

TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The Public Employment Relations Board (PERB or Board) proposes to adopt and amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to adopt proposed new sections 32312, and amend sections 32056, 32060, 32110, 32121, 32140, 32150, 32155, 32170, 32180, 32190, 32205, 32300, 32310, 32720, 32792, 32998, 32999, 93000, 93025, 93030, 93045, 93055, 93070, and 93075.

Section 32056 defines the terms, "State Mediation and Conciliation Service" and "Director". Section 32060 defines, "The headquarters office". Section 32110 provides electronic filing requirements. Section 32121 identifies the place to file matters with State Mediation and Conciliation Service. Section 32140 identifies the proper recipients for service. Section 32150 describes the manner in which parties obtain, serve, challenge, and enforce subpoenas. Section 32155 concerns recusals. Section 32170 describes the authority of a Board agent conducting a formal hearing. Section 32180 describes the rights of parties during a formal hearing. Section 32190 describes the filing of motions during a formal hearing. Section 32205 involves the process for requesting a continuance of a formal hearing. Section 32300 describes the process for filing exceptions to a decision by a Board agent. Section 32310 concerns a response to the filing of exceptions to a decision by a Board agent. Proposed section 32312 addresses the filing of a reply to a response to exceptions. Section 32720 describes the Board's authority to conduct representation elections. Section 32792 concerns requests for the Board to determine impasse and appoint a mediator. Section 32998 concerns reimbursement for services by State Mediation and Conciliation Service. Section 32999 concerns elections conducted by State Mediation and Conciliation Service. Section 93000 defines various transit districts under the Public Utilities Code. Section 93025 concerns investigations of representation petitions by State Mediation and Conciliation Service. Section 93030 concerns the conduct of hearings by State Mediation and Conciliation Service. Section 93045 concerns the use of subpoenas in proceedings conducted by State Mediation and Conciliation Service. Section 93055 describes the duties of a hearing officer following a hearing conducted by State Mediation and Conciliation Service. Section 93070 describes election procedures. Section 93075 concerns runoff elections.

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 person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 327-6377 or by e-mail at felix.delatorre@perb.ca.gov. The written comment period closes on July 26, 2021, which is 45 days after the publication of this notice. The Board will only consider comments received at the Board offices by that time. Submit written comments to:

J. Felix De La Torre, General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811

AUTHORITY AND REFERENCE

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act (EERA). Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Meyers-Milias-Brown Act (MMBA). Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act (Dills Act). Government Code section 3563(f) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer-Employee Relations Act (HEERA). Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Employment Protection and Governance Act (Trial Court Act). Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act). Pursuant to Government Code sections 3541.3(g) and 3524.52(a), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Judicial Council Employer-Employee Relations Act (JCEERA). Pursuant to Government Code sections 3541.3(g) and 3555(c), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Public Employee Communication Chapter (PECC). Pursuant to the Government Code sections 3541.3(g) and 3551(a), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Prohibition on Public Employers Deterring or

Discouraging Union Membership chapter (PEDD). Pursuant to Education Code sections 8431(e), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Child Care and Development Act (Childcare Provider Act). Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Orange County Transit District Act (OCTDA). Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Bay Area Transit District (BART Act).

General reference for **section 32056** of the Board's regulations: Section 3600, Government Code. General reference for **section 32060**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code. General reference for **section 32110** of the Board's regulations: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3551(a), 3555.5(c), 3563, 3563.2, 71639.1 and 71825, Government Code; and Sections 99561 and 99561.2, Public Utilities Code. General reference for **section 32121** of the Board's regulations: Sections 3600, 3601, 3603 and 3611, Government Code; and Sections 25051, 25052, 28850, 28851, 30750, 30751, 30754, 30756, 40120, 40122, 50120, 50121, 70120, 70122, 90300, 95650, 95651, 98162.5, 100301, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 125521, 125526, Appendix 1, Sections 4.2 and 4.4, and Appendix 2, Sections 13.90, 13.91 and 13.96, Public Utilities Code. General reference for **section 32140** of the Board's regulations: Sections 3509, 3513(h), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825, Government Code; and Section 99561(m), Public Utilities Code. General reference for **section 32150**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 3601, 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code. General reference for **section 32155**, of the Board's regulations: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3551(a), 3555.5(c), 3557, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. General reference for **section 32170**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(h), 3541.3(k), 3551(a), 3555.5(c), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Sections 99561(g) and 99561(j), Public Utilities Code. General reference for **section 32180**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code. General reference for **section 32190**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code. General reference for **section 32205**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(h), 3551(a), 3555.5(c), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code. General reference for **section 32300**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91,

