working days. Sixty-four days does not seem sufficient to afford an employee the necessary experience to meet the MQ standards for most state classifications.

Response 3:

1. MQs may include not only experience but also, for example, educational and/or licensure requirements. Accordingly, the Board declines to make this suggested change.
2. The minimum working hours is set in statute (Gov. Code, § 19242, subd. (b)(1)(A)); therefore, proposed section 547.55.1 reflects this standard.

Comment 4:

**Proposed § 547.58. Examination Appointments.**

Just to confirm: We are now keying LT appointments, not TAU appointments? If so, this resolves the JEP v. probationary period issue. I want to clarify that they are not considering/defining TAU as an LT appointment.)

Response 4:

Yes.

Comment 5:

**Proposed § 547.58.6. Shortening the Duration of the Job Examination Period.**

This seems inequitable to non-LEAP employees who do not have the ability to shorten the probation period. There’s no harm in requiring the full length of the JEP.

Response 5:

Please see Part III., Response 7, *ante*, at page 8, and Part VIII., Response 4, at page 26, *post*.



Comment 6:

**Proposed § 547.58.7(c). Successful Completion of the Job Examination Period.**

This language is contradictory to this section. Upon completion of the JEP, the LEAP candidate is appointed to the parallel class. How can we terminate within 30 days after the completion of the JEP?

Response 6:

Proposed section 547.58.7, subdivision (a) and (c) do not conflict. Subdivision (a) applies when a candidate successfully completes the job examination period. Subdivision (c) does not reference “successful completion” and instead applies when the appointing power fails to terminate the candidate within 30 days after the end of the job examination period. In the latter circumstance, a legal presumption is established that the candidate satisfied the evaluation standards of the job examination. This presumption ensures that otherwise successful candidates are not disadvantaged by an appointing power’s failure to satisfy proposed section 547.58.3, subdivision (b) [the final evaluation shall contain a recommendation as to whether to appoint the candidate to the parallel classification]. In addition, subdivision (c) reflects the statutory language of Government Code section 19242.9. Thus, the regulation conforms to statutory authority.

**V.**

**Summary of Written Comments from Catherine Campisi, President, Association of California State Employees with Disabilities (ACSED).**

We are generally pleased with the changes being proposed to the LEAP regulations. These changes will simplify and clarify the procedures for the LEAP program and lay the foundation for further improvements. We want to particularly express support for proposed sections 547.51, 547.52, and 547.55. There are, however, a few provisions which raise some concerns for us.

Comment 1:

**Proposed § 282. Termination of a Limited-Term Appointment.**

Proposed section 282 states that when terminating a limited term appointment, an appointing power must give the employee “oral or written notice of the termination.” We realize that termination of limited term appointments for LEAP candidates is controlled by section 547.58.8. Nevertheless, ACSED recommends that employees even in non-LEAP limited term positions should receive written notice of termination. If the only notice someone receives is oral, there is a high risk of misunderstanding and the department and the employee would be better protected by requiring the notice to be in writing.

Response 1:

Section 282 currently provides that a limited term employee may be separated at any time prior to the expiration of the term for which appointed by advising the employee either orally or in writing of the separation. Written notification of a termination may be a best practice in most situations, but there may also be unique situations in which oral notification of a termination is appropriate. The Board therefore declines to make this change as it may be overly restrictive and burdensome.

Comment 2:

**Proposed § 547.53. LEAP Readiness Evaluations or Written Examinations.**

“On a form designated by the Department” is unnecessarily restrictive as it could be strictly construed to require the exam or readiness evaluation to be on some sort of “form” and might even suggest a printed document. We think this regulation would be better to say “in a form designated by the Department.”

Response 2:

For purposes of clarity, proposed section 547.53 is amended to read “in a form designated by the Department.”

Comment 3:

**Proposed § 547.58.2. The Evaluation Standards of the Job Examination Period.**

(1) We urge the Board to amend the regulation to specify that the appointing power should develop the evaluation standards and submit them to CalHR for approval prior to the commencement of the JEP. This will help ensure consistency in evaluation standards from agency to another.

(2) We further recommend that the regulation require the appointing power to provide the candidate a copy of the evaluation standards at the commencement of the JEP.

