

TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

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

PROPOSED REGULATORY ACTION

The Board proposes to amend sections 32147 and 32305. Section 32147 provides for expediting matters before the Board. Section 32305 provides that proposed decisions become final if no timely exceptions are filed.

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 james.coffey@perb.ca.gov. The written comment period closes on December 6, 2022, which is 46 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:

James Coffey, Senior Regional Attorney
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; Government Code section 3540 et seq.). 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 3500 et seq.). 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 3512 et seq.). 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; Government Code section 3560 et seq.). 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; Public Utilities Code section 99560 et seq.). 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; Government Code section 71600 et seq.). 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; Government Code section 71800 et seq.). Government Code section 3524.52(a), authorizes the Board 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; Government Code section 3524.50 et seq.). Pursuant to Government Code sections 3541.3(g) and 3555.5(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; Government Code section 3555 et seq.). Pursuant to 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; Government Code section 3500 et seq.). Pursuant to Welfare and Institutions Code section 10421(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 Building a Better Early Care and Education System Act (Childcare Provider Act; Welfare and Institutions Code section 10420 et seq.). Pursuant to Public Utilities Code section 40122.1(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 Orange County Transit District Act (OCTDA; Public Utilities Code section 40122.1 et seq.). Pursuant to Public Utilities Code section 28849(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 San Francisco Bay Area Rapid Transit District Act (BART Act; Public Utilities Code section 28848 et seq.). Pursuant to Public Utilities Code section 102399(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 Sacramento Regional Transit District Act (SacRT Act; Public Utilities Code section 102398 et seq.).

General reference for **section 32147** of the Board's regulations: sections 3509, 3513(h), 3524.52(a), 3541.3(n), 3551(a), 3555.5(c), 3563(m), 71639.1 and 71825,

Government Code; sections 28849(b), 40122.1(a), 99561(m), and 102399(b), Public Utilities Code; and section 10421(e), Welfare and Institutions Code. General reference for **section 32305** of the Board's regulations: 3509, 3509.3, 3513(h), 3524.52(a), 3524.76, 3520.8, 3541.3(k), 3541.3(n), 3541.35, 3551(a), 3555.5(c), 3563(j), 3563(m), 3563.5, 71639.1, 71639.15, 71825 and 71825.05, Government Code; sections 28849(a), 40122.1(a), 99561(j), 99561(m), 99561.4, and 102399(b), Public Utilities Code; and section 10428.5(a), Welfare and Institutions Code.

POLICY STATEMENT OVERVIEW

PERB is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB presently administers fourteen collective bargaining statutes, 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; the Public Employee Communication Chapter (PECC) of 2017, which conferred PERB jurisdiction over violations of the PECC; the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD) of 2018, which conferred PERB jurisdiction over violations of the PEDD; 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. In 2021, the Legislature gave PERB jurisdiction over disputes relating to employer-employee relations of the Sacramento Regional Transit District (SacRT) for those exclusive representatives that have elected to move one or more of its bargaining units to the jurisdiction of PERB for unfair practice charges.

The proposed amendments update the Board's rules that govern expediting matters at each division of PERB's proceedings, as well as procedures concerning the finality of Board agent decisions in certain representation matters. These amendments are intended to fill gaps, resolve ambiguities, and simplify the Board's procedures and processes for case adjudication to make the expediting process more understandable to attorneys and non-attorneys alike.

Over time, the Legislature has continued to place additional public employers under PERB's jurisdiction. 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 its regulations, including its expedite regulations, to make them user-friendly, detailed, and understandable.

On June 14, 2018, the Board approved the Case Processing Efficiency Initiative Report, which included amending its regulations to provide for an expedited process for charges based on the level of complexity of the charge.

