

PUBLIC NOTICE
Regular Business Meeting Agenda
Public Employment Relations Board
August 11, 2022 ~ 10:00 a.m.

LOCATION: Pursuant to Government Code section 11133, there will not be a physical meeting location. Board members will participate via videoconference. Please follow the instructions below to attend the meeting remotely

Attend the meeting via video-conference:

1. In your web browser, go to <https://zoomgov.com/>
2. Select "Join a Meeting"
3. Enter the Meeting ID: **160 004 1541**
4. Enter your name
5. Enter the Passcode: **8057332885**, then click "continue"

OR

To attend the meeting via teleconference:

1. Dial (669) 254-5252
2. When prompted, enter the meeting id: **160 004 1541#**
3. Press # to skip the participant id
4. When prompted, enter the meeting password: **8057332885#**

A note on public comment:

In advance of the meeting, those who wish to comment during the public comment portion of the agenda or on specific agenda items may request to be added to the queue by emailing Cheryl.Shelly@perb.ca.gov . Please be sure to include your name, affiliation if any, and topic in the email.

During the meeting, you can make a request to speak in person, via video or the teleconference line when prompted by the Chair at each appropriate agenda item.

1. Roll Call.
2. Adoption of Minutes. April 14, 2022 Meeting
3. Public Comment. This is an opportunity for the public to address the Board on issues not scheduled on today's agenda. The Board cannot act on those items but may refer matters to staff for review and possible Board action at a future, publicly noticed meeting.

**This meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Board by contacting Cheryl Shelly at (916) 322-8231 or sending a written request to Ms. Shelly at PERB, 1031 18th Street, Sacramento, California 95811. Requests for further information should also be directed via telephone or writing to Ms. Shelly. Additional information is also available on the internet at www.perb.ca.gov.*

4. Staff Reports. The following Reports will be received. Any matter requiring Board action, and not included on this agenda, will be calendared for a subsequent public Board meeting.
 - A. Executive Director
 - B. Division of Administration
 - C. Office of General Counsel
 - D. Division of Administrative Law
 - E. State Mediation and Conciliation Service

5. Old Business:
 - A. PERB Case Processing Efficiency Initiative (Update)

 - B. Update to Proposed Regulations for Special Remedies under the Public Employee Communication Chapter: Consideration of approval for submitting a rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to add regulations for special remedies under the Public Employee Communication Chapter. The updates to the proposed regulation are attached following this agenda.

6. New Business:
 - A. The Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act require that PERB select and bear the costs of the services of the factfinding panel chairperson, including per diem fees and actual and necessary travel and subsistence. Prior Board action set the rate for factfinding services at \$1,300 per day with a five-day contract maximum. The Board will review the current factfinding policy for compensating factfinding panel chairpersons annually for potential modification.

7. Recess to Closed Session. The Board will meet in a continuous closed session each day beginning immediately upon recess of the open portion of this meeting through October 13, 2022.

The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Attachment – Agenda Item 5. B.

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS

32610.2 Pre-Filing Procedures for Certain PECC Charges.

(a) An unfair practice charge alleging that a public employer violated Government Code Section 3558, subdivision (a) must allege that the exclusive representative notified the public employer in writing of the facts and theories of the alleged violation(s).

(b) The following subsections apply only to claims that a public employer violated Government Code Section 3558, subdivision (a) by supplying an inaccurate or incomplete list of employees to the exclusive representative.

(1) Except as provided in subsection (b)(2), a public employer shall not be liable for violation(s) that it cures within twenty (20) days from the date it receives written notice of the alleged violation(s) from the exclusive representative.

(2) A public employer shall not avoid liability by curing an alleged violation if, in the twelve (12) months immediately preceding its curative action, the employer has cured three or more alleged violations of Government Code Section 3558, subdivision (a). Each cured violation within the preceding twelve months shall count toward the three-cure limit regardless of the exclusive representative or bargaining unit involved.

32610.3 Special Remedies for Certain PECC Charges.

(a) (1) For purposes of this Section, “special remedies” means attorney fees and costs incurred during certain stages of PERB proceedings regarding certain PECC charges, as defined in Government Code Section 3558, subdivision (d)(2), as well as civil penalties for certain PECC violations, as defined in Government Code Section 3558, subdivision (d)(2).

(2) For purposes of this Section, a “final decision” is a decision that is no longer subject to appeal.

(b) An administrative law judge or the Board itself may resolve special remedies in conjunction with resolving liability issues. If any special remedies issues remain unresolved After a final decision involving a claim under Government Code Section 3558, subdivision (a), the following procedures shall ~~the Office of the General Counsel shall resolve any remaining matters, including compliance and special remedies. The following procedures~~ apply unless otherwise ordered ~~by the Board~~:

(1) A prevailing party seeking an award of attorney fees and costs under this Section must file with the Office of the General Counsel and serve on all parties a motion regarding special remedies no later than twenty (20) days after the decision is final. If [civil penalty issues remain unresolved and](#) the prevailing party wishes to file evidence or argument regarding a civil penalty under this Section, the prevailing party must address that issue in the same motion.

(2) A motion regarding special remedies under this Section must be accompanied by a brief and sworn declarations containing competent evidence as needed to support the motion. If civil penalties are at issue, the sworn declarations shall contain evidence relevant to the criteria in Government Code Section 3558, subdivision (d)(2). If attorney fees and costs are at issue, the sworn declarations shall address: the amount of time spent; reasonable market rates for attorneys with similar experience; and, if compensable legal work was integrated with non-compensable legal work, information necessary to determine the portion of time that should be compensated.

(3) Any response to a motion regarding special remedies under this subsection must be filed with the Office of the General Counsel and served on all parties no later than twenty (20) days after the motion was filed. Any evidence relied on in the response must be supported by sworn declarations containing competent evidence.

(4) There shall be no reply briefs unless requested by ~~the~~ Board agent.

(5) ~~Prior to ruling on a motion regarding special remedies under this Section, the Office of the General Counsel~~ Board agent shall [work with the parties to resolve special remedies efficiently in conjunction with any other outstanding compliance issues, and shall](#) have discretion whether to request further written submissions, ~~and whether to convene an evidentiary hearing.~~ ~~If the Board agent determines that an evidentiary hearing is necessary, the Office of the General Counsel may or~~ transfer the matter to the Division of Administrative Law ~~to conduct a hearing and issue a written proposed decision.~~

(6) If a Board agent issues an administrative decision without a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 3 of these regulations. If the Board agent issues a written proposed decision based on a hearing, the decision may be appealed to the Board itself pursuant to Chapter 1, Subchapter 4, Article 2 of these regulations.