

# CALIFORNIA ARCHITECTS BOARD

## INITIAL STATEMENT OF REASONS

Hearing Date: July 8, 2019

Subject Matter of Proposed Regulations: California Supplemental Examination (CSE)

Sections Affected: 124 and 124.5 of Article 3 of Division 2 of Title 16 of the California Code of Regulations (CCR)

### **Introduction and Problem Statement**

The California Architects Board (Board) licenses architects. Under Business and Professions Code (BPC) section 5526, subdivision (a), the Board is required to adopt rules and regulations governing the examination of applicants for licenses to practice architecture in this state. BPC section 5550 provides that subject to the rules and regulations governing examinations, which are established by the Board, any person who meets the required qualifications for licensure is entitled to an examination for a license to practice architecture. CCR section 116 sets forth the eligibility requirements for examinations, the national Architect Registration Exam (ARE) and the California Supplemental Examination (CSE). CCR section 124 sets forth the procedures for taking the CSE, prohibits a candidate who fails the CSE from retaking the examination within 180 days from the date that the candidate took the examination that he or she failed, and requires such candidate to reappear for another complete CSE. CCR section 124.5 sets forth the procedures for a candidate to request Board review of a failed CSE.

While discussing whether to approve the Board's Fiscal Year 2017/2018 contract for CSE development with the Office of Professional Examination Services (OPES) of the Department of Consumer Affairs, the Board noted that the 180-day restriction to retake the CSE from the date a candidate fails is still imposed and, therefore, a candidate may only take the CSE twice annually. The Board believed 180 days was unnecessarily long and prevented otherwise qualified candidates from being eligible for licensure. A request was made to research whether the Board could shorten the retake timeframe for candidates. (See Underlying Data, June 15, 2017 Board Meeting Minutes, page 4.) At the Board's December 7, 2017 meeting, the CSE retake deadline issue with OPES' findings were presented to the Board. (See Underlying Data, December 7, 2017 Board Meeting Agenda and Meeting Materials.) The Board approved a motion to reduce the mandatory wait period to retake the CSE from 180 days to 90 days according to direction from OPES following a discussion of the issues regarding its implementation. (See Underlying Data, December 7, 2017 Board Meeting Minutes, p. 6.)

At the Board's March 1, 2018 meeting, this regulatory proposal was presented to the Board for its review and approval. (See Underlying Data, March 1, 2018 Meeting Agenda and Meeting Materials.) Along with the Board's original adoption of the reduced CSE retake timeframe from 180 days to 90 days, the Board approved repealing obsolete subsections of section 124 and making other minor and technical revisions.

(See Underlying Data, March 1, 2018 Meeting Minutes, p. 5.)

**Specific Purpose, Anticipated Benefit, and Factual Basis/Rationale:**

**Section 124 – California Supplemental Examination**

Section 124, subsections (a) – (d)

Purpose: This proposal will amend section 124, subsections (a) through (d), and is necessary to simplify the text of the regulation by changing references to the California Supplemental Examination to the abbreviated term “CSE.”

Anticipated Benefits and Rationale: By amending section 124, subsections (a) through (d) to make a non-substantive correction to shorten the term “California Supplemental Examination,” the regulation will be easier for candidates to read and understand and thereby provide clarity and consistency throughout the regulation.

Section 124, subsection (d) – Retake of Entire CSE

Purpose: This proposal will amend section 124, subsection (d), to clarify that a candidate who fails the CSE shall retake it in its entirety. This requirement to retake the entire examination is already contained in existing subsection (e), but as explained further below, that subsection is proposed to be repealed. To maintain consistency with the existing requirement to retake a failed CSE in its entirety, this proposal inserts that language under a new subsection.

Anticipated Benefits and Rationale: By amending section 124, subsection (d), to insert the requirement to retake the CSE in its entirety, this requirement will be retained as the current proposal repeals subsection (e), where the retake requirement is currently stated. In addition, it is necessary to advise candidates of this retake requirement so they are aware that, unlike the national Architect Registration Examination, the CSE cannot be broken down into sections that can be retaken separately, but, instead, must be retaken as a whole.

Section 124, subsection (d) – Reduction of CSE Retake Wait Time from 180 days to 90 days

Purpose: This proposal will amend section 124, subsection (d), to reduce the CSE retake wait time from 180 days to 90 days. This reduction in waiting period is necessary to reduce a potential barrier to licensure, while still maintaining a sufficient period of time for candidates to prepare for re-testing.

