

## **SUMMARY OF PUBLIC COMMENTS FOR 45-DAY PUBLIC COMMENT PERIOD AND THE BOARD'S RESPONSES**

### **I.**

#### **Introduction**

The State Personnel Board (Board) proposes to adopt sections 5.1 (definition of CEA), 5.2 (definition of Retired Annuitant), 90<sup>1</sup> (Continuously Vacant Classifications), 248 (Appointments and Classification Plan), 548.2 (Appointment to a CEA Position), and 548.5 (Creation or Revision of CEA Positions) of Title 2, Chapter 1, of the Code of Regulations (CCR). The Board also proposes to repeal section 548.77 (Report of Appointment) of the CCRs. A public comment period on these regulations was held from June 26, 2015, through August 3, 2015. A public hearing was held on July 22, 2015. The Board received written comments during this timeframe, but there were no comments at the hearing. The written comments were taken under submission and considered. A summary of those comments and the Board's responses are below.

### **II.**

#### **Summary of Written Comments from Christiana Dominguez, Legal Counsel, Blanning & Baker, For California Association of Professional Scientists (PECG) and Professional Engineers in California Government (CAPS).**

PECG and CAPS support the modernization of the state's civil service classification system. PECG and CAPS also appreciate the goal of streamlining the functions of both the Board and the California Department of Human Resources (the Department). Both unions, however, submitted the below comments to the proposed regulations.

#### Comment 1:

Section 90 would benefit from a provision confirming that the Department has an affirmative duty to provide recognized employee organizations with notices of proposed regulatory changes to represented classifications.

#### Response 1:

The Board agrees that section 90, subdivision (b) can be clarified as to the Department's duty. Therefore, the wording of subdivision (b) has been modified to state

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<sup>1</sup> As noted below under "Summary of Nonsubstantive Changes," for organizational reasons section 75 has been renumbered to section 90. Accordingly, to accurately reflect the renumbering scheme, references to section 75 have been changed herein to section 90.

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that the Department shall provide the written notice and proposed recommendation for classification action to interested parties affected by the recommendation.

Comment 2:

PECG and CAPS state that section 90 is not clearly written and, accordingly, recommend the following changes to the text:

(b) The Department shall provide to recognized employee organizations of affected classifications written notice of proposed recommendations for classification action. This notice must be provided at least 60 days in advance of the proposed action taking effect.

(c) If the Department recommends the abolishment of a vacant classification and if the Department receives no opposition to the proposed action, the classification shall be abolished without further Board action.

(d) If the Department recommends classification changes other than abolishment or if the Department receives opposition to any proposed action, the proposed recommendation shall be submitted to the Board for further action.

(e) On an annual basis, the Department shall report to the Board and to recognized employee organizations the number of classifications that were abolished under this section.

Response 2:

The goal of section 90, subdivision (b) is to give agencies and recognized employee organizations impacted by the Department's recommendation an opportunity for comment. Subdivision (b) as proposed by PECG and CAPS does not include reference to affected agencies. The Board finds that reference to affected agencies should remain in the regulation. The Board agrees, however, that to avoid confusion a timeframe should be added to this rule. A requirement that the notice be provided at least 60 days in advance of the proposed action taking effect may be problematic given the timing and scheduling of Board meetings. The Board finds that the better approach is to require the written notice and proposed recommendation for classification action within 30 days of the 24-month vacancy, and afford a minimum 30-day comment period.

Regarding subdivisions (c) and (d) as proposed by PECG and CAPS, the Department must submit a recommendation for classification action to the Board with only one exception: the Department does not receive any opposition to abolishing a classification. In that instance, the classification shall be abolished without further Board action. The Board does not find that amending the proposed language in the regulation is needed. However, this aspect of the rule has been moved from subdivision (b) to subdivision (c).

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Section 90 requires the Department to report annually to the Board the number of classifications that were abolished under this rule. PEGC and CAPS believe that the Department should also provide the report to recognized employee organizations. The Department's reports to the Board are all public, as is the Board's agenda and minutes of meetings. Reports are also posted on the Board's website, <http://www.spb.ca.gov>. Given this openness and ease of availability, the suggested amendment is not necessary. It should also be noted that a recognized employee organization may still request or negotiate receiving the annual report directly from the Department, if the organization so chooses.

Comment 3:

Under Section 548.5, the Department is required to post, but not independently analyze, proposals creating or revising CEA positions. This rule seems to contravene the Government Code section 19889 requirement that the Department designate positions for inclusion or removal from the CEA category, subject to Board review, and removes the Board and the Department from ensuring the appropriate use of CEA positions.