25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. General reference for **section 32310**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. General reference for **proposed section 32312**, of the Board's regulations: Sections 3509, 3513(h), 3541.3(k), 3541.3(n), 3551(a), 3555.5(c), 3563(j), 3563(m), 71639.1 and 71825, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561(j), 99561(m), 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. General reference for **section 32720**, of the Board's regulations: Sections 3541.3(c), 3541.3(e), 3541.3(g), 3541.3(l), 3541.3(m), 3513(h), 3520.5(b), 3544.1(a), 3544.3, 3544.7(a), 3546, 3563(c), 3574(a), 3577, 3579(e) and 3583.5, Government Code; and Sections 99561(c), 99561(e), 99561(k), 99561(l), 99564, 99564.1, 99564.2, 99564.3, 99564.4 and 99566.1, Public Utilities Code. General reference for **section 32792**, of the Board's regulations: Sections 3518, 3548 and 3590, Government Code. General reference for **section 32998**, of the Board's regulations: Sections 3551(a), 3555.5(c), 3557, 3600, 3601, 3602, 3603 and 3611, Government Code; Sections 25051, 25052, 28850, 28852, 30750, 30751, 30756, 40120, 40122, 50120, 50121, 70120, 70121, 95650, 95651, 98162.5, 100301, 100304, 100305, 100306, 101341, 101342, 101344, 102401, 102403, 103401, 103404, 103405, 103406, 120502, 120503, 120505, 125521, 125524, 125525, 125526, Appendix 1, Section 4.1 and Appendix 2, Section 13.90, Public Utilities Code; Section 11010, Government Code; and Sections 8740 and 8752, State Administrative Manual. General reference for **section 32999**, of the Board's regulations: Sections 3502.5(b), 3502.5(d), 3507.1(c), 71632.5(c), 71636.3 and 71814(c), Government Code. General reference for **section 93000**, of the Board's regulations: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor-Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for **section 93025**, of the Board's regulations: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for **section 93030**, of the Board's regulations: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; and 29 CFR Sections 102.60-102.72. General reference for **section 93045**, of the Board's regulations: Reference: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for **section 93055**, of the Board's regulations: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505

and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for **section 93070**, and of the Board's regulations: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72. General reference for **section 93075** of the Board's regulations: Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code. Additional reference: Labor Management Relations Act, 1947, Section 9, 29 USC Section 159; 29 CFR Sections 102.60-102.72.

POLICY STATEMENT OVERVIEW

PERB is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB presently administers ten collective bargaining acts, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB are: the Meyers-Milias-Brown Act (MMBA) of 1968, which established collective bargaining for California's city, county, and local special district employers and employees; the Educational Employment Relations Act (EERA) of 1976 establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act), establishing collective bargaining for state government employees; the Higher Education Employer-Employee Relations Act (HEERA) of 1979 extending the same coverage to the California State University System, the University of California System and Hastings College of Law; the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) of 2003, which covers supervisory employees of the Los Angeles County Metropolitan Transportation Authority; the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002, which together provide for collective bargaining rights for most trial court employees; and the Judicial Council Employer-Employee Relations Act (JCEERA) of 2018, which establishes collective bargaining for Judicial Council employees; the Building a Better Early Care and Education System Act of 2019, known as the Childcare Provider Act (CCPA), establishes collective bargaining for family childcare providers who participate in a state-funded early care and education program. In 2020, the Legislature gave PERB jurisdiction over the Bay Area Rapid Transit District Act (BART Act), where the Board has jurisdiction over disputes relating to employer-employee relations at BART, and jurisdiction over the Orange County Transit District Act (OCTDA) in the Public Utilities Code giving PERB jurisdiction over unfair practice charges at the Orange County Transportation Authority.