Anticipate Benefits and Rationale: By amending section 124, subsection (d), to reduce the retake period from 180 days to 90 days, candidates can retest more frequently, potentially decreasing their time to become licensed. If a candidate for licensure is qualified to take the CSE, the candidate should be permitted to take it as soon as practicable. By only permitting candidates to take the CSE two times per year, eligible candidates are forced to wait unnecessarily. A 90-day waiting period provides a reasonable amount of time for candidates to prepare for the CSE, while not requiring candidates to wait an unreasonable amount of time to retake the examination. This will have an added effect of increasing the number of licensed professionals available to

serve the needs of California citizens and businesses that require the services of an architect.

#### Section 124, subsection (d) – Modification of Pronouns

Purpose: This proposal will amend section 124, subsection (d), to be gender neutral by changing “he or she” to “they” when referring to candidates. This change to the regulation is being made to reflect the enactment of SB 179 (Atkins, Chapter 853, Statutes of 2017), which recognized nonbinary gender preferences of California residents and, among other things, authorized the change of a person’s gender on a birth certificate to be female, male, or nonbinary. (See Underlying Data, Bill Text for SB 179) That bill supports the conversion of the “he or she” pronouns to instead refer to “they.”

Following the Board’s adoption of the proposed regulations, the Executive Officer made one non-substantive correction to the text of section 124, subsection (d), to change the use of the pronouns “he or she” to “they.” This change is necessary to maintain consistency with the Board’s similar revision in this rulemaking package to CCR section 124.5, subsection (a), which is being updated for gender neutrality, and explained in detail further below. The Executive Officer is making this non-substantive change pursuant to the authority delegated by the Board to the Executive Officer in its motion to adopt this regulation proposal. (See March 1, 2018 Board Meeting Minutes, p. 5.)

Anticipate Benefits and Rationale: The amendment to section 124, subsection (d), is necessary to maintain consistency with the Board’s revisions to section 124.5 and update the CSE regulations to conform to the gender neutral pronouns in accordance with recent statutory changes made by SB 179.

#### Section 124, subsections (e) and (f)

Purpose: This proposal will repeal section 124, subsections (e) and (f), and is necessary to remove outdated grandfathering clauses regarding examination requirements that began January 1, 1991. Subsections (e) and (f) initially authorized a candidate to receive examination credit separately for each section of the oral examination passed and only required the candidate to take those portions of the oral examination where it had been specified that the candidate was found to be deficient. In 1990, the Board approved revising the regulation to require candidates taking the oral examination on or after January 1, 1991, to reappear for another complete oral examination. In 1998, the Board changed the name of the oral examination to the “California Supplemental Examination” to better reflect the focus and nature of the examination given and to not restrict the format of the examination to an oral examination if in the future it was determined that another format or a combination of formats could test the information more efficiently and/or effectively. Those changes to the regulation were adopted 20 years ago, and at present, all examination candidates are subject to the existing requirements to retake the complete CSE upon failure to pass the examination. Accordingly, subsections (e) and (f) are outdated, unnecessarily complicate the CSE retake requirements, and must be repealed.

Anticipated Benefits and Rationale: It is necessary to repeal section 124, subsections (e) and (f), to remove the outdated grandfathering clauses requiring candidates who

have failed the CSE on or after January 1, 1991, to retake the complete CSE, so that the regulation will be easier for candidates to read and understand, and thereby provide clarity and reflect current practice within the regulation.

## **Section 124.5 – Review of California Supplemental Examination**

### Section 124.5, subsection (a) – Modification of Pronouns

Purpose: This proposal will amend section 124.5, subsection (a), to be gender neutral by changing “he or she” to “they” when referring to candidates. This change to the regulation is being made to reflect the enactment of SB 179 (Atkins, Chapter 853, Statutes of 2017), which recognized nonbinary gender preferences of California residents and, among other things, authorized the change of a person’s gender on a birth certificate to be female, male, or nonbinary. The bill supports the conversion of the “he or she” pronouns to instead refer to “they.” In accordance with SB 179, this proposal is necessary to update section 124.5, subsection (a), to change references to pronouns from “he or she” to “they.”

Anticipated Benefits and Rationale: By amending section 124.5, subsection (a), the regulation will be updated to conform to gender neutral pronouns in accordance with recent statutory changes made by SB 179. The amendment is also necessary to be consistent with a similar change to section 124.

