

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The proposed regulations update the Public Employment Relations Board's (PERB or Board) rules that govern filing requirements, case processing, service of process, as well as access and storage of case materials. In large part, these updates are intended to bring PERB in step with new case processing technologies, consolidate duplicative rules, fill procedural gaps, and simplify the Board's procedures and processes for case adjudication in a way that make them more understandable to our non-attorney constituents.

In addition, PERB's jurisdiction has grown since the Board last updated its case processing and filing requirements. As the Legislature has added new labor relations acts to PERB's jurisdiction, the corresponding regulations often duplicated provisions from earlier labor relations acts. As one example, the current regulations that identifies the PERB office where constituents are required to file representation cases is found in four different regulations. The proposed regulations would consolidate the four regulations into one regulation. Similarly, a party is required to consult two different regulations to learn how and who to serve with case documents. This has resulted in confusion and errors, which delays the adjudication of cases. By consolidating repetitive and associated rules, the proposed regulations will be easier understood and followed by constituents.

When an agency consolidates and adds regulations, those changes often affect other regulations that incorporated by reference the consolidated or new regulations. Therefore, PERB must also update the non-affected regulations to delete regulations that no longer apply or add new regulations that replace the delete regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

In 2017, PERB undertook the task of modernizing its case management system (CMS) with the goal of moving toward a CMS that, for the most part, relies on electronically filed documents (e-filing), electronic service of process (e-service), and electronically maintained of case records. The availability and advancement of case management software has led most judicial systems to adopt e-filing processes and promote them as the preferred method of filing. Case management software automates processes and workflow, reducing errors in case processing and creating audit trails. For these case-handling processes, PERB has been developing ePERB. This new software provides a means to e-file and e-serve case documents through a public portal, while it digitalizes records and allows PERB to better manage information. Cloud storage enables secure and easy access for all. Once documents are filed electronically and scanned into the system, PERB staff may access them from any location 24/7 via ePERB. Therefore,

parties no longer need to file multiple photocopies of the same document. Data is stored securely in the cloud and this reduces the need for paper storage, document retrieval, and photocopying costs. Moreover, ePERB reduces the time spent by PERB responding to requests under the California Public Records Act. The proposed regulations also move PERB from a hard-copy system that relies on e-mail, fax, and in person filings, to one that utilizes ePERB, e-signatures, and a digital records, which allow for 24-hour accessibility to case materials for both constituents and PERB employees.

In addition, as part of PERB's case processing initiative, the Board seeks to make the agency's legal processes easier to understand and, therefore, more accessible to non-attorney parties. In this, PERB determined that several of its regulations needed amendments to eliminate ambiguities and consolidate redundant rules. When a party must consult two or more rules to perform a single task, it is inefficient and often results in filing errors. As one example, PERB presently has one rule for effectuating service of a document, and a different rule identifying the party who must be served with the document. The proposed regulations combine both regulations into one that provides all the information needed for serving case materials. The same problem occurs with PERB's rule for the filing proof of support in representation cases. Under the current regulations, the rule for filing proof of support is repeated under each chapter for each of PERB's labor relations acts—even though it is the same rule for all acts. The proposed regulations consolidate the rules to one rule.

Finally, several of the proposed regulations either add clarity to existing rules. For example, PERB has a distinct process and set of rules that govern how parties may seek injunctive relief from PERB. Unlike the normal case filing procedures, the injunctive relief rules do not describe whether parties may file documents during non-business hours or their deadlines for filing documents during a request for injunctive relief. The proposed rules clarify that filings related to injunctive relief cases must occur during business hours, otherwise the document is deemed to have been filed the next business day. The rules also authorize the assigned Board agent to set filing deadlines based on the circumstances of each request.