Response 3:

(1) One of the purposes of this proposed regulatory action has been to streamline and simplify the LEAP examination and selection process. Adding a procedural step that the appointing power must seek CalHR’s approval of the evaluation standards would be unnecessarily burdensome, since proposed section 547.58.2 sets forth the criteria for the evaluation standards and the criteria are not so complicated or complex that a separate agency review and approval would add any real value to the process.

(2) Proposed section 547.58, subdivision (b) provides that prior to or upon the examination appointment, the appointing power shall, at a minimum, provide the

selected candidate with the duty statement of the position. However, also requiring that the evaluation standards be provided to the candidate would promote greater transparency and understanding of the JEP expectations for the candidate. Accordingly, rather than amending proposed section 547.58.2, proposed section 548.58, subdivision (b) is amended as follows:

Prior to ~~or upon~~ the examination appointment, the appointing power shall, at a minimum, provide the selected candidate with the duty statement of the position, so that the candidate knows what duties and functions he or she is expected to perform and what will be evaluated during the job examination period. Along with the duty statement of the position, the appointing power shall also provide the selected candidate with the evaluation standards that will be applied and followed during the job examination period, as set forth in section 547.58.2.

Comment 4:

**Proposed section 547.58.7. Successful Completion of the Job Examination Period.**

From the perspective of ACSED, we want to encourage departments to hire LEAP candidates into permanent positions, and we cannot imagine why CalHR would want to disapprove such a placement. Therefore, we recommend removal of the extra step of CalHR approval, which will only serve to complicate and delay the process. We realize that this is not a new requirement, but this package of proposed changes provides a good opportunity to take this additional step to streamline the process.

Response 4:

While ACSED raises a valid point, the approval piece of this proposed regulation is statutorily mandated. Government Code section 19243 provides, "Upon successful completion of the job examination period, the candidate shall have qualified in the examination. With the approval of the department, the appointing power may appoint the candidate, without further examination, to an appropriate position where civil service status may accumulate. A candidate appointed in this way is not required to serve a probationary period." (Emphasis added.) As defined, "department" means CalHR. (See Gov. Code, § 18521.5.) Proposed section 547.58.7 therefore reflects this statutory standard. A statutory change would be needed to eliminate the requirement of CalHR approval.

///

///

Comment 5:

**Proposed § 547.58.8. Unsuccessful Completion of the Job Examination Period.**

(1) It makes sense that a candidate's limited term appointment will be terminated if they have not met the standards by the end of the job evaluation period, but we think it is inappropriate for a department to be able to terminate the appointment "during" the job evaluation period. This would mean that a department could terminate a candidate's appointment before he or she has had a reasonable chance to demonstrate the ability to meet the evaluation standards. This is unfair. If departments can arbitrarily decide to terminate appointments whenever they wish, candidates in the same classification could be treated inconsistently depending on which department they work for. We urge you to delete the words "during or" from proposed section 547.58.8, subdivision (a).

(2) We believe section 547.58.8 should be amended to require the appointing power to obtain approval from CalHR to terminate an appointment even once the job evaluation period is over. If the appointing power concludes that the person has failed to meet the standards and should be terminated, a review by CalHR to confirm this determination would be a reasonable precaution against situations where a candidate is unsuccessful because he or she did not receive accommodations or was subject to discriminatory treatment.

Response 5:

(1) To avoid potential unfairness, proposed section 547.58.2 requires that the evaluation standards provide the candidate "with sufficient opportunity to demonstrate his or her competencies to successfully perform the duties of the position." Proposed section 547.58.2 requires evaluation standards for the JEP, and proposed section 547.58.3 requires written evaluations to be provided to candidates during the JEP. Thus, the proposed regulations are intended to prevent agencies from arbitrarily terminating examination appointments. As to terminating an examination appointment during the JEP, there may be situations where during the JEP it is apparent that the candidate is unable to perform the duties of the position. Government Code section 19244 provides LEAP candidates with the right of appeal to the Board where there is a "termination of an appointment . . . during a job examination period." The regulation conforms to this statutory language. For these reasons, the Board declines to make this change.