INFORMATIVE DIGEST

Section 32147 concerns expediting matters before the Board. The proposed changes include additional rules clarifying in which division of the Board a motion to expedite may be filed, which differs based on whether the motion is for a single division of PERB or all divisions. The amended regulation also includes new filing requirements concerning how to label a motion to expedite, whether the motion may be included with other documents, the deadline for filing a response to the motion, and whether a reply brief may be filed. Additionally, the amended regulation identifies matters filed under specified PERB regulations that are subject to mandatory expediting by the Board. The amended regulation also describes the criteria that the Board considers when ruling on a motion to expedite a matter that is not subject to mandatory expediting, and whether the denial of the motion is with prejudice. The amended regulation further sets forth procedures for expediting, such as: how expedited matters

are prioritized over other matters; the labeling of documents filed in an expedited case; and whether expedited matters may be placed in abeyance or continued.

Section 32305 concerns the finality of Board agent decisions. The proposed changes include adding cases arising under section 61215 to the listing of matters arising under specified PERB regulations, where a Board agent's decision is final unless the Board itself issues a decision not later than 180 days from the date exceptions were filed with the Board, and clarifying that the Board shall not grant abeyances in these matters. The amended regulation further provides an additional matter that requires an expedited Board process.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

The Board has determined that the proposed regulatory 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 amended 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. As part of this initiative, PERB determined that it needed to amend its expedite regulations to eliminate ambiguities and add missing information. By making these changes, the proposed amendments will reduce case processing errors, which, in turn, will improve case processing times. In addition, the proposed amendments will make case adjudication more consistent. As one example, PERB's rules provide that the Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board. The current rules, however, are silent regarding the filing of a motion to expedite proceedings within a single division of PERB or the filing of a motion to expedite at all divisions. The current rules also do not specify the deadline for a party to file a response to the motion to expedite and whether a reply brief may be filed after the opposing party files its response. The proposed amendments add language expressly identifying with whom to file a motion to expedite proceedings within a single division or at all divisions of the Board, while also providing a deadline for a party's response to the motion and clarifying that no reply briefs shall be filed unless ordered.

The proposed amendments also specify which cases must be expedited from initial filing to conclusion, without any motion or order. For cases that are not subject to mandatory expediting, the proposed amendments set forth applicable criteria used in determining whether a case should be expedited. PERB's current rule governing expediting cases does not specify which cases require mandatory expediting, nor

does it provide significant detail regarding the criteria for granting a motion to expedite. As a result, the current regulations lack sufficient details to best guide constituents on how to file, challenge, or provide briefing for a motion to expedite proceedings. The proposed amendments address the problem by defining which cases shall be expedited, and by specifying the criteria that will be considered to determine whether to expedite cases that are not subject to mandatory expediting.

Essentially, the proposed amendments continue the Board's efforts to update its case processing regulations 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 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, 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 amended regulations will not affect small business because the amended regulations will only affect public employers, public employees, and public employee organizations.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The Board concludes that the amendment of the regulations 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 expedite regulations, 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.

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 amended 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:

James Coffey, Senior Regional Attorney
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811
(916) 584-5676
E-mail: james.coffey@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) 591-3166
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 James Coffey at the above address.

PRELIMINARY ACTIVITIES

On February 6, 2020, PERB held a stakeholder meeting to discuss the expedited decision process as part of the Case Processing Efficiency Initiative. PERB held a public meeting on October 14, 2021, wherein the public was given the opportunity to provide comments regarding implementation of these regulations. During the public meeting, constituents provided comments as well as recommendations to the Board. In response, the Board agreed to amend its expedite regulations for approval at the next public meeting.

On December 9, 2021, 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 amended regulations and the initial statement of reasons. Copies of these documents may be obtained by contacting James Coffey at the above address, and are also available on the Board's website 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 amend the 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 regulation as revised. Requests for copies of any modified regulation and/or the final statement of reasons should be sent to the attention of James Coffey 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 James Coffey 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 amended regulations can be accessed through PERB's website 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 website. The final statement of reasons or if applicable, notice of a decision not to proceed, will be posted on PERB's website following the Board's action.