The proposed regulations also add new rules that close gaps in case processing rules. For instance, PERB's regulations do not presently address the way PERB accepts and maintains confidential or private information filed by parties. The proposed regulations provide a uniform and comprehensive process for safeguarding confidential information and protecting the privacy and financial interests of constituents. The newly added regulations also addresses abeyances. While PERB often permits parties to place cases in abeyance, it has no rules that govern the length of time that a case may be in abeyance. The proposed regulation fills this gap by providing the parties with a limited time that a case may be in abeyance while the parties address related matters.

SECTION-BY-SECTION EXPLANATION FOR ADOPTION

A. Adoption of New Sections

Proposed Section 32092 adopts a definition of “electronic signature” where expressly permitted by statute or within PERB’s regulations.

Proposed Section 32093 adopts a definition of “electronic service” where authorized or required by statute or within PERB’s regulations.

Proposed Section 32094 adopts a definition of “filed” as the term is used for the formal submission of documents with PERB.

Proposed Section 32110 sets forth the requirements that govern the way parties electronically file documents with PERB through ePERB, as that term is defined by amended section 32090. The proposed section is necessary both for the filer and PERB. Without this information, a filer would have no guidance about the size limitations on electronic documents, the use of electronic signatures, after hours filings, and how to upload the documents for filing (e.g., the rule requires that parties file each document separately). The proposed section also makes electronic filing mandatory for all parties except for unrepresented individuals.

Proposed Section 32111 authorizes the Board to direct parties to use electronic means to post and thereby notify remote workers that a representation petition has been filed.

Proposed Section 32115 consolidates into one section the three sections (section 32122, 32123, and 32124) that informed parties at which PERB office to file a matter.

Proposed Section 32125 describes the filing requirements for documents with confidential information. At present, PERB does not have a rule to address and guide parties on this issue. This proposed section therefore addresses the filing of documents with social security numbers, taxpayer-identification numbers, birth dates, the names of minors, or account numbers related to financial institutions. Given the rise in identity theft, this proposed section is necessary to protect PERB’s constituents while simultaneously providing guidance to the parties and PERB when confidential information is required for the adjudication of a matter.

Proposed Section 32143 concerns the placement of PERB cases in abeyance. At present, PERB does not have a rule that addresses when cases may be placed in abeyance or for the length of time a case is in abeyance. The proposed section is needed to ensure that abeyances are granted in a uniform and consistent manner, and that moves cases to a final resolution in a timely manner.

B. Amendments to the Text of Existing Sections

Section 32090 provides definitions for service and filing by facsimile transmission. The amendment replaces the definition of “Fax Filing” with the definition of “e-PERB”. This amendment eliminates the use of fax filing and instead establishes ePERB as the means to file electronically file documents with PERB.

Section 32091 provides the definition and means of “Electronic Filing” and “filing by electronic mail”. The amendment removes filing by electronic mail as a means of electronic filing, and instead adds filing through ePERB as the sole means of electronic filing with PERB.

Section 32122 describes the appropriate location for filing documents in representation matters under the Educational Employment Relations Act. The proposed changes would delete the entire section because its requirements have been consolidated under proposed section 32115.

Section 32123 describes the appropriate location for filing documents in representation matters under the Higher Education Employer-Employee Relations Act. The proposed changes would delete the entire section because its requirements have been consolidated under proposed section 32115.

Section 32124 describes the appropriate location for filing of representation matters under the Ralph C. Dills Act. The proposed changes would delete the entire section because its requirements have been consolidated under proposed section 32115.

Section 32130 provides for the computation of time in which to file documents with PERB, which incorporates the language of California Code of Civil Procedure section 1013. The proposed change replaces the authorization to use a facsimile for service with the use of electronic service. The proposed change also provides a two-day extension of time to filings in response to documents served by overnight delivery.

Section 32132 concerns the requirements for an extension of time in which to file documents with the Board. The proposed change permits a Board agent to excuse a late-filed request for an extension of time for good cause as provided by proposed amended section 32136.