The proposed regulation and amendments update the Board's rules that govern the circumstances requiring Board members and PERB employees to recuse themselves from proceedings; the filing of exceptions to Proposed Decisions; the use of discovery and motions in formal hearings; and standards for obtaining continuances of a formal

hearing. In addition, the proposed amendments update the description of the facilitation services offered by State Mediation and Conciliation Service (SMCS) and correct the title of the individual charged with overseeing SMCS from Supervisor to Director. To a great degree, these amendments are intended to consolidate duplicative rules, fill gaps, and simplify the Board's procedures and processes for case adjudication in a way that make the regulations more understandable to attorney and non-attorneys alike.

Over time, the Legislature has continued to place additional public employers under PERB's jurisdictions. As a consequence, the Legislature has added more than two million public employees and their associated caseloads to the Board's jurisdiction. In response, PERB has continued to evaluate changes to case processing intended to be more efficient and streamlined. On April 13, 2017, the Board approved a Case Processing Efficiency Initiative to generate ideas for the improvement and streamlining of case processing. The Board solicited feedback from staff and constituents on the updates needed to make our proceedings efficient and user-friendly, keeping in mind that many constituents are non-attorneys or pro per litigants unfamiliar with legal procedures in an administrative law setting. PERB's case-adjudication processes differ from other judicial forums in that non-attorney parties may not only self-represent (pro per litigants) but may be represented by non-attorney representatives. It is therefore not uncommon for non-attorneys to appear on behalf of individuals or organizations and navigate their way through PERB's case adjudication processes and the corresponding regulations. As revealed through the stakeholder meetings that were part of the Case Processing Efficiency Initiative, PERB's case processing regulations are often unnecessarily complicated, incomplete, obsolete, or ambiguous. These problems often cause litigants to commit errors or missteps, which delay case adjudication. Aside from the delays, these errors create additional work for PERB's attorneys and judges. For this reason, the Board determined it was necessary to amend the regulations to make them user-friendly, detailed, and understandable.

On June 14, 2018, the Board approved the Case Processing Efficiency Initiative Report, which included a number of recommendations. These proposed regulations incorporate some of those recommendations.

INFORMATIVE DIGEST

A. Adoption of New Sections

Proposed Section 32312 adds a provision to allow the filing of a reply brief in support of a statement of exceptions to a decision by a Board agent.

B. Amendment to the Text of Existing Sections

Section 32056 provides definitions for State Mediation and Conciliation Service and the officer that oversees that division. The amendment replaces the term "Supervisor" with "Director" as the definition for the officer that oversees State Mediation and Conciliation Service.

Section 32060 states that the Board itself, the General Counsel, the Chief Administrative Law Judge, and the Executive Director are located in the headquarters office. The proposed amendment adds the Director of State Mediation and Conciliation Services as being located in the headquarters office.

Section 32110 provides electronic filing requirements. The proposed amendment corrects a typographical error that cites to the incorrect subdivision which sets size limits on a Portable PDF.

Section 32121 describes the appropriate location for filing documents with State Mediation and Conciliation Service. The proposed changes would replace the San Francisco Regional office with the Sacramento Regional Office as the office to file matters with State Mediation and Conciliation Service.

Section 32140 describes the proper recipient for service of process. The proposed amendment removes the reference to service by facsimile, which is no longer authorized by the regulations. In addition, the proposed change adds “other public school employers” to the list of public entities authorized to receive service of process in a PERB proceeding.

