INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

The Public Employment Relations Board (PERB or Board) is responsible for maintaining labor harmony between the state's public employers, certain private employers, and their approximately 2.5 million employees. It does this by administering and enforcing eighteen of the state's labor relations acts. By enacting these statutes, the Legislature seeks "to promote full communication between public employers and their employees by providing reasonable methods of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations." (See, e.g., Gov. Code, §§ 3500, 3512, 3540.)

PERB functions as an administrative, quasi-judicial body. PERB is tasked with processing unfair practice charges and representation cases arising out of various labor relations acts. The processing of these cases may include hearings before an administrative law judge, settlement conferences and mediations, and appeals before the Board. At each of these stages, individuals involved in these proceedings may require reasonable accommodations to participate in the process. (Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; Unruh Civil Rights Act (Cal. Civ. Code Sec. 51 et seq.)) However, the current system of reasonable accommodations at PERB is informal, with little clear guidance and most decisions being left to the Board agent processing the case. This proposed regulation aims to formalize and standardize the reasonable accommodations process, giving Board agents and PERB constituents clear procedures to follow.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATION

PERB currently does not have regulations related to reasonable accommodations for persons with disabilities. Disability accommodation requests made by individuals appearing before PERB are decided by the Board agent processing the case and/or designated Board staff. This proposed regulation aims to standardize the reasonable accommodation process and formalize the procedures for accommodation requests made in proceedings at any level of PERB. It does so by establishing, among other things, how a request can be made, the amount of notice that should be provided, confidentiality rules, and provisions for the duration of an accommodation.

SECTION BY SECTION EXPLANATION FOR ADOPTION OF NEW SECTION

Proposed section 32142, subdivision (a), establishes the definitions of terms used within the regulation. These include terms such as "[p]ersons with disabilities" and "[a]ccommodation" as well as defining the role of the Disability Coordinator. Establishing terms helps eliminate ambiguity in the regulation.

Proposed subdivision (b) details the process for requesting accommodations.

Proposed subdivision (b), subsection (1) states that the intent of the Board is to have disability accommodation requests be resolved directly by the Board agent to whom the matter is assigned, or the Chair of the Board if the matter is before the Board itself.

Proposed subdivision (b), subsection (2) states that disability accommodation requests that fall outside the scope of the assigned Board agent or Chair of the Board's authority will be submitted to the Disability Coordinator. When evaluating this request, the Disability Coordinator may consult with the Board agent or Chair of the Board to determine whether the requested accommodation would fundamentally alter the nature of the service, program, or activity provided by the Board. Some requests may not be procedurally proper for the Board agent or the Chair of the Board to decide. For example, a request from a member of the public to use braille to understand a public record request. Thus, having a Disability Coordinator ensures that a Board agent who is not assigned to a particular case can assess accommodation requests.

Proposed subdivision (b), subsection (3) allows for accommodation requests to be made orally or in writing, and explains what the written request must include. Applicants may be required to provide additional information or verification regarding the requested accommodation. This may include information about the severity of the limitations requiring an accommodation, and how the accommodation would enable the applicant to participate in the proceeding. Regulations that require the requestor to provide clarity assists PERB in understanding the request for accommodation, thereby ensuring that the requestor receives the necessary accommodation.

Proposed subdivision (b), subsection (4) requires requests to be made with as much notice as possible. If the request is made less than 10 days before the date the accommodation is needed, the applicant must explain why the request was not made earlier. Encouraging requestors to provide sufficient advance notice helps ensure that the requested accommodation can be made and minimizes any potential disruption to a timely proceeding or processing of a case.

Proposed subdivision (b), subsection (5) states that the Board will keep all accommodation request information confidential unless confidentiality is waived, disclosure is required by law, or if the Board agent determines that the disclosure is necessary to ensure the fairness of the proceeding. The applicant's identity and confidential information will not be disclosed to the public or persons other than those

involved in the accommodations process. Maintaining confidentiality limits any potential violations of privacy rights.

Proposed subdivision (b), subsection (6) states that requests for accommodation may only address the accommodation requested and not the subject matter or merits of their case before PERB. Maintaining a separation between the substantive merits of a case and any accommodation request, the latter of which is unrelated to the merits of the case, promotes a cleaner administrative record.