Section 32135 defines when a document is considered filed with PERB and requires that parties attach a proof of service with all filed documents. The proposed change would require that documents filed with PERB by mail, overnight delivery or in person must be scan ready to facilitate uploading into ePERB. The proposed change also removes all facsimile filing requirements because PERB will no longer accept such facsimile filings.

Section 32136 concerns late filing requirements. The proposed change establishes good cause to file a document late if the late filing is caused by a malfunction or error with ePERB.

Section 32140 concerns service requirements. The proposed change removes facsimile service as an option to serve parties. The change also incorporates the entirety of section 32142, which concerns the proper recipients for service of process under the various labor-relations acts under PERB's jurisdiction. The proposed change also describes the rules for service of process via e-PERB.

Section 32142 concerns designation of recipients for service and filing. The proposed change deletes the entire section since it is being incorporated into section 32140, above.

Section 32166 concerns an application to join a representation hearing as a full party. The proposed change deletes references to three regulations concerning proof of support that will be deleted and consolidated with section 32700 through this rulemaking.

Section 32212 concerns briefs and oral argument. The proposed changes remove the requirement that a party file a copy of the brief with PERB.

Section 32360 concerns requirements for appeals of administrative decisions. The proposed change removes the requirement that a party file five copies of its appeal with PERB.

Section 32375 provides for responses to administrative appeals. The proposed change removes the requirement that a party file five copies of its response to an appeal with PERB.

Section 32410 provides for the filing of requests for reconsideration. The proposed change removes the requirement that a party file five copies of its request for reconsideration, or that the responding party file five copies of its opposition with PERB.

Section 32450 concerns the filing of requests for injunctive relief. The proposed change removes the requirement that a party file six copies of its request for injunctive relief with the General Counsel, or that the filing party concurrently serve a copy of its request on the appropriate regional office. In addition, the proposed change provides that requests filed after business hours are deemed filed the next business day.

Section 32455 concerns the investigation of requests for injunctive relief. The proposed change removes the requirement that a responding party file six copies of its response with the General Counsel, or that the responding party concurrently

serve a copy of its response on the appropriate regional office. In addition, the proposed change provides that the assigned Board agent will establish and inform the parties of all filing deadlines. The proposed change removes the requirement that the responding party file by personal delivery, express mail, or by some other means intended to overnight delivery, since the Board agent's deadlines will control and the parties will be responsible for meeting the filing deadlines regardless the means of delivery.

Section 32500 concerns procedures for requesting judicial review of a decision in a representation case. The proposed change removes the requirement that a party file five copies of its request for judicial review, or that the responding party file five copies of its response with PERB.

Section 32605 concerns the number of copies of unfair practice charges required for filing. The proposed change completely deletes section 32605 since the Board will no longer require the filing of additional copies of unfair practice charges.

Section 32635 provides for the appeal of dismissals of unfair practice charges. The proposed change removes the requirement that a party file five copies of its appeal of a dismissal, or that the responding party file five copies of its opposition with PERB.

Section 32700 concerns the requirements for valid proof of employee support in representation proceedings. The proposed changes consolidate with 32700 the several other regulations (i.e., sections 61020, 81020, and 91020) that concern proof of support for the various labor-relations acts under PERB's jurisdiction, and includes rules for submitting proof of support under the Child Care Provider Act. In addition, the proposed changes clarify that, where authorized by law, reasonable local rules that govern proof of support control. The proposed change further deletes text that is either repetitive or has been moved to a more appropriate place within proposed section 32700. The proposed change provides that the party filing proof of support bears the burden to show that it was obtained within one-year of the petition file date where the proof of support is undated. The proposed change clarifies that proof of support must be the original document and signed by employees, while removing the option of filing a notarized membership list to show proof of support. Finally, the proposed changes provide for the use and rules of electronic signatures to show proof of support.

Section 33002 provides the means for a party to seek a stay of an SMCS election. The proposed change removes a citation to a regulation that has been stricken and replaces it with a new regulation added to replace the deleted regulation.