Section 32150 describes the issuance of subpoenas in formal hearings. The proposed changes would define the different types of subpoenas; specify the content needed for each type of subpoena; describe the method of serving a subpoena on a witness; add rules for motions that seek to extend the date for production of documents, for revoking or limiting a subpoena, and to enforce a subpoena, as well as other changes that clarify the use of subpoenas.

Section 32155 describes the grounds for disqualifying a Board agent or Board Member from participating in PERB proceedings. The proposed changes would describe grounds for recusal of Board Members and Board agents, but also adds the General Counsel, Chief Administrative Law Judge, Legal Advisors, conciliators, mediators, and other PERB officers, employees, or contractors as being subject to recusal.

Section 32170 describes the powers and the duties of a Board agent conducting a hearing. The proposed change now describes the “authority” of a Board agent conducting a hearing. The proposed change includes definitions for “Prehearing conference”, “Formal Hearing”, and “Hearing”. The proposed amendment further authorizes the use of video conferencing to conduct hearings and describes a Board agent’s authority to address motions during a hearing, including motions related to protective orders.

Section 32180 concerns the rights of parties during a hearing. The proposed change provides that parties may self-represent, be represented by counsel, or be represented by a non-attorney representative. The proposed amendment gives a Board agent the authority to decide the best forum to conduct a hearing, including the use of a video hearing.

Section 32190 concerns motions filed with PERB. The proposed change would establish that the rules governing motions apply only after the Office of the General Counsel issues a complaint. The proposed regulation also designates deadlines for the filing of certain motions, as well as longer briefing schedules for those motions.

Section 32205 concerns requests for continuances during a formal hearing. The proposed change includes additional rules for parties requesting a continuance, which differ based on the number of days the request is made prior to a formal hearing. The proposed regulation also includes new filing requirements and describes the grounds that the administrative law judge considers when ruling on a request for a continuance.

Section 32300 concerns the filing of exceptions with the Board itself to a Proposed Decision. The proposed change eliminates the requirement that parties file a brief along with the statement of exceptions, describes the required content of the statement of exceptions, sets a 14,000 word limit, and describes the grounds that the Board will consider in its decision.

Section 32310 concerns a party's response to exceptions filed with the Board itself. The proposed change sets forth the required content to a response to a statement of exceptions and establishes a word limit to that response.

Proposed Section 32312 concerns the filing of a reply brief in support of a statement of exceptions. The proposed section authorizes parties to file a reply brief after the opposing party files its response to a statement of exceptions. The proposed section places a 5000 word limit on a reply brief unless the Board permits a longer brief.

Section 32720 concerns the Board's authority to conduct representation elections. The proposed change makes clear that section 32720 does not apply to elections for transit districts, or elections under the under the Meyers-Milias Brown Act, Trial Court Act, or Court Interpreter Act when conducted by State Mediation and Conciliation Service under specified circumstances.

Section 32792 concerns a party's requests that the Board determine impasse and appoint a mediator. The proposed change makes clear that section 32792 applies only to the Ralph C. Dills Act, Educational Employment Relations Act, and Higher Education Employer-Employee Relations Act.

Section 32998 concerns reimbursement rates for service by State Mediation and Conciliation Service. The proposed changes update the description of facilitation services offered by SMCS, and corrects the title of the individual charged with overseeing SMCS from Supervisor to Director.

Section 32999 concerns representation and agency shop elections by State Mediation and Conciliation Service. The proposed change specifies that section 32999 does not apply to elections conducted by the Office of the General Counsel or an agency shop election.

