

**CHAPTER 9. PROCEDURES UNDER SPECIFIED  
TRANSIT DISTRICT ACTS AND LAWS**  
*To be Repealed and Replaced by Proposed Chapter 6*

**93000. Definitions.**

(a) “District” means the Alameda-Contra Costa Transit District, the Fresno Metropolitan Transit District, the Golden Empire Transit District, the Marin County Transit District, the North County Transit District, the Orange County Transit District, the Sacramento Regional Transit District, the San Diego County Transit District, the San Diego Metropolitan Transit Development Board, the San Francisco Bay Area Rapid Transit District, the San Mateo County Transit District, the Santa Barbara Metropolitan Transit District, the Santa Clara Valley Transportation Authority, the Santa Cruz Metropolitan Transit District, the Southern California Rapid Transit District, the San Joaquin Regional Transit District, and the West Bay Rapid Transit Authority, as the case may be.

(b) “Law” means the Transit District Law, Public Utilities Code, Section 24501 et seq.; Fresno Metropolitan Transit District Act of 1961, Public Utilities Code, Appendix 1, Section 1.1 et seq.; Golden Empire Transit District Act, Public Utilities Code, Section 101000 et seq.; Marin County Transit District Act of 1964, Public Utilities Code, Section 70000 et seq.; North County Transit District Act, Public Utilities Code, Section 125000 et seq.; Orange County Transit District Act of 1965, Public Utilities Code, Section 40000 et seq.; Sacramento Regional Transit District Act, Public Utilities Code, Section 102000 et seq.; San Diego County Transit District Act of 1965, Public Utilities Code, Section 90000 et seq.; Mills-Deddeh Transit Development Act, Public Utilities Code, Section 120000 et seq.; San Francisco Bay Area Rapid Transit District Act, Public Utilities Code, Section 28500 et seq.; San Mateo County Transit District Act, Public Utilities Code, Section 103000 et seq.; Santa Barbara Metropolitan Transit District Act of 1965, Public Utilities Code, Section 95000 et seq.; Santa Clara Valley Transportation Authority Public Utilities Code, Section 100000 et seq.; Santa Cruz Metropolitan Transit District Act of 1967, Public Utilities Code, Section 98000 et seq.; Southern California Rapid Transit District Law, Public Utilities Code, Section 30000 et seq.; San Joaquin Regional Transit District Act Public Utilities Code, Section 50000 et seq.; and West Bay Rapid Transit Authority Act, Public Utilities Code, Appendix 2, Section 1.1 et seq.

(c) “Hearing officer” as used in this Chapter means a hearing officer appointed by the Supervisor.

**93005.                    Petition for Certification.**

(a) The investigation of a question concerning representation of employees shall be initiated by the filing of a petition with SMCS. Such petition shall be called a petition for certification and is a petition which would arise under paragraph (1)(A)(i) and (1)(B) of Section 9C of the Labor-Management Relations Act. It may be filed by any employee or group of employees or any individual or labor organization acting on their behalf and claiming to represent a majority of the employees in an appropriate unit or by a district.

In the event any petition seeks to include employees covered in whole or in part by an existing collective bargaining agreement between the district and any labor organization, such petition in order to be considered timely must be filed within the period 120 to 90 days, inclusive, prior to the date such collective bargaining agreement is subject to termination, amendment or modification.

(b) Petition for Decertification. The investigation of a question concerning representation, alleging an individual or labor organization which has been certified or is being currently recognized as the bargaining representative is no longer such representative shall be called a petition for decertification and is one of the type which would arise under paragraph (1)(A)(ii) of Section 9(c) of the Labor-Management Relations Act. It may be filed by any employee or group of employees or any individual or labor organization acting on their behalf and shall be filed as set forth in (a).

(c) Petition for clarification of an existing bargaining unit or petition for amendment of certification. A petition for clarification of an existing bargaining unit or a petition for amendment of certification, in the absence of a question concerning representation, is a petition which would arise under Section 9(b) of the Labor-Management Relations Act. It may be filed by a labor organization or by a district and shall be filed as set forth in (a).

**93010.                    Form of Petition.**

(a) Petitions shall be in writing and signed, and shall be sworn to before a notary public or other person duly authorized by law to administer oaths and take acknowledgements. An original and one copy shall be filed.

(b) A petition shall contain the following:

- (1) The name and address of the district, of responsible members, and of the establishments involved.
- (2) The general nature of the district's business.
- (3) A description of the bargaining unit which the petitioner claims to be appropriate.
- (4) The names and addresses of any other labor organization which claims to represent any employees in the alleged or the certified appropriate unit, and brief descriptions of the contract or contracts, if any, covering the employees in such unit and the expiration date of such contract(s).
- (5) The number of employees in the alleged appropriate unit.
- (6) The name, affiliation (if any), and address of the petitioner (state if petitioner is the district).
- (7) Any other relevant facts.