Section 61020 describes requirements for proof of support under the MMBA. The proposed change strikes the entirety of section 61020. Section 61020 is repealed because this rulemaking package consolidates the proof of support requirements under section 32700 for all Acts within PERB's jurisdiction.

Section 61080 concerns the conduct of elections and eligibility to appear on ballot under the MMBA. The proposed change removes a citation to repealed section 61020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 61210 provides for the filing of a petition for certification under the MMBA. The proposed change removes a citation to repealed section 61020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 61215 provides for the filing of a petition for recognition under the MMBA. The proposed change removes a citation to repealed section 61020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 61350 provides for the filing of a decertification petition under the MMBA. The proposed change removes a citation to repealed section 61020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 61450 provides for the filing of a unit modification petition under the MMBA. The proposed change removes a citation to repealed section 61020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 81020 describes requirements for proof of support under the Trial Court Act. The proposed change strikes the entirety of section 81020. Section 81020 is repealed because this rulemaking package consolidates the proof of support requirements under section 32700 for all Acts within PERB's jurisdiction.

Section 81080 concerns the conduct of elections and eligibility to appear on ballot under the Trial Court Act. The proposed change removes a citation to repealed section 81020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 81210 provides for the filing of a petition for certification under the Trial Court Act. The proposed change removes a citation to repealed section 81020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 81350 provides for the filing of a decertification petition under the Trial Court Act. The proposed change removes a citation to repealed section 81020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 81450 provides for the filing of a unit modification petition under the Trial Court Act. The proposed change removes a citation to repealed section 81020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 91020 describes requirements for proof of support under the Trial Court Interpreter Act. The proposed change strikes the entirety of section 91020. Section 91020 is repealed because this rulemaking package consolidates the proof of support requirements under section 32700 for all Acts within PERB's jurisdiction.

Section 91080 concerns the conduct of elections and eligibility to appear on ballot under the Trial Court Interpreter Act. The proposed change removes a citation to repealed section 91020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 91210 provides for the filing of a petition for certification under the Trial Court Interpreter Act. The proposed change removes a citation to repealed section 91020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 91350 provides for the filing of a decertification petition under the Trial Court Interpreter Act. The proposed change removes a citation to repealed section 91020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 91450 provides for the filing of a unit modification petition under the Trial Court Interpreter Act. The proposed change removes a citation to repealed section 91020 and replaces it with section 32700, which contains all rules regarding proof of support.

Section 93010 identifies the form of a petition for certification under the Transit District Act. The proposed changes would eliminate the need for a party to file one copy of a petition. The proposed change is necessary to provide more clarity and efficiency in the Board's processes.

Section 93030 concerns SMCS's investigation of disputes concerning a petition for certification. The proposed changes would eliminate the need for a party to file one copy of a motion for intervention. The proposed change is necessary to provide more clarity and efficiency in the Board's processes.

Section 93070 identifies the procedures for conducting an election. The proposed changes would eliminate the need for a party to file five copies of exceptions to the report on challenged ballots or objections. The proposed change is necessary to provide more clarity and efficiency in the Board's processes.

C. Amendments to the Authority and Reference Only

None

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

In April 2017, the Board approved a Case Processing Efficiency Initiative to generate ideas on improving and streamlining the processing of cases. PERB engaged constituents and staff in the Los Angeles, San Francisco and Sacramento regional offices to what discuss changes the Board could consider to more efficiently process our workload. Preliminary results of these meetings were tabulated and presented for public comments in March 2018. On June 14, 2018, the Board met in open session to consider the final recommended report and vote on changes to enact. Among the approved initiatives, PERB initiated a process to replace the outdated case tracking system with e-PERB, a more efficient platform that will provide a web-based portal for constituents to improve access to information. The proposed regulations are necessary to fully implement ePERB.