(2) One of the goals of this proposed rulemaking action is to simplify and streamline the LEAP process. To require appointing power's to obtain CalHR's approval to terminate the JEP of an unsuccessful candidate, where approval is not otherwise required by statute, may impose unnecessary procedural constraints that add complexity rather than promote efficiency. It is also worth noting that anti-discrimination laws are well established, and proposed section 547.51 has been amended for purposes of clarity to add: "In addition to any other laws that may be applicable, the LEAP examination and appointment process shall comply with applicable laws related to reasonable

accommodation.” Further, LEAP candidates have a right to appeal to the Board the termination of their examination appointment. Accordingly, the Board declines to make this change.

## VI.

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

Comment 1:

#### **Proposed § 280. Purpose of Limited Term Appointments.**

SEIU Local 1000 strongly opposes inclusion of this section and having LEAP positions filled only for temporary staffing needs as limited term appointments. Having limitations on filling positions that apply only to employees with disabilities is problematic and possibly discriminatory.

Response 1:

It appears that SEIU has misread proposed section 280. By its express language, proposed section 280 provides that limited-term appointments shall be made for “examination appointments.” Examination appointments, as opposed to appointments that are made into civil service, are used so that LEAP candidates can serve the job examination period (JEP) in the classification to which they seek civil service appointment. Thus, using a limited-term appointment is the mechanism by which “examination appointments” are made. LEAP candidates who successfully complete the JEP are then appointed to the corresponding civil service classification in which they served the JEP.

Comment 2:

#### **Proposed § 281. Acquisition of Permanent Status.**

Not counting time that a LEAP candidate serves in a limited-term appointment toward acquiring permanent status is problematic for some of the same reasons cited above. Having different standards for counting time toward permanent status that apply only to employees with disabilities is problematic and possibly discriminatory.

Response 2:

It appears that SEIU has misread proposed section 281. The limited-term appointment is the mechanism by which the LEAP candidate receives an “examination appointment.” In turn, the examination appointment is the method by which candidates are tested or examined for whether they qualify for appointment into civil service. Like other candidates taking a civil service examination, the LEAP candidate is not in civil service

during the JEP; rather, the JEP is the examination. Government Code section 19242.6 provides that candidates serving in LEAP positions shall not acquire permanent civil status but shall receive the same salary and benefits to which other state employees in temporary positions are entitled. Proposed section 281 reflects the mandate of this statute.

Comment 3:

**Proposed § 282. Termination of a Limited-Term Appointment.**

SEIU Local 1000 strongly opposes this section taking away appeal rights from LEAP candidates and the other changes that would be implemented by this section. Having different standards for employees with disabilities that do not apply to other employees is problematic and possibly discriminatory. Taking away the right of appeal for LEAP candidates is a major problem.

Response 3:

It appears that SEIU has misconstrued this proposed regulation. It is not the intent of this proposed regulation to eliminate the appeal rights of LEAP candidates, nor does the language of the proposed regulation suggest that such a reading is reasonable. By its express terms, proposed section 282, subdivision (a) does not apply to LEAP candidates competing in an examination appointment by way of a limited-term appointment. Proposed subdivision (b) further states that the termination of a LEAP candidate's appointment shall be in accordance with Article 28, section 547.58.8.

Comment 4.

**Proposed § 547.50. Definitions.**

There should be a written requirement to ensure that confidentiality of this information is protected. In addition, what types of licensing is acceptable should be more clearly defined and the type of professionals that can provide documentation should be broadly defined.

Response 4:

Confidentiality laws, particularly with respect to medical records, are well-established and clearly stated in other federal and state laws. CalHR is in the process of preparing a human resources (HR) manual that will not only provide best practices but also cite to other laws relevant to the civil service examination and selection process. Thus, to cite those laws in Board regulations, would be unnecessarily duplicative and problematic should those laws be amended or changed. The proposed regulation references "licensed medical professional" or "a licensed rehabilitation professional." The term "licensed" is commonly understood and does not require special definition.

Comment 5:

**Proposed Repealed § 547. 51. LEAP Eligibility Criteria.**

SEIU strongly supports eliminating the requirement that DOR certify employee eligibility but asserts that this requirement should be eliminated in its entirety, not moved to another section. The DOR requirement was moved to proposed section 547.55 but should be eliminated from there as well. Numerous individuals have reported problems working with DOR, including excessive delays in getting the necessary documentation. In addition, DOR has a history of discriminating against individuals with mental health disabilities. For these reasons, DOR verification should not be required of any LEAP candidate.