Section 93000 provides definitions for matters involving transit districts. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

Section 93025 concerns investigations by State Mediation and Conciliation Service of representation matters involving transit districts. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

Section 93030 concerns hearings by State Mediation and Conciliation Service in representation matters involving transit districts. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

Section 93045 concerns the issuance of subpoenas by State Mediation and Conciliation Service in representation matters involving transit districts. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

Section 93055 concerns the duties of a hearing officer with State Mediation and Conciliation Service following a hearing in a representation matter involving a transit district. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

Section 93070 concerns election procedures by State Mediation and Conciliation Service in representation matters involving transit districts. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

Section 93075 concerns run-off election procedures by State Mediation and Conciliation Service in representation matters involving transit districts. The proposed change replaces the term “Supervisor” with “Director” to describe the PERB officer that oversees State Mediation and Conciliation Service.

C. Amendments Only to the Authority and Reference Citations of Existing Regulations

None.

For more information regarding specific proposed regulations or amendments to the existing regulations, please refer to the proposed regulatory language.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Board has determined that the proposed regulatory adoptions and amendments are not inconsistent or incompatible with existing regulations. After conducting a review of all regulations that would relate to or affect this area of California law, the Board has determined that due to PERB’s exclusive jurisdiction to implement and

enforce the labor relations acts within its jurisdiction, the proposed regulations are the only regulations concerning the implementation and enforcement of these laws. Therefore, the Board has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

As part of PERB's Case Processing Efficiency Initiative, the Board seeks to make the agency's procedures for case processing easier to understand and therefore more accessible to non-attorney parties and representatives. In this, PERB determined that it needed to amend many of its regulations to eliminate ambiguities, add missing information, and consolidate or remove redundancies. By making these changes, the proposed regulations will reduce case processing errors, which, in turn, will improve case processing times. In addition, the proposed regulations will make case adjudication more consistent. As one example, PERB's rules provide that a party may file a statement of exceptions to a Proposed Decision, and the opposing party may file a response brief to the statement of exceptions. The rules, however, are silent on whether a party may file a reply brief after the opposing party files its response. This has resulted in some parties filing a reply brief while other parties foregoing a reply brief, often because they did not know whether a reply brief was authorized by the regulations. The proposed regulations add a new rule that expressly authorizes reply briefs with specific word limits. This assists the Board by providing full briefing in a concise and detailed manner.

One proposed change is a result of circumstances that resulted from the COVID-19 pandemic. In particular, PERB's current regulations include no rules to govern the use of video conferencing to conduct formal hearings. In response to this problem, the proposed regulations authorize administrative law judges to determine the location of a formal hearing, and whether parties, representatives, and witnesses will participate in a hearing either in-person, telephonically, by video, or a combination. PERB also seeks to eliminate inefficient regulations. For example, the current regulations allow parties to request a continuance of a formal hearing at any time up to five days before the hearing, but the rule treats all requests equal regardless if the request comes 5 days or 30 days before a hearing. Because scheduling impacts are greater when a request is made less than a week before a hearing, PERB seeks to update its continuance regulation to include different standards for obtaining a continuance, each standard dependent on how close to the hearing a party makes the request.

The proposed regulations also close information gaps. As one example, PERB's regulation describing the circumstances that require PERB employees to recuse themselves from a case do not cover all PERB employees involved in case investigations and adjudication. In particular, the current regulation does not expressly cover Legal Advisors, the General Counsel, Chief Administrative Law Judge, Executive Director, PERB officers, employees, or contractors. The proposed regulation closes this gap in coverage by applying the recusal regulation to those individuals. Similarly, PERB's current regulation governing the use of subpoenas does not include the detailed information that is typically found in subpoena rules used by courts and other administrative law forums. As a result, the current regulation lacks

the details to best guide constituents on how to obtain, serve, challenge, or enforce a subpoena. The proposed regulation solves the problem by defining the different types of subpoenas; specifying the content needed for each type of subpoena; describing the method of serving a subpoena on the witness; adding rules for motions that seek to extend the date for production of documents, for revoking or limiting a subpoena, and to enforce a subpoena, as well as other changes that clarify the use of subpoenas.

Essentially, the proposed regulations are a continuation of the Board's efforts to update its case processing regulations so as to provide constituents with easy to understand yet comprehensive rules on case processing.

