

California Victim Compensation and Government Claims Board
Victim Compensation Program Regulations
Title 2, §§ 640-645

TITLE 2. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES

Article 5, §§ 640 – 645

[Notice Published November 6, 2009]

The Victim Compensation and Government Claims Board (Board) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested individual, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on December 21, 2009. The Board will consider only comments received at the Board's office by that time. Submit comments to:

Geoff Feusahrens
Regulations Analyst
Victim Compensation and Government Claims Board
400 R Street, Suite 500
Sacramento, CA 95811

Comments may also be submitted by facsimile (FAX) at (916) 491-6441 or by e-mail to regulations@vcgcb.ca.gov.

AUTHORITY AND REFERENCE

Government Code sections 13920, and 13974 authorizes the Board to adopt these proposed regulations. The proposed regulations implement, interpret and make specific sections 11425.10(a), 11425.50, 11440.30, 11445.10(a), 11445.20(c), 11445.30, 11445.70(c), and Diola v. Board of Control (1982) 135 Cal.App.3d 580, 588, fn 7; Tennon v. Victim Compensation and Government Claims Board (2000) 152 Cal. App. 4th 1164.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Currently, hearings for Persons Erroneously Convicted of Felonies are governed by Title 2, Article 5.2 and the General Hearing Procedures found in Title 2, Article 2.5 (General Hearing Procedures). Section 643(p) provides that if there is any conflict between the General Hearing Procedures and these regulations, these regulations apply to these hearings.

Because the manner that hearings for persons erroneously convicted of felonies are conducted is unique when compared to other hearings by the Board, the existing regulations created confusion for claimants and representatives regarding which provisions under the General Hearing Procedures apply to the conduct of hearings for Claims of Persons Erroneously Convicted of Felonies.

This rulemaking action seeks to include the most relevant information that claimants and claimant representatives need to know to participate in these hearings in one location for easier reference. The rulemaking action includes new and amended regulations that adopt several provisions of the General Hearing Procedures for hearings for Claims of Persons Erroneously Convicted of Felonies, including commonly used terminology for these hearings, proper citations, and current Board practices.

For clarity for claimants and representatives, the rulemaking action specifies that the formal hearing provisions, alternative dispute procedures, and declaratory decision of the Administrative Procedures Act provisions do not apply to hearings for Claims of Persons Erroneously Convicted of Felonies.¹ It includes six new regulations that describe the Board's current practices in handling hearings for persons erroneously convicted of felonies, including hearings by electronic means, proposed decision by hearing officer, and action of proposed decision by the Board. In addition, it clarifies the hearing officer's authority in overseeing the conduct of these hearings.

The draft hearing regulations specify that hearings for persons erroneously convicted of felonies are open to the public. The hearing procedure regulations also seek to amend section 640, Presentation of Claim, to require claimants to file an original and two copies of the claim including supporting evidence and documentation. The original will remain with the Board, and one copy of the claim file will be provided to the California Attorney General and the other copy of the claim file will be retained by the Board in the event an appeal is filed and an administrative record is required.

FORM INCORPORATED BY REFERENCE:

Erroneously Convicted Felon Claim Form (Rev. September 1, 2009)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

¹ Cal. Code Regs., tit. 2, § 615.1.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private individual or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations do not affect small businesses because the regulations address the manner in which the Board conducts hearings for Claims of Persons Erroneously Convicted of Felonies and only affect claimants for Claims of Persons Erroneously Convicted of Felonies.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a), paragraph (13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private individuals than the proposed action.

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Geoff Feusahrens
Regulations Analyst
Victim Compensation and Government Claims Board
400 R Street, Suite 500
Sacramento, CA 95811
Telephone: (916) 491-3863

The backup contact person for these inquiries is:

Kyle Hedum
Staff Counsel III
Victim Compensation and Government Claims Board
400 R Street, Suite 500

Sacramento, CA 95811
Telephone: (916) 491-3605

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Geoff Feusahrens at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT PROPOSED REGULATIONS, AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies may be obtained by contacting Geoff Feusahrens at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if any, and 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 which are sufficiently related to the originally proposed text, it will make the modified text available to the public 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 Geoff Feusahrens 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.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Geoff Feusahrens at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through our website at www.vcqcb.ca.gov.

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