Proposed subdivision (b), subsection (7) states that, at any time during the accommodation request process, the assigned Board agent, Disability Coordinator, or reviewing officer in subsection (f) may place the scheduled proceeding in abeyance or grant a continuance. To satisfy an accommodation request, it may be necessary to delay the proceeding. This proposed text provides the Board agent the authority to do so. No continuance or abeyance shall be granted as an accommodation without affording all parties notice and an opportunity to be heard. This ensures that all arguments are considered before PERB makes a determination that could delay the processing of a case.

Proposed subdivision (c) requires that PERB respond to a request for accommodation within 20 days. This promotes expedient processing of the case. This response shall be in writing or in an alternative format, and must include the reasons for the granting or denial of the request and the nature and duration of the accommodation to be provided, if any. A thorough response assists the Board agent with making the appropriate determination regarding the accommodation request.

Proposed subdivision (d) details the duration of any granted accommodation. This includes the situations in which the accommodation may be ended, such as requests for termination of the accommodation, modification of the accommodation, or the natural end of the accommodation. Maintaining a timeline for the accommodation eliminates ambiguity regarding the duration of the granted accommodation, thereby providing for efficient case processing.

Proposed subdivision (e) dictates the situations in which PERB may deny a request for accommodation. This includes accommodations that would create an undue financial or administrative burden, those that would fundamentally alter the nature of the service, program or activity provided by the Board, or if the accommodation is in violation of governing legal authority. Informing a requestor of the reasons for denial of their request promotes transparency and fairness of the process. It also assists the requestor with deciding whether to seek review of any denial.

Proposed subdivision (f) details the review procedures for whole or partial denials of an accommodation request. The written request for review must state the reasons that the denial of the accommodations request necessitates review. Doing so assists the deciding Board agent in making their determination. The written request for review must be submitted within 20 days of the denial to the head of the division where the determination was made, or to the Board itself if denied by a division head, the Chair of the Board, or the Disability Coordinator. A final response to this request must occur within 20 days. The 20-day deadlines are included to promote efficient case processing, as well as provide sufficient time for the requestor to prepare its reasons necessitating review.

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

The proposed regulation aims to standardize the process of requesting accommodation for disability in matters before PERB. In accordance with Government Code section 11346.3, subdivision (b), PERB has made the following assessments regarding the proposed regulation:

A. Creation or Elimination of Jobs Within the State of California

PERB has determined that the proposed regulation will have no impact on the creation or elimination of jobs in the State of California. These regulation addresses reasonable accommodation requests in matters before PERB. The scope of this regulation is limited to procedural matters and will not result in the creation or elimination of any job within the state.

B. Creation of New Business or Elimination of Existing Businesses Within the State of California

The proposed regulation addresses reasonable accommodation requests in matters before PERB. The nature of this regulation involves procedural rights in the conduct of proceedings before PERB, and will not result in the creation of new businesses, eliminate existing businesses, or affect the ability of California businesses to compete with businesses in other states.

C. Expansion of Businesses Within the State of California

This regulation addresses reasonable accommodation requests in matters before PERB. PERB has determined that the proposed regulation will lead to the expansion or elimination of existing businesses within the State of California.

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

The proposed regulation aims to standardize the process for requesting reasonable accommodations. 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 California's public sector labor relations statutes by providing processes for individuals to request reasonable accommodations so that they can fully participate in PERB matters. California residents' general welfare will be benefitted by stable labor relations and dispute resolution, which translates to continuous delivery of the essential services that public employers and their employees provide to California's communities.

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

PERB did not rely upon any technical, theoretical, or empirical studies, or other documents in proposing the adoption of this regulation.

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

PERB's primary purpose is to administer public sector labor relations statutes, which set forth the rights and obligations of public sector employers and employees. Because the scope of PERB's jurisdiction is limited primarily to the public sector, PERB has initially determined that the proposed regulatory action will not have a significant adverse economic impact on business as it involves procedural issues associated with PERB.

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

PERB has not identified any adverse impact on small businesses because of the proposed regulation and has not identified any 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 regulation would standardize the process for requesting accommodation for persons with disabilities but it does not mandate the use of specific technologies or equipment. If a request for accommodation is granted, the proposed regulation does not require PERB to use specific technologies or equipment.