Response 5:

DOR's role with LEAP is consistent with its mission and guiding principles. A verification from DOR certifying that the Proof of Disability Documentation qualifies a candidate as a person with a disability for purposes of LEAP benefits the program in that this prerequisite promotes consistent and uniform application of the LEAP verification process. This will in turn promote fair and equal treatment of persons seeking to enter civil service employment through LEAP.

Any concerns with DOR's management of the program are more appropriately addressed directly with DOR.

Comment 6:

**Proposed § 547.51. Use of the LEAP Process.**

Rather than encouraging appointing powers to use LEAP, appointing powers should be required to use LEAP. SEIU strongly opposes the rather half-hearted and unconvincing use of the term "encourage." Such a feeble reference hardly warrants regulatory ink. It falls short of a meaningful commitment the Governor set forth when he signed AB 1041 (Chesbro), codifying an Employment First Policy "for people with disabilities in California." It is noteworthy that this policy states, "It is the policy of the state that opportunities for integrated, competitive employment shall be given the highest priority for working age individuals with developmental disabilities, regardless of the severity of their disabilities." (Welf. & Inst., Code, § 4869, subd. (a)(1).) If the Board can only muster the word "encourage," the State will fall woefully short in its own commitment.

Response 6:

In October 2013, California's Employment First Policy (AB 1041) was passed and signed into law by Governor Brown. The Employment First Policy is specific to persons with developmental disabilities and provides, among other things, that "integrated competitive employment is intended to be the first option considered by planning teams

for working age individuals, but individuals may choose goals other than integrated competitive employment.” (Welf. & Inst., Code, § 4869, subd. (a)(3).) The Employment First Policy does not reverse or change the state’s civil service merit system (Cal. Const., tit. VII) or the Civil Service Act, including LEAP, which is a voluntary and additional method of applying for state employment. (Gov. Code, § 19241.5.) Accordingly, this proposed regulation is consistent with the California constitution and civil service laws.

Comment 7.

**Repeal § 547.54. LEAP Job Examination Period.**

Eliminating subdivisions (b), (c), and (d) is problematic and SEIU opposes its deletion. As required by subdivision (b), LEAP candidates should be provided written information identifying the specific knowledge, skills, and abilities that are assessed. The requirement in subdivision (c) should be kept so that agencies are required to determine an appropriate test of fitness that will provide the LEAP candidates with sufficient opportunity to demonstrate that they possess the satisfactory level of knowledge, skill and ability to effectively perform the duties of the regular civil service classification to which appointment is sought. The requirement in subdivision (d) for written evaluations every four weeks should also be retained as LEAP candidates would benefit from frequent feedback.

Response 7:

Subdivisions (b), (c), and (d) have been captured in other proposed regulations. Proposed section 547.58.2 requires that the evaluation standards of the JEP 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. Proposed section 547.58 requires that the selected candidate must be given the duty statement and evaluation standards prior to the examination appointment. Proposed sections 547.58.2 and 547.58.3 requires feedback and evaluations every four weeks.

Comment 8:

**Proposed § 547.54. Applicants with a Developmental Disability.**

SEIU Local 1000 opposes this section unless it is amended. California statutes and regulations clearly recognize that it is unlawful discrimination to treat state employees differently on the basis of disability. The State should also recognize that it may be discrimination to differentiate between types of disabilities. The options offered in this subsection should apply to every LEAP candidate, not only candidates with developmental disabilities. SEIU understands that this proposed regulation is implementing the options offered to people with developmental disabilities by Government Code section 19242, subdivision (a). Despite the language of this section,



disparate treatment according to the type of disability should be avoided in order to avoid discrimination.

Response 8:

SEIU provides no legal citation supporting its claim that a LEAP internship for persons with developmental disabilities would constitute disparate treatment based on a person's type of disability. It should be noted that the Employment First Policy is a law (at both the federal and state levels) specific to persons with developmental disabilities, not all persons with a disability. Thus, absent citation to authority that would justify the Board disregarding the plain language of Government Code section 19242, subdivision (a), the Board declines to do so.

Comment 9:

**Repeal § 547.55. Extension or Reduction in Job Examination Period.**

LEAP candidates should get extra time during the LEAP JEP to demonstrate their KSAs in a specific area if they have not been given the opportunity to do so. Therefore, SEIU opposes its deletion.