(c) In addition, a petition for certification, when filed by an employee or group of employees or an individual or labor organization acting in their behalf, shall also contain:

- (1) A statement that the district declines to recognize the petitioner as the representative within the meaning of Section 9(a) of the Labor-Management Relations Act or that the labor organization is currently recognized but desires certification.
- (2) Whether a strike or picketing is in progress at the establishment involved, and if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(d) In addition, a petition for certification, when filed by a district, shall also contain:

- (1) A brief statement setting forth that one or more individuals or labor organizations have presented to the petitioner a claim to be recognized as the exclusive representative of all employees in the unit claimed to be appropriate; a description of such unit; and the number of employees in the unit (if different from (b)(3) or (b)(4)).

(2) The name or names, affiliation if any, and addresses of the individuals or labor organizations making such claim for recognition (if different from (b)(4)).

(3) A statement whether the petitioner has contracts with any labor organization or other representatives of employees and if so, their expiration date.

(4) Whether a strike or picketing is in progress at the establishment involved and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(e) In addition, a petition for decertification shall also contain:

(1) Name or names of the individuals or labor organizations who have been certified or are being currently recognized by the district and who claim to represent any employees in the unit involved, and the expiration date of any contracts covering such employees (if different from (b)(4)).

(2) An allegation that the individuals or labor organizations who have been certified or are currently recognized by the employer are no longer the representative in the appropriate unit as defined in Section 9(a) of the Labor Management Relations Act.

(3) Whether a strike or picketing is in progress at the establishment involved, and, if so, the approximate number of employees participating, and the date such strike or picketing commenced.

(f) In addition, a petition for clarification shall also contain:

(1) The name of the recognized or certified bargaining representative (if different from (b)(4)).

(2) If the bargaining unit is certified, an identification of the existing certification.

(3) A description of the proposed clarification.

(4) The number of employees in the unit as proposed under the clarification.

(5) The job classifications of employees as to whom the issue is raised, and the number of employees in each classification.

(6) A statement by petitioner setting forth reasons why petitioner desires clarification of unit.

(g) In addition, a petition for amendment of certification shall also contain:

(1) The name of the certified union involved.

(2) Identification and description of the existing certification.

(3) A statement by petitioner setting forth the details of the desired amendment and reasons therefor.

(h) Concurrently upon filing, a copy of said petition shall be served by the petitioner upon the district and upon any known labor organization purporting to act as representative of any employee directly affected by such petition, in accordance with Section 32140.

**93015. Percentage of Valid Authorizations Required to Determine Existence of a Representation Dispute.**

(a) No question concerning representation shall be deemed to exist unless the labor organization raising such question by petition shall make a showing of proved authorizations or membership of at least 30 percent of the employees in the proposed unit. Authorization must be signed and dated by the individual employee. No authorizations will be accepted which bear a date more than six months before the date of the petition.

(b) In lieu of the submission of signed authorization or membership applications, an adequate showing of interest may be demonstrated by submission of proof satisfactory to SMCS that

(1) The petitioner held a contract covering employees in a utility or facility at the time of its acquisition by the district;

(2) And the district assumed such collective bargaining agreement pursuant to the provisions of any contract of acquisition or the terms of the act;

(3) And the proposed unit is identical with the unit established in such collective bargaining agreement.

(c) In the event a petition seeks to add a group of employees not covered by an existing SMCS-certification, it shall be necessary to submit authorization or membership applications only for that portion of the proposed unit attributable to such accretion.

**93020. Consent Election Agreements.**

Where a petition has been duly filed, the district and any individuals or labor organization may, with the approval of SMCS, enter into a consent election agreement. Such agreement shall include a description of the appropriate unit, the time and place of the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of SMCS and in accordance with Sections 93070 and 93075 below. SMCS shall issue to the parties a certification of the results of the election, including a certification of representative where appropriate.

**93025. Investigation of Petition by Service.**

(a) After a petition has been filed under Section 93005(a) or (b), if no agreement for a consent election is entered into and if it appears to SMCS that there is reasonable cause to believe that a question of representation exists, that the policies of the act will be effectuated, and that an election will reflect the free choice of the employees in the appropriate unit, the Supervisor shall serve upon the petitioner, the district, any known individuals or labor organizations purporting to act as the representative of any employees directly affected by such investigation and any other parties a notice of hearing before a hearing officer at a time and place fixed therein, which notice shall be given at least 10 days in advance of the date specified for the hearing. Any such notice of hearing may be amended or withdrawn by the When more than one petition has been filed involving all or part of the same group of employees, or otherwise raising common issues, SMCS may, on the motion of any of the parties, or on its own motion, order that said petitions be consolidated for the purpose of hearing and decision.

