

DATE: May 20, 2022

TO: ALL INTERESTED PARTIES
/s/ SUZANNE M. AMBROSE

FROM: Suzanne M. Ambrose
Executive Officer

SUBJECT: NOTICE OF PROPOSED REGULATIONS

Notice is hereby given that the State Personnel Board (Board) proposes to amend Sections 67.6 and 67.7 in order to clarify the whistleblower retaliation complaint process. (Cal. Code Regs., tit. 2, §§ 67.6, 67.7.)

PUBLIC HEARING:

A public hearing regarding the proposed regulatory action will be held on July 6, 2022, at 10:00 a.m. via WebEx. In order to participate in the public hearing, please see the following options:

- Via Video (Online)

You may click, or copy and paste into your web browser, the following link: <https://spb-meetings.webex.com/wbxmjs/joinservice/sites/spb-meetings/meeting/download/954f2e97a5004b2ba3f39f9f7c2e9594?siteurl=spb-meetings&MTID=m7343bc3964b420308af3bd82915034f6>

Then enter the following information to gain access to the hearing:

Meeting Number: 2555 488 9635
Meeting password: 33F9GbqXAWM

- Via Telephone

You may also participate by dialing the phone number first and then the participant code listed below:

Phone Number: +1-408-418-9388

Participant Code: 25554889635

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN COMMENT PERIOD:

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Lori Gillihan, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Email: lori.gillihan@spb.ca.gov

The written comment period closes on July 5, 2022. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

AUTHORITY AND REFERENCE:

The Board proposes to amend Sections 67.6 and 67.7 of Title 2, Chapter 1 of the California Code of Regulations pursuant to the authority vested in it by the California Constitution, article 7, section 3, and Government Code section 18701. The proposed regulation will implement, interpret, and make specific the provisions of Government Code sections 8547.8, 18670, 18671, 18671.1, 18675, 18710, 19572, 19574, 19575, 19582, 19583.5, 19590, 19592, and 19683.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, §§ 1, subd. (b), & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.) Regulations concerning Board hearing procedures related to disciplinary and merit matters are not exempt from the APA. (Gov. Code, § 18215, subd. (a)(2).)

The purpose of this regulation is to clarify the whistleblower retaliation complaint process in order to ensure conformity with existing Government Code section 19683.

Specifically, the proposed changes make clear that any supervisor, manager, employee, or appointing power that the Board's Executive Officer (EO) finds committed retaliation has a right to appeal the Notice of Findings (NOF) by requesting a full evidentiary hearing whether or not they were a named or unnamed party to the complaint. Moreover, Government Code section 19683 provides that named, party retaliators are subject to discipline following a final determination of the Board, while unnamed, non-party retaliators should receive a Notice of Adverse Action (NOAA) from their appointing power after being notified by the Board. (Gov. Code 19683, subd. (e).) As such, the proposed changes to section 67.7 now align with the current statutory framework.

The benefits of this regulatory change include: (1) clarity for all parties to a whistleblower retaliation complaint regarding the complaint process and their appeal rights and (2) conformity with existing statutory framework to ensure the appropriate actions are taken by the Board so that unnamed, non-party retaliators may exhaust their full appeal rights. As a result, the adoption of these regulations, will have a positive impact on the general health and welfare of California residents in that the benefits of this regulatory action create a fair, equitable, and consistent process for the civil service hiring process.

In reviewing other state regulations, the Board found that the instant regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ON PUBLIC AGENCIES:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any State agency: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

- Cost or savings in federal funding to the State: None

SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

ECONOMIC IMPACT ON BUSINESS:

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: None. The proposed regulations only set standards related to state civil service appeals procedures. Accordingly, it has been determined that the adoption of the proposed regulations would not affect small businesses in any way.

COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts the Board's appeals procedures.

RESULTS OF ECONOMIC IMPACT ASESMENT:

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 create a fair, equitable, and consistent process for the civil service hiring process.

CONSIDERATION OF ALTERNATIVES:

The Board has initially determined that no reasonable alternatives it has considered or that have been otherwise identified and brought to the attention of the Board 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS:

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Lori Gillihan, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-1043
Email: lori.gillihan@spb.ca.gov

The backup contact person for these inquiries is:

Carlos Gomez, Analyst
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-8350
Email: carlos.gomez@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Policy Division Chief, Lori Gillihan, at the above address.

AVAILABILITY OF RULEMAKING FILE:

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and initial statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in ~~underline~~ and strikeout can be accessed on the Board's website at www.spb.ca.gov under "What's New?"