NO EXISTING AND COMPARABLE FEDERAL REGULATION OR STATUTE

During the process of developing these proposed regulatory adoptions and amendments, the Board has conducted a search for any similar federal regulations and statutes on this topic and has determined that there are no existing, comparable federal regulations or statutes or Board precedent, as these proposed regulatory changes apply solely to public employers and employee organizations under the jurisdiction of the California public sector labor relations statutes set forth above. Therefore, the Board has concluded that these regulations are neither inconsistent nor incompatible with existing Federal regulations or statutes.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: The proposed action would not impose any new mandate.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 et seq.: The proposed action would not impose any new costs which must be reimbursed.

Other non-discretionary cost or savings imposed upon local agencies: The proposed action would not result in any new costs which must be reimbursed, or savings imposed upon local agencies.

Cost or savings to state agency: The proposed action would not result in any new costs or savings.

Cost or savings in federal funding to the state: The proposed action would not result in any new costs or savings.

Cost impact on private persons or directly affected businesses: The agency is not aware of any cost impacts that a representative private

person or business would necessarily incur in reasonable compliance with the proposed action.

Significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states: The proposed action will have no impact.

Significant effect on housing costs: There will be no effect on housing costs.

Business Reporting Requirement: The proposed action will not require a report to be made.

The Board has determined that the proposed regulations will not affect small business because the proposed regulations will only affect public employers, public employees, and public employee organizations.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board concludes that the adoption of the proposed regulations and amendments will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

BENEFIT ANALYSIS

By updating the case processing and adjudication regulations, as well as the benefits from the efficiencies from user-friendly, comprehensive, and consolidated rules, PERB will improve public sector labor relations by providing necessary information and clarity to parties about PERB's standards and processes. This will improve efficiencies 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, the enhanced use of video conferencing in case adjudication provides PERB employees and constituents a safe means for telework during a public health crisis, as experienced in 2020 during the COVID-19 crisis. Despite the closure of PERB's offices and subsequent telework requirements, PERB has continued its full range of services to the public. The proposed regulations allow PERB and its constituents to experience the full range of PERB services, including evidentiary hearings on disputed matters.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), a rulemaking agency must determine that no reasonable alternative considered by the agency 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSONS

Any questions or suggestions regarding the proposed action should be directed to:

J. Felix De La Torre
General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811
E-mail: felix.delatorre@perb.ca.gov

The backup person for these inquiries is:

Ronald Pearson, Supervising Regional Attorney
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811
(916) 322-3198
E-mail: ronald.pearson@perb.ca.gov

Please direct requests for copies of the proposed text (the “express terms”) 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 J. Felix De La Torre at the above address.

PRELIMINARY ACTIVITIES

PERB held public meetings on April 11, 2019, June 13, 2019, August 8, 2019, and October 10, 2019, wherein the public was given the opportunity to provide comments regarding implementation of these regulations. During the public meetings, several constituents provided comments as well as recommendations to the Board. In response, the Board agreed to amend several of the proposed regulations for approval at the next public meeting. During the subsequent public meetings, the

Board itself approved the publication of the proposed regulatory text and the commencement of the formal rulemaking process.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF 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 California Regulatory Notice Register, the rulemaking file consists of this notice, the express terms of the proposed regulations and the initial statement of reasons. Copies of these documents may be obtained by contacting Felix De La Torre at the above address and are also available on the Board's web site at www.perb.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding a hearing, if one is requested, and considering all timely and relevant comments, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations as revised. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of J. Felix De La Torre at the above address. 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 J. Felix De La Torre at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of this notice of proposed action, the initial statement of reasons, and the text of the proposed regulations in underline and strikeout, can be accessed through PERB's web site located at www.perb.ca.gov throughout the rulemaking process. Written comments received during the written comment period will also be posted on PERB's web site. The final statement of reasons or, if applicable, notice of a decision not to proceed will be posted on PERB's web site following the Board's action.