(b) After a petition has been filed under Section 93005(c), the Supervisor shall conduct an investigation and, as appropriate, may issue a decision without a hearing; or prepare and serve on the petitioner, the district, any known individuals or labor organizations purporting to act as representatives of any employees directly affected by such an investigation and any other parties, a notice of hearing before a hearing officer at a time and place fixed or take other appropriate action. Any such notice of hearing may be amended or withdrawn by the Supervisor at any time prior to the commencement of

the hearing and by the hearing officer after commencement and prior to the close of the hearing.

(c) If after investigation of the petition it appears to the Supervisor that there is no reasonable cause to believe that there exists a question whether a labor organization represents a majority of employees of the district in an appropriate unit, or if the Supervisor determines that the petition has not been filed in accordance with these regulations, the Supervisor shall have the power to dismiss the petition without a hearing or approve the withdrawal of the petition.

(d) Any determination made by the Supervisor pursuant to this Section may be appealed to the Board itself in accordance with Sections 32350 through 32380 or, if applicable, in accordance with and subject to the limitations provided in Section 32200.

**93030. Conduct of Hearings.**

(a) Hearings shall be conducted by a hearing officer appointed by the Supervisor and shall be open to the public unless otherwise ordered by the hearing officer. It shall be the duty of the hearing officer to inquire fully into all matters in issue and necessary to obtain a full and complete record upon which SMCS, the Supervisor, the hearing officer, or the Board may discharge their duties under the Laws described in Section 93000. A hearing officer may be substituted by the Supervisor at any time.

(b) The hearing officer may, in his or her discretion, continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at a hearing or by other appropriate notice.

(c) All motions, including motions for intervention pursuant to Section 93035 below, shall be in writing, or if made at the hearing may be stated orally on the record, and shall briefly state the action or relief sought and the grounds for such motion. An original and one copy of written motions shall be filed with the hearing officer, and a copy thereof shall immediately be served by the moving party upon each of the other parties to the proceeding. The hearing officer shall rule either orally on the record or in writing upon all motions, including all motions to dismiss a petition.

**93035. Intervention.**

Any labor organization or other person desiring to intervene in any hearing shall make a motion for intervention stating the grounds upon which such labor organization or

other person claims to have an interest in the proceeding. The hearing officer may by order in writing or on the record permit intervention to such extent and upon such terms as may be deemed proper, and such intervener shall thereupon become a party to the proceeding; provided, however, that (1) no labor organization which is a party to a contract covering employees in the alleged appropriate unit shall be denied the right to intervene as a party in such proceeding, and (2) no labor organization which makes a showing of proved authorizations or membership of at least 10 percent of the employees in the unit claimed to be appropriate by the petitioner shall be denied the right to intervene as a party in such proceedings. Any labor organization desiring to intervene for the purpose of seeking an election in a unit different from that claimed to be appropriate by the petitioner shall be required to make a showing of proved authorizations or membership of a least 30 percent of the employees in the unit claimed to be appropriate by the organization seeking intervention. The district shall be deemed a party to each proceeding hereunder without the necessity of intervening therein.

**93040. Rights and Duties of Parties at Hearing.**

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the hearing officer shall have power to call, examine and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection and included in the record. No such objection shall be deemed waived by further participation in the hearing.

(c) All motions, rulings and orders shall become a part of the record. Interlocutory rulings by the hearing officer shall not be directly appealable.

(d) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the transcript of the hearing.

(e) Misconduct at any hearing shall be grounds for summary exclusion by the hearing officer from further participation in such hearing.



(f) The refusal of a witness at a hearing to answer any question which has been ruled to be proper shall in the discretion of the hearing officer be grounds for striking all testimony previously given by such witness on related matters.