### Section 124.5, subsection (b) – Modification of CSE Result Delivery

Purpose: This proposal will amend section 124.5, subsection (b), to reflect the Board’s current practice of delivering CSE results to candidates at the conclusion of the examination, on the same day as the candidates take the CSE, rather than delaying the delivery of the CSE results by mailing them. As the Board’s delivery method of the CSE results has changed to same-day delivery, the regulation must be updated to remove the notice to candidates to expect their results by mail. In addition, this provision must be updated to reflect the same-day delivery of the results because the day on which the results are provided to the candidate is the first day from which the 30-day deadline is counted for candidates to request review of a failed examination.

Anticipated Benefits and Rationale: By removing the notice that CSE results will be mailed to the candidates, candidates will no longer mistakenly believe that the CSE results will be mailed to them. Further, removing this provision clarifies for candidates that they will have 30 days from the date the results are provided to them to request a review of the examination, rather than 30 days from an unknown date as the CSE results are no longer mailed to candidates. By clarifying the start date of the deadline to request examination review, candidates will not unnecessarily delay in submitting their requests for review but will instead understand that immediately following receipt of the CSE results, they can begin preparing and submitting documentation to request review of the examination.

### Section 124.5, subsection (b) – CSE Review Request Guidelines

Purpose: This proposal will amend section 124.5, subsection (b), to simplify and clarify the information required to be submitted when requesting a CSE review. The current regulation language provides that a candidate’s request for review must set forth the

grounds for review and all of the specific facts or circumstances and how those facts or circumstances constitute the basis for review. As it appears from multiple candidate review submissions that candidates are unsure what this text means, it is necessary to clarify the review requirements by changing “grounds for review” to “alleged significant procedural error in or adverse environmental conditions during the examination administration.” This proposed language provides clarity to candidates and specifies that there are only two conditions – procedural error and adverse environmental conditions – that will qualify the candidate for review of the examination (as required under subsection (a)).

In addition, candidates currently misunderstand what “facts or circumstances constitute the basis for review.” The existing language is overly broad and leads candidates to believe that personal facts and circumstances that affected their CSE performance are grounds for review. Yet, the CSE review process was established to provide candidates a method of challenging the CSE results due to circumstances of the exam procedures and environmental control of the location and setting of the examination that were in the control of the CSE administrator, not the candidate.

Anticipated Benefits and Rationale: The grounds for review are clearly defined in subsection (a). This proposed amendment will conform subsection (b) to mirror the grounds specified in subsection (a). This proposal will better inform candidates seeking CSE review as to what conditions will qualify for examination review and the facts or circumstances to be provided to support the alleged conditions. By amending section 124.5, subsection (b), the regulation will be easier for candidates to understand, and thereby provide clarity regarding the required documentation.

### **Underlying Data**

1. June 15, 2017 California Architects Board (Board) Meeting Agenda and Meeting Minutes
2. December 7, 2017 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
3. March 1, 2018 Board Meeting Agenda; Relevant Meeting Materials; and Meeting Minutes
4. Bill Text of SB 179 (Atkins, Chapter 853, Statutes of 2017)

### **Business Impact**

The proposed regulations will not have a significant adverse economic impact on businesses. This initial determination is based on the fact that this proposal only revises the policies and procedures affecting individual licensure candidates who take the CSE. The modification to the examination retake policy will not have an impact on the ability for businesses to compete in other states or within California, as it only impacts individuals who are in the process of becoming licensed. These individuals are not required to be employed to take the licensing examination. They must only have met the requirements for examination eligibility.

### **Economic Impact Assessment**

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it only affects the examination of architect license applicants, and the effect is insufficient to create or eliminate jobs.
- It will not create new business or eliminate existing businesses within the State of California because it only affects architect license applicants who are not yet licensed to practice architecture, and there is no indication that any businesses will be affected.
- It will not affect the expansion of businesses currently doing business within the State of California because it only affects architect license applicants who are not yet licensed to practice architecture, and there is no indication that any businesses will be affected.
- This regulatory proposal will potentially decrease the time to become licensed, allowing additional professionals to lawfully practice, which will benefit the health, safety, and welfare of California residents.
- This regulatory proposal does not affect worker safety because it is not related to worker safety in any manner.
- This regulatory proposal does not affect the state's environment because it is not related to the environment in any manner.

### **Specific Technologies or Equipment**

This regulation does not mandate the use of specific technologies or equipment.

### **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.