Response 3:

The purpose of Government Code section 19889 is clear: "encourage the development and effective use in the civil service of well-qualified and carefully selected executives." To carry out that purpose, the Board "shall establish by rule a system of merit personnel administration specifically suited to the selection and placement of executive personnel." The Department "shall be responsible for salary administration, position classification, and for the motivation and training of executive personnel." The Department also "designate[s]" positions for inclusion or removal from the CEA category "subject to review" by the Board. While the Department is charged with the administrative task of designating positions for inclusion or removal from the CEA category, nothing in the language of section 19889 requires the Department to analyze each agency's CEA proposal. Although the Department's designation of a CEA position is "subject to" Board review, the statute does not mandate such review.

Under section 548.5, if there is no opposition to a CEA proposal that is timely submitted to the Department, the CEA proposal will become effective without Board action. Where CEA proposals are challenged and the Department recommends Board approval, the matter shall be placed on the Board agenda. This procedure will provide a transparent, cost effective, and least burdensome process for approving and/or revising CEA positions. While section 548.5 is different from how the Board has handled CEA proposals in the past, this new procedure is consistent with the Board's general rulemaking authority and specific rulemaking authority under Government Code section 19889. The procedure is also in keeping with the goal of civil service reform.

In addition, the new procedure set forth in section 548.5 does not remove the Board from ensuring the appropriate use of CEA positions. Under Government Code section 18661, the Board is empowered to conduct an audit of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. This power necessarily encompasses the review of CEA positions.

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Comment 4:

The notice requirements are inadequate. The Department should have an affirmative duty to reach out to recognized employee organizations representing classifications most likely impacted by the appointments.

Response 4:

The rule requires that for a period of 30 calendar days the Department shall post the notice and report of the CEA proposal on the Department's website. The Department's website is easily available and accessible. A more burdensome notice requirement is unnecessary. It also should be noted that interested parties may still request the Department to directly provide them with the notice and report of the CEA proposal.

Comment 5:

The regulation specifies that oppositions be submitted on a form designated by the Department, but presumably such a form does not currently exist. Therefore, it is hard to weigh in on the merits or problems with this approach, absent reviewing the form.

Response 5:

The use of forms designated by the Department for oppositions to CEA proposals would provide ease of use, save time and money, and reduce any ambiguity as to what information is necessary to include in an opposition. The Department currently provides agencies with forms to use for various personnel matters, including the return rights of CEAs and exempt appointees. Thus, the use of forms for the new CEA creation and revision procedures would continue what is currently a common personnel practice in state civil service. However, to provide flexibility to the Department in administering this procedure, subdivision (d) has been changed to state that the Department may require that oppositions be on a form that is designated by the Department. This change will also allow interested parties, like PECG and CAPS, the opportunity to provide the Department with feedback once, and if, the Department creates such a form.

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

Comment 1:

DWR reports to, and routinely receives directions from, the California Natural Resources Agency (CNRA) and the Administration. As such, there may be instances where a 30-calendar day posting period for new or substantially revised CEA allocations may cause an unacceptable delay in business operations to the extent that a statewide issue may not be addressed timely. DWR respectfully requests the Board to consider a process that would allow for an exception to the 30-day posting rule as written. DWR believes that with Board approval, a five to ten day posting period will be sufficient in emergent circumstances.

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Response 1:

The Board recognizes DWR's concern. However, other departments, like DWR, report to and/or work within an agency structure. In developing and promulgating these regulations, the Board balanced the need for efficiency in state civil service with the need for transparency and the opportunity for public comment. The Board finds that the 30-day posting period satisfies this balance and also furthers the goals set forth in the initial Statement of Reasons. Furthermore, these proposed regulatory changes create a system that is far more efficient than the current Board/Department approval process for CEA positions.

**Summary of Nonsubstantive Changes.**

For organizational reasons, section 75 has been renumbered to section 90 and simplified by referencing "interested parties" rather than "agencies and recognized employee organizations." Section 248, subdivision (b) is stricken as unnecessary. For purposes of clarity, the term "allocated" in section 548.2 has been changed to "approved by the Board pursuant to section 548.5." For consistency, in section 548.5, subdivision (b), the reference to "subsection" has been changed to "subdivision." Section 548.5, subdivision (c) has been simplified to reference "any interested party" rather than "any person, association, or organization." Also for consistency, the word "filed" in section 548.5, subdivision (e) is replaced by "submitted." These are all nonsubstantive changes.

**III.**

**Conclusion**

The Board appreciates the feedback it received regarding this proposed regulatory package. 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.