**93045. Subpoenas.**

(a) Application for subpoenas may be filed in writing by any party with the Supervisor if made prior to the hearing, and with the hearing officer if made at the hearing. The Supervisor or the hearing officer shall forthwith cause the subpoenas to be issued. Applications for subpoenas may be made ex parte. Any person served with a subpoena, whether ad testificandum or duces tecum, who does not intend to comply therewith shall within five days after the date of service file with the hearing officer a petition to revoke the subpoena. Notice of the filing of a petition to revoke shall be promptly given by the hearing officer to the party at whose request the subpoena was issued. The hearing officer shall revoke a subpoena if in his or her opinion the evidence sought does not relate to any matter under investigation or in question in the proceedings, is not relevant, or the subpoena does not describe with sufficient particularity the evidence requested, or if for any other reason the subpoena is otherwise invalid. The hearing officer shall make a statement in writing or on the record of the procedural or other grounds for this ruling. Filing with reference to the revocation of a subpoena shall not become part of the record except upon the request of the party aggrieved by the ruling on the petition. Persons compelled to produce written evidence are entitled to retain the same, but the party compelling its production may pay the cost of procuring a copy thereof to be submitted in evidence in lieu of the original.

(b) Witnesses summoned before the hearing officer shall be paid by the party for whom the witness appears.

**93050. Briefs.**

The hearing officer shall upon request allow parties to file briefs following the completion of the hearing. Copies of such briefs shall be concurrently served upon all parties.

**93055. Duties of Hearing Officer Following Hearing.**

Upon the close of a hearing, the hearing officer shall as expeditiously as possible prepare a proposed decision and order which shall include a written analysis of the

record and of the arguments of the parties, findings of fact and a determination upon the issues submitted to the hearing officer. If the hearing officer determines that an election is to be held, the hearing officer shall set forth the appropriate unit or units within which such election(s) shall be held and the categories of employees who shall be eligible to vote in such unit or units. The original of such proposed decision and order, together with the petition or petitions, notices of hearing, written motions, rulings or orders, the transcript of the hearing, stipulations, exhibits and documentary evidence, affidavits of service, depositions, and briefs or other legal memoranda submitted by the parties shall constitute the record in the proceedings and shall promptly be forwarded to the Supervisor by the hearing officer. The decision of the hearing officer shall be final if not appealed as set forth in Section 93060. A copy of the proposed decision and order shall concurrently be served upon each of the parties by the hearing officer.

**93060. Exceptions.**

Within twenty (20) days from the date of service of the proposed decision and order, any party may file with the Board itself exceptions to the proposed decision in accordance with Section 32300.

**93065. Determination.**

The provisions of Sections 32300 through 32320, and Sections 32400 and 32410, shall be applicable to disputes arising under this Chapter. If the Board determines that an election is to be held, the Board shall order such election within such unit or units as have been found to be appropriate, and shall determine the categories of employees who shall be eligible to vote in such unit or units. A copy of the decision and order of the Board shall be served upon each of the parties.

**93070. Election Procedures.**

(a) All elections shall be conducted by SMCS and shall be by secret ballot. Whenever two or more labor organizations are included as choices in an election, any participant, upon its prompt request to and approval thereof by the Supervisor, whose decision shall be final, may have its name removed from the ballot. Provided, however, that in a proceeding involving a district-filed petition or a petition for decertification, the labor organization certified, currently recognized or found to be seeking recognition may not have its name removed from the ballot without timely notice in writing to all parties and to SMCS disclaiming any representation interest among the employees in the unit.

Any party may be represented by observers of its own selection, subject to such limitations as SMCS may prescribe. Any party and any agent or representative of SMCS may challenge for good cause the eligibility of any person to vote in the election. Each challenged ballot shall be impounded. Upon the conclusion of the election SMCS shall issue a tally of the ballots to each party. Within five days thereafter any party may file with SMCS two copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons for the objections. The objecting party shall immediately serve a copy of such objections upon each other party and file with the SMCS proof of service and shall, upon request, promptly furnish evidence to support the objections.

(b) If (1) no objections are filed within the time specified in subsection (a) above, and (2) any challenged ballots are insufficient in number to affect the results of the election, and (3) no runoff election is to be held pursuant to Section 93075 below, SMCS shall forthwith issue to the parties a certification of the results of the election, including certification of representatives where appropriate; and the case will be closed.

(c) If objections are filed to the conduct of the election or conduct affecting the results of the election, or if the challenged ballots are sufficient in number to affect the results of the election, the Supervisor shall investigate such objections or challenges, or both, and shall prepare and serve upon the parties a report on such objections or challenged ballots, or both. Within 10 days from the date of issuance of the report on such objections or challenged ballots, or within such additional period as the Supervisor may allow upon written application for extension made within such 10-day period, any party may file with the Supervisor an original of exceptions to such report. Concurrently upon the filing of such exceptions, the filing party shall serve a copy upon each of the other parties, and proof thereof shall be promptly filed with Supervisor. If no exceptions are filed to such report within the time permitted, the Supervisor may issue a written decision in conformity with such report, as to the validity of such objections or challenges or may make other disposition of the case based on an administrative investigation or in the exercise of reasonable discretion, and SMCS shall thereupon promptly act to close the case in accordance with such decision.