Response 9:

Under this proposed regulatory action, the JEPs are the length of the probation of the class the candidate is testing for. That means that JEPs will be six months or twelve months, depending upon the length of the probationary period of the parallel classification. In most circumstances, this length of time should provide sufficient opportunity for the candidate to demonstrate he or she can successfully perform the duties of the position. Proposed section 547.58.5 allows for the extension of the JEP where due to permissible absences the appointing power determines that further evaluation of the candidate is required.

Comment 10.

**Proposed § 547.55. Eligibility Criteria for Placement on a LEAP-Referral List.**

SEIU Local 1000 asserts that the requirement for DOR verification should be eliminated. (See Part VI, Comment 5, *ante*, at p. 18.)

Response 10:

Please see Part VI, Response 5, *ante*, at page 18.

///

///

Comment 11:

**Proposed § 547.55.1. LEAP Internships for Applicants with Developmental Disabilities.**

SEIU feels it is inappropriate and possibly unlawful discrimination to treat candidates differently based on a diagnosis of a developmental disability. (See Comment 8.)

Response 11:

Please see Part VI, Response 8, *ante*, at page 20.

Comment 12:

**Repeal § 547.56. Transition from LEAP Position to Regular Civil Service Position.**

It seems that the Board is actually eliminating appeal rights for LEAP candidates in proposed section 547.57. LEAP candidates should have the right to appeal any termination of their service.

Response 12:

The proposed regulatory action does not repeal LEAP candidates' right to appeal. (Please see Part VI, Response 3, *ante*, at p. 17; Gov. Code, § 19244.)

Comment 13:

**Proposed § 547.56. (Failure to Satisfy Eligibility Criteria.)**

This proposed section is confusing as it references "appeal rights," yet other sections seem to indicate that the right to appeal is being denied LEAP candidates. (See proposed § 282.)

Response 13:

The proposed regulatory action does not repeal LEAP candidates right to appeal. (Please see Part VI, Response 3, *ante*, at p. 17; Gov. Code, § 19244.)

Comment 14:

**Repeal § 547.57. Termination During Job Examination Period.**

By deleting this section, including subdivision (b), LEAP candidates lose the right to appeal. LEAP candidates should have equal rights.

Response 14:

The proposed regulatory action does not repeal LEAP candidates right to appeal. (Please see Part VI, Response 3, *ante*, at p. 17; Gov. Code, § 19244.)

Comment 15:

**Proposed § 547.58. Examination Appointments.**

Providing the candidate with a duty statement is a minimum. To truly put the LEAP candidate in a position to succeed, the appointing power should also provide the candidate a detailed statement of expectations, available resources, a mentor if desired, as much training as is reasonably needed, periodic informal reviews, and all necessary, reasonable supports.

Response 15:

This proposed regulatory action provides candidates with more than the duty statement. This proposed action simplifies the evaluation standards of the JEP by requiring that those standards be based upon the job classification as set forth in the duty statement of the position and include other necessary features, as specified in proposed section 547.58.2. As amended, proposed section 547.58 will require that the candidate also be given the evaluation standards prior to the examination appointment. In addition, the evaluation standards also require feedback and an evaluation schedule. If the candidate requires reasonable accommodation, those laws would apply during the JEP.

Comment 16:

**Proposed § 547.58.1. Length of the Job Examination Period.**

Under this proposed section, “The length of a job examination period for a LEAP-certified class shall be the same as the length of the probationary period of the parallel classification.” Therefore, time spent in a LEAP job examination should count as full civil service credit.

Response 16:

Proposed section 547.58.1 aligns with Government Code section 19242.6, which mandates that candidates serving in LEAP positions 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. If the candidate is appointed into civil service, civil service status may accumulate. (Gov. Code, § 19242.8.) SEIU provides no basis in law that would allow the Board to ignore this statutory scheme.

Comment 17:

**Proposed § 547.58.4. Status of Candidate During the Job Examination Period.**

This proposed section should be changed so that candidates do acquire permanent civil service status during the JEP. There is no valid reason for treating LEAP candidates differently than other state employees as they are doing the same state work.

Response 17:

Please see Part VI, Response 16, *ante*, at page 22.

Comment 18:

**Proposed § 547.58.7. Successful Completion of the Job Examination Period.**

This proposed section should make it explicitly clear that a LEAP candidate need not go through a probationary period after successful completion of the JEP.