ECONOMIC IMPACT ASSESSMENT (Government Code section 11346.3(b))

The proposed regulations are designed to move PERB from an antiquated e-mail or paper filing system to a web-based CMS and public portal that allows parties to electronically file, serve, store, and access case materials. In addition to updating its regulations to conform to the electronic filing system and public portal, PERB proposes to amend other regulations to consolidate duplicative or related regulations and fill gaps in regulations to achieve additional efficiencies.

In accordance with Government Code Section 11346.3(b), PERB has made the following assessments regarding the proposed regulations:

Creation or Elimination of Jobs Within the State of California

The proposed regulations are designed to update PERB's case processing rules by updating its CMS and by using advancements in technology to make case management and adjudication more efficient. In doing so, no jobs in California will be created or eliminated.

Creation of New Businesses or Elimination of Existing Businesses Within the State of California

The proposed regulations are designed to move from an e-mail filing system to a web-based CMS. In updating the electronic filing system and corresponding regulations, as well as the additional efficiencies from consolidation of duplicative or related rules, no

new businesses will be created or existing businesses eliminated in California, and the ability of California businesses to compete with businesses in other states will not be impacted.

Expansion of Businesses Within the State of California

The proposed regulations are designed to update PERB's case processing rules by updating its CMS and by using advancements in technology to make case management and adjudication more efficient. The only parties that will be affected by this regulatory action are public employers, public employees, and employee organizations. In updating the electronic filing system and corresponding regulations, as well as the additional efficiencies from consolidation of duplicative or related rules, no existing businesses in California will be expanded.

PERB will continue to investigate the potential for economic impact throughout this rulemaking process.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

In updating the electronic filing system and corresponding regulations, as well as the additional efficiencies from consolidation of duplicative or related rules, PERB will ensure improvement of public sector labor relations by providing information and clarity to parties regarding PERB's process, and aid efficiency in PERB's resolution of labor disputes, which will promote full communication between public employers and their employees in resolving disputes over wages, hours and other terms and conditions of employment. The proposed regulatory action will not adversely affect the health and welfare of California residents, worker safety, or the State's environment. The proposed regulatory action will further the policies underlying prompt resolution of labor disputes by providing a process to expediently resolve alleged violations of California's labor relations laws. California residents' general welfare will be benefitted by stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that California's public agencies and employees provide to California's communities.

In addition, a CMS system, such as ePERB, that permits PERB employees and its constituents to issue, file and access case documents through a web-based system provides a safe means for telework during a public health crisis, as experienced in 2020 during the COVID-19 crisis. Despite the closure of PERB offices and subsequent telework requirements, PERB has been able to continue to provide its full range of services. The regulations allow PERB and its constituents to experience the full range of ePERB, which adds to their ability to telework.

INFORMATION RELIED UPON TO SUPPORT PERB'S INITIAL DETERMINATION THAT THE PROPOSED REGULATORY ACTION WILL NOT HAVE A SIGNIFICANT ADVERSE ECONOMIC IMPACT ON BUSINESS

The public sector labor relations statutes that PERB is charged with enforcing set forth the rights and obligations of entities and individuals operating in the public sector. Because the public sector labor relations statutes that PERB is charged with enforcing is limited to the public sector, PERB has initially determined that the proposed regulatory action updating the regulations that govern the filing and processing of PERB cases will not have a significant adverse economic impact on business.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

PERB has not identified any adverse impacts on small business as a result of these proposed regulations and has not identified alternatives that would lessen any adverse impact on small business. Thus, no such alternative has been proposed.

MANDATED USE OF SPECIFIC TECHNOLOGIES OR EQUIPMENT

PERB's proposed regulations mandate the use of specific technologies or equipment in that parties must file document through the ePERB public portal. This requires parties to have the proper computer hardware, internet access, and software to convert documents to PDF format. The regulations provide an exemption for non-attorney parties who wish to continue using mail or personal filing methods.