

PUBLIC NOTICE
Regular Business Meeting Agenda
Public Employment Relations Board
December 8, 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: **160 079 6598**
4. Enter your name
5. Enter the Passcode: **7558018370**, then click "continue"

OR

To attend the meeting via teleconference:

1. Dial (669) 254-5252
2. When prompted, enter the meeting id: **160 079 6598#**
3. Press # to skip the participant id
4. When prompted, enter the meeting password: **7558018370#**

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. October 13, 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)

6. New Business:

- A. Proposed Regulations for Special Remedies under the Public Employee Communication Chapter and the Prohibition on Public Employers Deterring or Discouraging Union Membership:
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 and the Prohibition on Public Employers Deterring or Discouraging Union Membership. The proposed regulation is attached following this agenda.

- B. Staff Recognition: Announcement of the 2022 Employee Achievement awards.

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 February 9, 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)).

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD
SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 1. Definitions

32095. Special Remedies.

“Special remedies” means any of the following:

(a) attorney fees and costs sought by a prevailing employee organization pursuant to Government Code Section 3551.5, subdivision (b)(1);

(b) attorney fees and costs sought by a prevailing party pursuant to Government Code Section 3558, subdivision (d)(4); or

(c) civil penalties assessed pursuant to Government Code Section 3551.5, subdivision (a), or Section 3558, subdivision (d)(2).

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 12-month period shall count toward the three-cure limit regardless of the exclusive representative or bargaining unit involved.

32611.8. Special Remedies for Certain PECC and PEDD Charges.

(a) An administrative law judge or the Board itself may resolve special remedies issues in conjunction with resolving liability issues. If any special remedies issues remain unresolved after a final decision involving a claim under Government Code Section 3550, or Government Code Section 3558, subdivision (a), the following procedures shall apply unless otherwise ordered:

(1) A party seeking to resolve outstanding special remedies issues must file a motion with the Office of the General Counsel no later than twenty (20) days after the decision is final. All unresolved special remedies issues must be presented in the same motion. Service and proof of service of the motion pursuant to Section 32140 are required.

(2) A motion regarding special remedies 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 under the applicable Government Code Section. 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 must be filed with the Office of the General Counsel 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. Service and proof of service of the response pursuant to Section 32140 are required.

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

(5) The Office of the General Counsel 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, convene an evidentiary hearing, or transfer the matter to the Division of Administrative Law.

(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.

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