Response 18:

For purposes of clarity, proposed section 547.58.7 is amended to add, “A candidate appointed into civil service in this way is not required to serve a probationary period.”

Comment 19:

**Proposed § 547.58.8. Unsuccessful Completion of the Job Examination Period.**

This proposed section, like proposed section 547.56, is confusing at it references the right to appeal the action to the Board; yet, other sections seem to indicate that the right to appeal is being denied LEAP candidates (see proposed § 282). SEIU strongly asserts that LEAP candidates should have full appeal rights for any adverse employment action.

Response 19:

The proposed regulatory action does not repeal LEAP candidates right to appeal. (Please see Part VI, Response 3, *ante*, at p. 17; Gov. Code, § 19244.)

///

///

///

///

## VII.

### **Summary of Written Comments from Lois Vasquez, Staff Services Manager, Office of Equal Employment Opportunity, California Highway Patrol (CHP).**

#### Comment 1:

#### **Proposed § 547.51. Use of the LEAP Process.**

The proposed text states: “Appointing powers are encouraged to use the LEAP examination and appointment process to fill vacancies. Prior approval of the Board or the Department is not required.”

The Initial Statement of Reasons indicates that the text is meant to encourage the use of the LEAP appointment process and not require prior Board or CalHR approval. However, the first part of the text implies the use of the LEAP list is optional for departments. This appears to conflict with section 155, which requires the use of a Hiring Manager’s Report when a LEAP-referral list exists.

#### Response 1:

The Hiring Manager’s Report required by section 155 is intended to provide hiring managers with a diverse and qualified applicant pool. The rule, however, does not require that the hiring manager appoint a LEAP candidate.

#### Comment 2:

#### **Proposed § 547.58.1. Length of the Job Examination Period (JEP).**

(1) How will this new requirement impact LEAP candidates appointed to part-time and intermittent positions?

(2) Will there be an exception or provision to extend the duration of the JEP to allow part-time and intermittent employees to serve the equivalent of a full-time JEP (which is equal to the probation of the parallel classification) in order to provide appointing powers sufficient time to evaluate LEAP candidates and provide LEAP candidates with sufficient time to prove their ability to perform the duties of the job?

(3) Proposed section 547.58.5 (Absences During the Job Examination Period) provides for the extension of the JEP due to permissible absences. Will there be any other provisions for the extension of the JEP?

///

Response 2:

(1) and (2) For purposes of clarity, proposed section 547.58.1 has been amended to specifically address a JEP that is for a job classification having a part-time or intermittent time base. These amendments are consistent with section 321 (Extension of Probationary Period). The proposed amendments provide that for examination appointments to classifications in positions that have a full-time base, the length of the job examination period shall be based on monthly pay periods worked. For examination appointments to classifications in positions that have a part-time or intermittent time base, the length of the job examination period shall be based upon the following:

- (1) If the probationary period for the parallel classification is six months, the job examination period shall be 840 hours.
- (2) If the probationary period for the parallel classification is one year, the job examination period shall be 1680 hours.
- (3) Hours worked toward completion of the job examination period must be physically worked. Time off from work shall not be counted.

In addition, where the job examination period is for a classification in a position that has an intermittent time base and the parallel classification has a one year probationary period, the appointing power may allow the candidate to work during the job examination period in excess of the 1500-hour working limitation within 12 consecutive months where there is availability of work and funds.

(3) Not at this time. The JEP has been extended to be the length of the probationary period of the parallel civil service classification. This length should provide sufficient time and opportunity for the candidate to demonstrate that he or she can successfully perform the duties and functions of the position.

## VIII.

### **Summary of Written Comments from Stephanie Varrelman, Chief, Office of Workforce Equality, Department of Water Resources (DWR).**

Comment 1:

**Proposed § 547.55 (a)(1). Proof of Disability Documentation.**

Please clarify that the disability documentation is provided directly to the California Department of Rehabilitation (DOR), not the appointing power.

///

Response 1:

For purposes of clarity, proposed section 547.55(a)(1) has been amended as follows: “Obtain Proof of Disability Documentation and provide the documentation directly to DOR, in a manner and means determined by DOR.”

Comment 2:

**Proposed § 547.55 (a)(2). Verification.**

Please clarify that the verification from DOR is provided directly to CalHR, not the appointing power.