(d) If exceptions are filed, either to the report on challenged ballots or objections, or both if it is a consolidated report, the Supervisor shall appoint a hearing officer to examine the exceptions and make recommendations. If it appears to the hearing officer that such exceptions do not raise substantial and material factual issues with respect to the conduct of the election or conduct affecting the results of the elections, the hearing

officer may make written recommendations to the Supervisor forthwith, and shall concurrently serve copies of said recommendations upon the parties. Within 10 days from the date of issuance of the aforesaid recommendations, or within such additional period as the Supervisor may allow upon written application for extension made within the 10-day period, any party may file with the Board itself an original and five copies of exceptions to the hearing officer's recommendations, in accordance with the provisions of Section 93065. Concurrently upon the filing of such exceptions, the filing party shall serve a copy upon each of the other parties and proof thereof shall be promptly filed with the Board.

(e) If it appears to the hearing officer that any exceptions filed to the report of the Supervisor on challenged ballots or objections raise substantial and material factual issues, the hearing officer shall cause to be served upon the parties a notice of hearing on said exceptions, which notice shall be given at least 10 days in advance of the date specified for the hearing. The hearing shall be conducted by the hearing officer in accordance with the provisions of Sections 93030, 93040, 93045, and 93050 insofar as applicable. Upon the close of the hearing, the hearing officer shall prepare and deliver to the Supervisor a proposed decision resolving questions of credibility and containing findings of fact and recommendations as to the disposition of the challenges or objections, or both if it be a consolidated matter. Said decision, together with (1) the notice of hearing, (2) motions, (3) rulings, (4) orders, (5) transcript of the hearing, (6) stipulations, (7) exceptions, (8) documentary evidence and briefs, (9) objections to the conduct of the election or conduct affecting the results of the election, (10) the report of Supervisor on such objections, (11) the report of Supervisor on challenged ballots, (12) exceptions to the report of the Supervisor on objections or to the report on challenged ballots, and (13) the record previously made, shall constitute the record in the case. A copy of the hearing officer's proposed decision shall immediately be served upon each of the parties, where-upon any of the parties may file exceptions to said report within the same time limitations and requirements as to service, and proof thereof, as are provided for in the case of exceptions filed under subsection (d) of this section.

(f) After the period for the filing of exceptions under subsection (d) or (e) has expired the Board shall issue a written decision and serve copies upon the parties. If the hearing officer has issued recommendations under subsection (d), finding that the exceptions to the report of the Supervisor do not raise substantial and material factual issues, and exceptions to such recommendations have been filed, and after consideration of such exceptions the Board decides that the exceptions to the report of the Supervisor do raise substantial and material factual issues, the Board shall direct

the hearing officer to issue a notice of hearing, whereupon the procedures for a hearing and the issuance of the hearing officer's report provided for in subsection (e) of this section (including the provision for filing exceptions to the hearing officer's report) shall be followed. The Board may adopt the recommendations of the hearing officer issued under subsection (d) or the proposed decision of the hearing officer issued under subsection (e) as its own. SMCS shall thereafter promptly proceed to take such action as may be called for by the decision of the Board, after which the case will be closed.

**93075. Runoff Elections.**

(a) SMCS shall conduct a runoff election when an election in which a ballot providing for not less than three choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast. The runoff election shall be held promptly following final disposition of any challenges, objections or exceptions which followed the prior election as provided in Section 93070. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who are employed in an eligible category on the date of the runoff election shall be the only employees eligible to vote.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the highest and second highest number of votes.

(d) In the event the number of votes cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and "neither" or "none" is equally divided among the several choices, or in the event the number of ballots cast for one choice in such election is equal to the number cast for another of the choices but less than the number cast for the third choice, the Supervisor shall declare the first election a nullity and shall conduct another election among the three choices which received the greatest number of ballots in the original election; provided that in the event there was a tie in the original election between the third and fourth choices or among the third, fourth and other choices, the Supervisor shall in the runoff election include on the ballot all such tied choices. In the event two or more choices receive the same number of ballots, and if either (1) there are no challenged ballots which would affect the results of the election, or (2) after all challenges have been disposed of it is found that all eligible voters have cast valid ballots, there shall be no runoff election and the petition shall be dismissed. Only one such further election pursuant to this subsection (d) may be held.

(e) The provisions of Section 93070 above shall be applicable to a runoff election.

**93080. Relevant Federal Law.**

In resolving questions of representation, the Board shall apply the relevant federal law and administrative practice developed under the Labor Management Relations Act, 1947, as amended.