Response 2:

For purposes of clarity, the following language has been added to the proposed regulation: “The verification or referral shall be submitted to the Department in a manner and means determined by the Department in coordination with DOR and DDS.”

Comment 3:

Please clarify that extensions should be consistent with section 321 (Extension of Probationary Periods) that agencies currently use for all probationary employees.

Response 3:

For purposes of clarity, proposed section 547.58.1 has been amended to be consistent with section 321. Please see Part VII., Response 2, *ante*, at page 25.

Comment 4:

As the length of the job examination period for a LEAP-certified classification will be the same as the length of the probationary period of the parallel classification, the ability for an appointing power to shorten the job examination period is not fair and equitable to a non-LEAP candidate who is appointed from the examination list. Non-LEAP candidates appointed from the examination list must serve either 6-month or 12-month probationary periods. There is not an option for the appointing power to shorten the probationary period. Allowing appointing powers the ability to shorten a job examination period for LEAP appointments allows for greater rights than a non-LEAP appointment.

Response 4:

By law, LEAP is an alternative testing and selection method from the traditional civil service hiring process. The statutory scheme of LEAP allows for the JEP to be shortened or extended with the approval of CalHR. (Gov. Code, § 19243.) Accordingly, these proposed regulations accurately reflect this statutory mandate.

As to whether there is unfairness for a probationer because the LEAP statutory scheme allows for a shortening of the JEP and not the probationary period, it should be considered that during the JEP LEAP candidates, because they are testing for a civil service position, do not acquire permanent civil service status, whereas an employee on probation does. (See Gov. Code, §§ 18526, 18527, & 19242.6.) Further, the proposed rulemaking action places a limit on the amount of JEP time that can be shortened. (See proposed § 547.58.6 [a LEAP candidate cannot serve less than three quarters of the job examination period].) Moreover, the JEP can also be lengthened. (See 547.58.5. [Absences During the Job Examination Period].)

In addition, while the two hiring procedures are different, both promote a merit-based civil service hiring process. A candidate entering civil service through the traditional civil service process takes an examination (e.g. an online Training and Experience Examination or a written test) that may take no more than half a day or less to complete, whereas the LEAP examination is much longer and actually tests whether the candidate can successfully perform the duties and functions of the job.<sup>1</sup> In the traditional civil service hiring process, because the examination is separate from actual performance in a position, the probationary period allows the candidate the opportunity to show he or she can successfully perform the duties and functions of the job. In LEAP, the probationary period is not only not legally required any more, it did not significantly contribute to an evaluation of whether the candidate could successfully perform the duties of the job; the JEP does this. In addition, in both the traditional civil service process and LEAP, candidates must convince the hiring manager that they, and not another competitor, are the best fit for the job. Accordingly, while these two civil service selection procedures differ in that one has a longer probationary period and the other a longer examination period, both promote a merit-based civil service hiring process.

#### Comment 5:

Please consider adding the following two points of clarification within the regulations to ensure that LEAP candidates are not subject to any inadvertent disadvantage as a result of either their extended time in a limited term (LT) position or the absence of a probationary period.

- (1) LEAP candidates serving the JEP in an LT capacity are to be treated as permanent employees for the purposes of evaluation during the event of a layoff or SROA.
- (2) Once a candidate passes the job examination period, they will be given the same return rights as if they served a probationary period in the parallel classification.

---

<sup>1</sup> It should be noted that during the JEP, the candidate is required to perform duties that are appropriate for the class to which he or she seeks civil service appointment. (See proposed § 547.58.2 [JEP based upon classification as set forth in duty statement].) This requirement is in keeping with the mandate covering the scope of duties to be performed after appointment into civil service: "No person shall be appointed under a class not appropriate to the duties to be performed." (Gov. Code, § 19051.)



Response 5:

(1) LEAP candidates serving in the JEP are being tested for permanent appointment into civil service. Therefore, their status during the JEP is not as a permanent employee. Accordingly, the Board declines to make this amendment.

(2) Return rights apply to civil service employees. As noted above, the status of LEAP candidates during the JEP is not as a permanent employee. (See Gov. Code, § 19242.6.) Accordingly, the Board declines to make this amendment.

**IX.**

**Conclusion**

The Board appreciates the feedback it received regarding these proposed regulations. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.